

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12354 OF 2017

Ashok Hari Shitlani)
Age 5years, Occup. Agriculturist,)
Residing at Trimurti Building, Plot No.17)
Santacruz North, Mumbai — 400 054)...Petitioner

Versus

1. The State of Maharashtra)
Through the Secretary,)
Revenue and Forest Department)
Mantralaya, Mumbai)
 2. The Deputy Collector (Land Acquisition))
Metro Centre No.1, New Panvel)
Taluka Panvel, District Raigad)
 3. The Deputy Collector (Land Acquisition))
Metro Centre No.1, New Panvel)
Taluka Panvel, District Raigad.)
 4. Madhukar Babu Angre)
Since deceased through his)
Legal Representative Nos. 5 to 10)
 5. Anant Madhukar Angre)
 6. Malti Madhukar Angre)
 7. Sanjay Madhukar Angre)
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- All residing at Bamandongri)
Post Vahal, Taluka Panvel)
Dist. Raigad)
8. Supriya Sunil Wani)
Residing at Block No. 3,)
Pandurang Kripa CHS Ltd.)
Opp. Ghodke Hospital, Panvel,)
Taluka Panvel, District Raigad)
9. Vishakha Vilas Choudhary)
Residing at Dahisar,)
District Thane — 400612)
10. Kalyani Kailas Pote,)
Residing at Vadap, Post Gorkamat,)
Taluka Karjat, District Raigad — 410 201)
11. City and Industrial Development)
Corporation (Maharashtra) Ltd.)
Having its head office at CIDCO Bhavan)
CBD Belapur, Navi Mumbai — 400 614)
and registered office at ‘Nirmal’, 2nd Floor,))
Nariman Point, Mumbai — 400 021)
Through its Managing Director)...Respondents
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Mr.Y.S. Jahagirdar, Senior Advocate with Mr.N.V. Walawalkar, Senior Advocate, Mr.S.M. Sabrad and Mr.Amey Sawant for the Petitioner.

Mr.A.I. Patel, Additional Government Pleader with Ms.M.S. Bane,
AGP for the State - Respondent Nos.1 to 3.

Mr.Kezar Kharawala with Mr.Pradosh Patil i/b Lex Juris for the
Respondent Nos.5 to 8.

Dr.Uday Warunjikar with Mr.Nitesh Bhutekar i/b Mr.Vijay Dighe for
the Respondent Nos.9 and 10.

Mr.Akshay R. Kulkarni i/b Mr.Ashutosh M. Kulkarni for CIDCO -
Respondent No.11.

**CORAM:- R.D. DHANUKA &
GAURI GODSE, JJ.**

**RESERVED ON 10 APRIL, 2023
PRONOUNCED ON 2 MAY, 2023**

JUDGMENT [PER R.D. DHANUKA, J.]

1. Rule. Mr.Patel, learned Additional Government
Pleader waives service for the Respondent Nos.1 to 3.
Mr.Kharawala waives service for the Respondent Nos.5 to 8.
Dr.Warunjikar, waives service for the Respondent Nos.9 and

10. Mr.Kulkarni waives service for CIDCO - Respondent No.11. Rule is made returnable forthwith. By consent of the parties, the Petition is taken up for final hearing.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of certiorari for quashing and setting the Consent Award dated 4 July, 2017 and for a declaration that the land acquisition proceedings in respect of the writ property bearing Survey No.395, Hissa No.O at Village Vahal, Taluka Panvel, District Raigad admeasuring 01 H 75R (17500 sq. mtrs.) have lapsed.

3. The Petitioner has also prayed for a writ of certiorari for quashing and setting aside the order dated 28 August, 2015 passed by the Respondent No.2 and further seeks a writ of mandamus against the Respondent Nos.1 to 3 to pass an order under Section 11 of the Land Acquisition Act, 1894 in the name of the Petitioner in respect of the agricultural land i.e. land bearing Survey No.395, Hissa No.O at Village Vahal, Taluka Panvel, District Raigad admeasuring 01 H-75R-OP (17500 sq. mtrs.).

Some of the relevant facts for the purpose of deciding this Petition are as under :-

4. It is the case of the Petitioner that prior to 16 June, 2006, the Respondent No.1 was the owner of the writ property. On 16 June, 2006, the original Respondent Nos.4 and 5 to 7 being consenting party executed a registered Agreement to Sale in respect of the writ property in favour of the Petitioner thereby conferring all rights, title and interest in respect of the writ property in favour of the Petitioner.

