

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11859 OF 2016

**AMBADAS LAXMAN PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. Vinod P. Patil, Advocate for petitioners

Mrs. M. A. Deshpande, AGP for respondent Nos. 1, 2, 3, 6 and 7

Mrs. V. D. Jadhav – Patil Advocate for respondent No.4

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**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 04.01.2023

ORAL ORDER :-

Heard. Rule. Rule is made returnable forthwith. The learned AGP and the learned Advocate Mrs Jadhav – Patil waives service for the respective respondents. At the joint request, the matter is heard finally at the stage of admission.

2. The petitioners are coming with the following prayers:

“(B) This Hon’ble Court by way of writ, order or directions in the like nature be pleased to direct the respondent authorities to make the payment of compensation to the petitioners as per the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(C) This Hon'ble Court by way of writ, order or directions in the like nature be pleased to direct the respondent no.1 State Govt. to initiate enquiry into the matter of delayed payment by respondent no.7 and be released to direct the respondent no.1 to take appropriate legal action against the respondent no.7 and the amount of interest of delayed payment may be recovered personally from the respondent no.7.

(D) This Hon'ble Court by way of writ, order or directions in the like nature be pleased to quash and set aside the impugned communication dt. 16.12.2014 (it ought to have been 16.12.2015) issued by respondent no.7 by which respondent no.7 modified the award dt. 24.12.2012 and reduced the amount of compensation of the petitioners without any authority of law and be pleased to direct the respondent authorities to pay the amount of compensation as per award as well as as per the provisions of 2013 Act along with interest."

3. The learned advocate Mr. Patil, at the outset submits that the petitioners are not pressing for the prayer clause (B).

4. An award dated 24.12.2012 passed under the Land Acquisition Act, 1894, has been revised by the respondent No.7 - Special Land Acquisition Officer by his impugned order dated 16.12.2014. By referring to the decision of the Supreme Court in the case of *State of Haryana vs. Gurucharansingh & Anr ; – AIR 1966 SC 106* and another matter. He concluded that the fruit bearing trees

ought not to have been separately valued when the valuation of the property under acquisition was made on the basis of market value.

5. The learned advocate Mr. Patil would submit that the respondent No.7 has no power or jurisdiction to revise the earlier award. Therefore, for this reason alone, the impugned communication is liable to be set aside. He submits that by resorting to such modification, an amount of more than rupees 50,00,000/- (Rupees Fifty Lakh) has been withheld, which is illegal and the petitioner should be paid the compensation together with interest from 16.12.2015.

6. The learned AGP fairly concedes that the learned Special Land Acquisition Officer has no power or jurisdiction under the Land Acquisition Act, 1894, to resort to some modification or review of the award. Only typographical and clerical errors can be corrected. By referring to the affidavit in reply of the respondent No.7, she would further submit that an attempt was made to rectify the award in the light of the decision of the Supreme Court. Since it is a matter of public money, the officer seems to have taken the decision to save it.

7. Admittedly, the Land Acquisition Officer does not have any power or jurisdiction under the Land Acquisition Act, 1894 to

modify or rectify the award. Only by virtue of Section 14A of the Land Acquisition Act, 1894, clerical and arithmetical errors can be rectified. For this reason alone, the attempt to modify the award suffers from the vice of lack of power and jurisdiction.

8. Apart from the above state of affairs, the original award specifically refers to the decision of the Supreme Court, relevant portion has been extracted and the then officer had even specifically mentioned as to how in the light of that observation and the decision, she was valuing the land and the fruit bearing trees separately. If this was the state of affairs, when the predecessor Special Land Acquisition Officer, may be by resorting to some objective satisfaction regarding applicability of the law in terms of the decision of the Supreme Court, had passed the award, the successor Officer could not have sit in appeal to rectify it howsoever erroneous the conclusion of his predecessor was.

9. Consequently, once having found that no power or jurisdiction vests with the Land Acquisition Officer to modify and rectify an award and that when the award itself mentions about the law laid down by the Supreme Court, it was unbecoming of the

successor Special Land Acquisition Officer to resort to such modification.

10. The impugned order having the effect of modifying the award, therefore, is a nullity and liable to be quashed and set aside.

11. So far as the relief being claimed by the petitioners regarding interest, is the matter we feel need not be gone into in this proceeding since, there would be every room to doubt as to on whom the responsibility of interest can be fastened. We, therefore, keep that issue open, more so when petitioners claim for enhancement is pending before the reference Court.

12. The writ petition is partly allowed. Rule is made absolute accordingly.

13. The impugned order dated 16.12.2014 is quashed and set aside. The remainder of the amount of compensation lying with the respondent No.7 shall be paid to the petitioners at the earliest together with interest accrued thereon, if any.

[S. G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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