

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

WRIT PETITION NO.13162 OF 2022

1. Shivraya Vitthalrao Yadapalle
Age : 45 years, Occu : Service,
2. Santosh Vitthalrao Yadapalle
Age : 37 years, Occu : Service,
3. Laxman Vitthalrao Yadapalle
Age : 37 years, Occu : Service
Through General Power of Attorney Holder
Mr. Anilkumar Sayalu Muddamwar
R/o. Kalaskar Galli, Tq. Degloor,
Dist. Nanded .. Petitioners

Versus

1. The State of Maharashtra
Through Secretary, Revenue Department,
Mantralaya, Mumbai.
2. Collector, Nanded.
3. The Sub Divisional Officer,
Deglur, Dist. Nanded
4. Tahsildar, Deglur,
Dist. Nanded
5. Zilla Parishad Nanded,
Through its Chief Executive Officer .. Respondents.

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Mr. Sanjeev Deshpande, Senior Advocate a/w. Mr. Swapnil Joshi
i/by Mr. Shreyas Deshpande, Advocate for the petitioners.

Mr. P.K. Lakhotiya, AGP for Respondent Nos.1 to 4

Respondent No. 5 – Served.

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**CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 11-04-2023

PER COURT :

. The petitioners are claiming to be the owners of the land Gut Nos.604, 604/1 to the extent of 81-R situated at Tamlur, Tal. Degloor, Dist. Nanded which title they claim to have acquired by virtue of compromise decree passed in Regular Civil Suit No.89 of 2015 (Santosh Vitthalrao Yadapalle vs. Gangabai Vitthalrao Yadapalle and others), which was for partition and separate possession.

2. It is the case of the petitioners that the respondent – State Authorities have encroached over their land without taking recourse to the acquisition proceedings and have constructed a rural hospital, primary school and water reservoir. The petitioners claim that they are entitled for compensation in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the ‘Act of 2013’).

3. It is the claim of the petitioners that their grand father was served with a notice under Section 7 and 8 of the Land Acquisition Act, 1894 (in short, ‘Act of 1894’) way back in 1956 in

relation to the aforesaid gut numbers. According to petitioners, though the notice was served, there was no acquisition of the land of the petitioners by following due process of law and the respondent authorities have taken possession of the land by taking undue advantage of the grand father of the petitioners being illiterate. In the aforesaid background, the contentions are that the efforts made by the petitioners to secure the copy of the award were unfruitful since the respondent authorities have not passed any such award and therefore the same was not available. Alleging that the constitutional rights of the petitioners under Article 300A of the Constitution as well as statutory rights are infringed to claim compensation, the present petition has been preferred.

4. While contesting the aforesaid submissions Mr. Lakhotiya, the learned Additional Government Pleader has urged that the copy of the notice under Section 7 and 8 addressed to the grand father of the petitioners sufficiently speaks of the land being taken over by the respondent authorities by taking recourse to the Act of 1894. According to him, it is for the petitioners to demonstrate that since 1956 till this date, they have permitted the respondent authorities to be in possession without there being any obstruction. As such, he has sought dismissal.

5. Considered the rival submissions made by the learned counsel appearing for the respective parties.

6. The claim of the petitioners that they have right to property under Article 300A of the Constitution as they cannot be deprived of the property save by authority of law. A person who is to be deprived of his property, can be only by following due procedure of law.

7. The petitioners have admitted that in the year 1956 the grand father of the petitioners was served with the notice under Section 7 and 8 of the Act of 1894. In the aforesaid background, the fact remains that the respondent authorities appear to have taken out the acquisition proceedings. Based on the same, the possession was taken from the grand father of the petitioners and neither the grand father nor the father of the petitioners have questioned such acquisition. Rather from the conduct of the grandfather and father of the petitioners of permitting the respondent authorities to construct hospital, school, water reservoir sufficiently speaks about extending their consent for such construction.

8. In the aforesaid background, it appears that for the first time after lapse of more than 50 years the petitioners are questioning the act of the respondent authorities of depriving the petitioners of their right to claim over the property. In such an eventuality, the petitioners must explain the delay caused in approaching before this Court. The delay depicts the cause which is brought before the court. The petitioners have failed to substantiate the same by citing cogent reasons. In support of the above observations, reliance can be placed on the judgment of the Apex Court in the matter of **State of Maharashtra vs. Digambar**, reported in 1995 SCC (4) 683.

9. The fact that the petitioners have entered into a compromise decree in a suit bearing Regular Civil Suit No.89 of 2015 by itself will not bring the cause of the petitioners within limitation.

10. In the aforesaid background, there is no substance in the petition and the petition accordingly fails and stands dismissed.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)