5. On 24 December, 2012, the original Respondent No.4 through his power of attorney holder made an application dated 12 April, 2012 to the learned Additional Collector of Raigad at Alibag for sale of the said property. It is the case of the Petitioner that the learned Additional Collector after considering the said application, opinions of the learned Tahsildar of Panvel and CIDCO, passed an order thereby granting permission for sale of the said property under Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and Rules made there under.

6. On 13 February, 2013, the Respondent No.4 through his

power of attorney holder executed a registered Sale Deed in favour of the Petitioner thereby conferring all rights, title and interest in respect of the said property in favour of the Petitioner.

7. On 7 December, 2013, the Respondent No.1 issued a Notification which was published in Maharashtra Government Gazette on 16 December, 2013 under Section 4 of the Land Acquisition Act, 1894 regarding intention to acquire the lands at Village Vahal, Taluka Panvel, District Raigad for Navi Mumbai Project and included the writ property in the said Notification.

8. On 1 July, 2014, the Petitioner made an application to the Respondent No.3 and informed the Special Land Acquisition Officer that the Petitioner had purchased the writ property and therefore, and that the Respondents should make all correspondence in respect of the acquisition of the said property with the Petitioner only.

9. On 4 August, 2014, the Petitioner made an application to the Respondent No.3 and informed the Special

Land Acquisition Officer that the Petitioner had purchased the writ property and therefore, should make all correspondence in respect of the acquisition of the writ property with the Petitioner only. On 5 August, 2014, the Respondent No.3 addressed a letter to the Petitioner assuring about conducting an enquiry about the grievances of the Petitioner and that the decision of the said enquiry will be communicated to the Petitioner.

10. On 20 May, 2015, the Respondent No.1 decided to acquire the writ property and issued a Declaration under Section 6 of the Land Acquisition Act, 1894, which came to be published on 20 May, 2015 in Maharashtra Government Gazette regarding acquisition of the writ property for Navi Mumbai Project.

11. On 23 June, 2015, the Petitioner made an application to the Respondent No.2 and raised his objection for making any correspondence with the earlier owners of the writ property. On 28 August, 2015, the Respondent No.2 passed an order purportedly under Section 9(3) & (4) of the

Land Acquisition Act, 1894, directing to declare an award in the name of the earlier owners of the writ property. It is the case of the Petitioner that the Respondent No.2 totally overlooked the Sale Deed executed by the earlier owner in favour of the Petitioner. A copy of the said order dated 28 August, 2015 was sent to the Petitioner in the last week of December, 2015. The Petitioner thus filed this Petition on 31 October 2016 for various reliefs.

12. Mr. Y. S. Jahagirdar, learned Senior Counsel for the Petitioner tendered synopsis and also brief written arguments and copy of the Complaint in S.C. Suit (St) NO. 4229 of 2022 filed by the Respondent Nos. 9 and 10 against Respondent No.7- Sanjay Madhukar Angre and others including the Petitioner herein. He also invited our attention to the various documents annexed to the Affidavit in Reply filed by various parties. He submitted that prior to the Notification dated 7 December, 2013 issued under Section 4 of the Land Acquisition Act, 1894 the acquisitions proceedings had already commenced in year 1970. Since no Award was rendered by the Special Land Acquisition Officer in pursuance of the said Notification

issued in the year 1970 within the time prescribed under Section 11-A i.e. within 2 years from the date of declaration of Notification under Section 6 of the Land Acquisition Act, 1894 the acquisition proceedings initiated earlier lapsed.

13. It is submitted by the Learned Senior Counsel that Section 4 Notification was once again issued on 7 December, 2013 in respect of the writ property followed by Notification under Section 6 on 20 May, 2015 i.e. after expiry of one year from Section 4 Notification which itself is a patent illegality. It is submitted that consent award was passed, after expiry of two years from the date of declaration under Section 6 issued on 20 May, 2015, whereas the consent award was passed on 4 July, 2017, which is again hit by Section 11A of the Land Acquisition Act, 1894.

14. It is submitted that the consent award could not have been made in any event under the Land Acquisition Act, 1894 after 1 January, 2014 as the said Fair Compensation Act clearly mandated that any acquisition proceedings initiated under the Land Acquisition Act, 1894 is to be proceeded

under the Fair Compensation Act from the stage at which it was on the date of coming into operation of the Fair Compensation Act i.e. with effect from 1 January, 2014, only when no award was passed under the Land Acquisition Act, 1894.

