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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4427 OF 2023**

Vishn Sakharam Lahamge

.. Petitioner

**Versus**

State of Maharashtra and Ors.

.. Respondents

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***Mr. Raju Suryavanshi, Advocate for the Petitioner.***

***Mr. V.S. Gokhale 'B' panel a/w Mrs. M.S. Bane, AGP  
for the Respondent/State.***

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**CORAM : B. P. COLABAWALLA &  
M.M. SATHAYE, JJ.**

**DATE : JUNE 20, 2023**

**P. C.**

1. The learned Advocate appearing on behalf of the Petitioner seeks leave to delete Respondent No. 2 from the above Petition. Amendment is accordingly allowed and the Petitioner is permitted to delete Respondent No. 2 from the cause title of the Petition. Amendment shall be carried out forthwith in front of the Associate.

2. Rule. With the consent of the Petitioner and Respondent Nos. 1, 3, 4 and 5 rule made returnable forthwith and heard finally.

3. The above Petition is filed seeking following reliefs.

*“a) rule be issued, record and proceedings be called for ;*

*b) this Hon’ble Court be pleased to issue a writ of mandamus, directions, order or any any other appropriate writ in that nature, directing the Respondents to forthwith delete the remark of acquisition for Gendeshwar Percolation Tank recorded in the other rights column of the 7/12 extract of land bearing Survey No. 67 (old Gat No. 1343), Hissa No. 1, lying, being and situate at Sinnar, Taluka Sinnar, District Nashik.”*

4. To put in nutshell, the Petitioner seeks a direction against the Respondent (Revenue authorities) to forthwith delete the remark of acquisition for Gendeshwar Percolation Tank recorded in the other rights column of the 7/12 extract of land bearing Survey No. 67 (old Gat No. 1343), Hissa No. 1, lying, being and situate at Sinnar, Taluka Sinnar, District Nashik.

5. The learned Counsel appearing on behalf of the Petitioner submitted that initially to challenge notification issued under Section 4 of the Land Acquisition Act, 1894, the Petitioner had filed a Civil Suit bearing R.C.S. No. 318 of 1996 in the Court of the learned Civil Judge, Jr. Division, Sinnar. In that suit an order was passed under Order 7 Rule 10 of the Civil Procedure Code for return

of the plaint for presentation before proper/competent forum. Being aggrieved by the said order ( dated 12.06.2008), the Petitioner filed Writ Petition No. 8342 of 2008 in this Court. In the said Writ Petition, the Special Land Acquisition Officer filed an Affidavit-in-Reply dated 2<sup>nd</sup> February, 2009 in which it was stated that no progress has taken place in the acquisition proceedings till date and hence notification issued under Section 4 of the Land Acquisition Act has lapsed. Considering the aforesaid Affidavit, Writ Petition No. 8342 of 2008 was disposed of by an order dated 2<sup>nd</sup> March, 2009 and the Petitioner was granted liberty to file a fresh Petition and seek appropriate reliefs as may be advised.

6. In light of this liberty, the Petitioner, thereafter, filed Writ Petition No. 3770 of 2009 before a Division Bench of this Court. The aforesaid Writ Petition was disposed of by an order dated 6<sup>th</sup> April, 2009. For the sake of convenience said order is reproduced hereinbelow.

***“CORAM: BILAL NAZKI AND  
SMT. V.K. TAHILRAMANI, JJ.  
DATE : APRIL 06, 2009***

***P.C.***

***1. This petition has been filed with the grievance that the Notification under Section 4 of the Land Acquisition Act was passed in the year 1996 and***

*nothing was done thereafter, therefore, the land should be treated to be the land of the Petitioner.*

*2. The learned AGP on instructions submits that the Petitioner had also filed a suit in the Court at Nasik which was dismissed on the ground that the Court did not have jurisdiction. The Petitioner filed Writ Petition before this Court which is also dismissed. But the State has made a categorical assertion in the affidavit in Writ Petition that the acquisition has lapsed as the Government has not taken any steps to make an Award after Section 4 Notification was issued in the year 1996. Copy of the affidavit filed in the Writ Petition has been placed on this file as well. In this view of the matter, we do not think that any relief is required to be given to the Petitioner as the land belonging to the Petitioner which is subject matter of this petition, has not been at all acquired by the State Government. This Petition is accordingly disposed of. However, disposal of this petition would not disentitle the State to take steps in future for acquisition of the land if public purpose so demands.”*

7. After this order, the Petitioner made several representations to the concerned Authorities to delete the entry in the other rights column in 7/12 extract which indicated the subject property as subjected to acquisition. This however, has still not been done and therefore present Petition is filed by the Petitioner.

8. We have heard the learned Counsel appearing for the Petitioner as well as the learned AGP for Respondent Nos. 1, 3 4 and 5 respectively. The learned AGP brought our attention to page 25 of

the paper book (Exhibit G) in which it is indicated that the acquisition of the subject matter property is still under consideration. She therefore submitted that entry made in other rights column in the 7/12 extract ought to be continued at least for a period of six months so as to enable the authorities to take a decision whether they want to acquire the subject property or otherwise.

9. After hearing the learned AGP, we are unable to agree with her submissions. In the Affidavit dated 2<sup>nd</sup> February, 2009, filed by the authorities in Writ Petition No. 8342 of 2008 a categorical statement is made that since no progress has taken place in the acquisition proceedings, notification issued under Section 4 of the Land Acquisition Act has lapsed. In fact, it is on the basis of this very affidavit and it was brought to the attention of the Division Bench of this Court in Writ Petition No. 3770 of 2009 that this Court in its order dated 6<sup>th</sup> April, 2009 inter-alia recorded that no relief was required to be granted to the Petitioner as the land belonging to the Petitioner which was subject matter of the Petition had not at all being acquired by the State Government. Once this is the position, we fail to understand why the mutation entry in the other rights column in 7/12 extract should continue. We are also not in

agreement with the request made by the learned AGP because we find that no steps have been taken to acquire property by the State Government of which indication was expressed as far back on 11<sup>th</sup> February 2015. Yet, till today nothing has been done. Considering these circumstances, we are of the opinion that the Petitioner is entitled to the reliefs claimed in the above Petition.

10. This Court has taken consistent view that private lands of the citizens like Petitioner cannot be kept under continuous and indefinite fetter, without initiating any action of proposed acquisition as expressed by co-ordinate Bench of this Court in order dated 15<sup>th</sup> November 2021 in group of Writ Petitions with lead Writ Petition No. 1332 of 2021.

11. In view of the forgoing discussions, following order is passed:-

- (a) Respondent No. 5 is directed to forthwith delete the remark of acquisition for Gendeshwar Percolation Tank recorded in the other rights column of the 7/12 extract of land bearing Survey No. 67 (old Gat

No. 1343), Hissa No. 1, lying, being and situate at Sinnar, Taluka Sinnar, District Nashik.

(b) It is made clear that this order will not in any way affect the right of the State Government to imitate fresh acquisition proceedings in relation to the aforesaid land if permitted under law. If it desires to acquire this land, they may do so in accordance with law.

12 Rule is made absolute in the aforesaid terms. Writ Petition is accordingly disposed of. No order as to costs.

13. All concerned to act on an authenticated copy of this order duly authenticated by the Associate.

**[ M.M. SATHAYE, J.]**

**[ B. P. COLABAWALLA, J.]**