15. It is submitted by the learned Senior Counsel that by virtue of provisions of 24(1) (a) of the Fair Compensation Act, the acquisition of the writ property, if any, ought to have been continued under the provisions of the Fair Compensation Act from the stage of Notification under Section 4 dated 7 December, 2013. This submission is made without prejudice to the rights and contentions of the Petitioner that the said acquisition initiated once by issuance of Notification under Section 4 of the Land Acquisition Act, 1894 the proceedings stood lapsed in view of the Special Land Acquisition Officer not having made any Award within two years from the date of issuance of Notification under Section 6.

16. It is submitted by the learned Senior Counsel that

the original owner had already executed a registered Agreement of Sale for the writ property with the Petitioner on 16 June, 2006, few years before the said notification dated 7 December, 2013 under Section 4 of the Land Acquisition Act and two of the sons of the original owner and one daughter viz. Respondent Nos. 5 to 7 herein had signed the said Agreement of Sale as confirming parties.

17. It is submitted by the Learned Senior Counsel that the writ property being a tenanted land, permission of the Collector was applied for as required by Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and was granted on 24 December, 2012. He submitted that the writ property was transferred by the original owner vide Registered Sale Deed dated 13 February, 2013 executed with the Petitioner. The name of the Petitioner was already mutated in the record of rights of the writ property by mutation entry No. 4947 on 2 July, 2014 which was certified on 30 July, 2014 after due notice to the vendors.

18. It is submitted by the learned Senior Counsel that

the Petitioner had already informed the Special Land Acquisition Officer by letter dated 1 July, 2014 about sale deed between the original owner and the Petitioner and that he applied to the Talathi for recording the name of the Petitioner in the 7/12 extracts but the same could not be effected by then. The Petitioner requested the Special Land Acquisition Officer to cancel the notice under Section 4(1) of the Land Acquisition Act, 1894 and issue the same to the Petitioner to continue further proceedings for acquisition of the said Land in the name of the Petitioner.

19. It is submitted by the learned Senior Counsel that the Petitioner had once again informed the Deputy Collector (Acquisition) by a letter dated 4 August, 2014 about his Agreement of Sale and Sale Deed with Madhukar Babu Angre and requested him to carry out further correspondence with him. The Petitioner stated that he was placing the 7/12 extract showing his name on record which was manually informed to the Deputy Collector (Acquisition) to carry on further action in respect of the land under acquisition in the name of the Petitioner.

20. Learned Senior Counsel invited our attention to the letter dated 5 August, 2014 addressed to the Petitioner informing that a notice had been issued to the original owner Shri Madhukar Babu Angre regarding Survey No.395 which was replied in July, 2014. The Deputy Collector accepted that by his letter dated 4 August, 2014 the Petitioner had informed him about his ownership as per the Sale Deed dated 13 February, 2013 and that the notice under the Land Acquisition Act, 1894 was not binding on him. The Deputy Collector assured the Petitioner that appropriate decision would be taken in that behalf by making detailed investigation/hearing about it, and that further intimation would be given to him.

21. It is submitted by the learned Senior Counsel that however, on 11 August, 2014, the said Madhukar Babu Angre alleged to have filed an application to the Deputy Collector for passing the consent award. It is submitted that the notification under Section 6 was issued after one year from the date of issuance of Section 4 notification. He submitted that in any event admittedly, on that date, the name of the

Petitioner was found in the Records of Rights by reason of the said entry certified on 2 July, 2014. The Petitioner had already informed the Deputy Collector regarding the name of the Petitioner in the 7/12 extracts on the basis of the Sale Deed dated 13 February, 2013 and placed the documents on record.

22. It is submitted that the Deputy Collector, however, had passed a perverse order on 28 August, 2015 purportedly under Section 9(3) and (4) of the Land Acquisition Act by taking notice of the said objections of the owner that the said Sale Deed was illegal. He did not consider the objection of the Petitioner that the notice of acquisition was issued to the original owner though the land was sold to the Petitioner. The Deputy Collector observed that the process of acquisition was already going on and it was not possible to take decision in the matter due to dispute about the ownership of the said land, and therefore passed an order that the compensation may be paid as per Section 30 of the Land Acquisition Act, 1894 after award is declared in the name of the original owner.

23. It is submitted by the learned Senior Counsel that admittedly the appeal filed by Respondent Nos. 8 to 10 against the order recording the name of the Petitioner in the mutation entry was dismissed by the Sub-Divisional Officer on 2 May, 2016 and further application against the said order filed by the Respondent Nos. 8 to 10 also came to be dismissed by the Deputy Collector on 7 July, 2016. Learned Senior Counsel submitted that admittedly on 4 July, 2017, the Deputy Collector passed an order and award calling it to be consent award on the basis of the application dated 11 August, 2014 filed by the Respondent No.4 for passing consent order and declared it in favour of Madhukar Babu Angre, Respondent No.4 herein (since deceased).

24. It is submitted that no notice was given to the Petitioner of such application for passing consent award nor the Petitioner was supplied with any documents filed before the Deputy Collector by the original owner. He submitted that though the said Madhukar Babu Angre expired on 8 September, 2015, the alleged consent award was passed in favour of the dead person, by erroneously observing that in

old 7/12 extract, the Respondent No.4 was found in possession of the land. He submitted that the Deputy Collector gave an option whether the monetary compensation would be accepted or the compensation in the nature of developed plot would be accepted, that the concerned land owner/person interested opted for compensation in terms of Government Resolution dated 1 March, 2014. He submitted that the Deputy Collector relied upon the alleged consent letter purported to be signed by Madhukar Babu Angre. He submitted that the alleged signature of Madhukar Babu Angre if compared with the signatures on the admitted documents of Agreement of Sale and Sale Deed, the alleged signature on the letter of consent seems to be doubtful.

25. It is submitted by the learned Senior Counsel that since the Deputy Collector had on earlier occasion by the letter dated 5 August, 2014 accepted that the objection raised by the Petitioner in the letter dated 4 August, 2014 would be investigated in detail, thoroughly and appropriate decision would be taken, the Deputy Collector ought to have given notice to the Petitioner of any application made by the

Original Owner of the land before passing a consent award and could not have passed any order after granting personal hearing to the Petitioner and after considering the objections of the Petitioner before making the consent award.

26. It is submitted by the learned Senior Counsel that the Deputy Collector could not have made a consent award on the basis of the consent alleged to have been given by the person who had ceased to be the owner and more particularly without notice to the Petitioner-transferee of the writ property and present owner when his name was already entered into the revenue record as far as back as on 2 July, 2014, certified on 30 July, 2014.

27. It is submitted by the learned Senior Counsel that the statement of the Deputy Collector in the consent award mentioned the name of the Madhukar Babu Angre as alleged to have been mentioned as per the record is totally erroneous and illegal because the name of the Petitioner had already been entered into the revenue record as far as back on 2 July, 2014 and was certified after due notice to the heirs of

the original owner on 30 July, 2014. It is submitted by the learned Senior Counsel that the entire consent award is in gross violation of principles of natural justice. The said so called concerned affidavit dated 11 August 2014 came to be produced for the first time in the Affidavit in Sur-rejoinder filed by Respondent Nos.5 and 7.

28. It is submitted by the learned Senior Counsel that the Petitioner is in possession of the writ property under registered Agreement for Sale dated 16 June, 2006. The Deputy Collector has passed the impugned award without referring to the documents filed by the Petitioner. Respondent Nos.4 to 7 had not challenged the agreement for sale executed by the original owner in favour of the Petitioner. The Deputy Collector has not disbursed any compensation in favour of the Respondent No.4 or Respondent Nos. 5 to 7.

29. Learned Senior Counsel invited our attention to the affidavit in reply filed by the Collector, notarized on 26 May, 2022 and in particular paragraph 7, stating that as could be seen from the documents produced on record, Award could

not have been passed in the name of the deceased Respondent No.4. It is submitted that in paragraph 6, the Deputy Collector has contended that Order under Section 9(3) (4) of the Land Acquisition Act, 1894 was passed on 19 August, 2015 pointing out that since there was dispute about the ownership, award would be passed in the name of the original owner and the amount of compensation would be given as per Section 30 of the Land Acquisition Act, 1894. The said order dated 28 August, 2015 was initially challenged before this Court in this Writ Petition. During the pendency of this Writ Petition, on 4 July, 2017, consent award under Section 11(2) of the Land Acquisition Act, 1894 came to be passed which is also challenged by the Petitioner.

30. In paragraph 8 of the said affidavit, the Deputy Collector stated that taking into consideration all the facts mentioned in the said affidavit, the original award needs to be corrected and accordingly prayed that this Court be pleased to pass necessary orders. It is submitted that in view of the affidavit filed by the Deputy Collector, the impugned consent award deserved to be quashed and set aside on this

ground alone. He submitted that even if there is any dispute about the ownership, the award could not have been passed in the name of original owner.

31. It is submitted by the learned Senior Counsel that even in the said affidavit, the Deputy Collector did not produce any copy of the alleged consent given by the original owner for making a consent award. Learned Senior Counsel submitted that recently Respondent Nos.9 and 10 have filed civil suit in the **Learned Civil Judge Senior Division, Panvel**, challenging the Sale Deed, Agreement for Sale and Power of Attorney. Respondent Nos.9 and 10 are the daughters of the original owner. He submitted that the said suit is filed by the Respondent Nos. 9 and 10 after several orders recording mutation entry in the name of the Petitioner and after having rejection of the proceedings filed by some of the legal heirs of Respondent No.4 challenging mutation entry in favour of the Petitioner.

32. Learned Senior Counsel for the Petitioner invited our attention to the Affidavit in Reply, affirmed on 30 June,

2017 filed by Ashwini Patil I/c. Deputy Collector, Land Acquisition and submitted that in the said affidavit, it is contended that under the law, the lawful owner of the land under acquisition is eligible to get compensation and other benefits, such as the developed plot having area 22.5% of the total land under acquisition. If there is a dispute regarding ownership under the land under acquisition, the rival pleadings can be decided by the Civil Court and the machinery under the Land Acquisition Act does not have requisite jurisdiction to do so. There is no legal fault in the order dated 28 August, 2015 that has been belatedly challenged by the Petitioner after more than one year.

33. It is further contended in the said affidavit that under the Government Resolution dated 16 June, 2014 where the developed plot has been allotted to the true owner of the land under acquisition can be set apart in case of dispute regarding the ownership of the land under acquisition. He submitted that according to the Deputy Collector, the very same resolution has directed the concerned Deputy Collector to refer the dispute to the Civil Court. The Deputy Collector

accordingly requested vide its order dated 23 June, 2017, CIDCO to set apart the developed plot and the monetary compensation till the dispute of ownership is effectively resolved under Section 30 of the Land Acquisition Act, 1894.

34. Learned Senior Counsel invited our attention to the affidavit filed by the Deputy Collector on 26 May, 2022, stating that the Deputy Collector has admitted in the said affidavit that on 7 December, 2013, Notification under Section 4 of the Land Acquisition Act came to be issued through inadvertence in the name of Respondent No.4 though the Petitioner was the owner of the land on that date. The Petitioner had made an application pointing out that the notification under Section 4(1) issued in the name of deceased Respondent No.4 be cancelled and the same be issued in the name of the Petitioner. The name of the Petitioner had appeared on 4 August, 2014 in the Mutation Entry No. 4947.

35. It is submitted that in the said affidavit filed by the Deputy Collector, he had referred to the letter dated 28

August, 2015 addressed by the Deputy Collector to the Petitioner that after holding inquiry/hearing, necessary decision would be taken. He submitted that the Deputy Collector has also admitted that the declaration under Section 6 issued on 20 May, 2015 also came to be issued and once again through inadvertence was issued in the name of the deceased Respondent No.4.

36. Mr. A.M. Kulkarni, learned counsel for the CIDCO relied upon the possession receipt dated 15 November, 2017 and submitted that the possession was already handed over to CIDCO by the Government Authorities in presence of panchas and submitted that Executive Magistrate had taken possession on 15 November, 2017. He submitted that the legal heirs of the deceased Respondent No.4 had entered into a plot admeasuring 2760 sq. mtrs. based on the alleged consent of the original Respondent No.4 dated 11 August, 2014. He did not dispute that the Notification under Section 6 of the Land Acquisition Act was issued after the alleged consent given by the original owner.

37. Mr. Kezer Kharawala, learned counsel for the Respondent Nos. 5 to 8 relied upon the Affidavit in Reply filed by his client. Learned counsel also invited our attention to the Additional Affidavit filed by Respondent Nos.9 and 10 who are the daughters of the Original Respondent No.4. He relied upon various paragraphs of the sur-rejoinder filed by his clients and submitted that the Respondent No.4 during his life time had already signed the consent letter dated 10 October, 2014 duly notarized.

38. Upon raising query, the learned counsel admitted that there is no explanation given in the sur-rejoinder or earlier affidavits filed by the Respondents as to why the alleged consent letter was not mentioned. He invited our attention to the affidavit in reply filed by the Deputy Collector on 26 May, 2022 and submitted that the Deputy Collector has taken his stand now that the Award is passed in the name of the dead person. He submitted that the so called Sale Deed came to be executed by the Petitioner in his own favour by representing the Respondent No.4. The other legal heirs of the Madhukar Babu Angre were not parties to the said Sale

Deed.

39. Learned counsel relied upon the following judgments for consideration of this Court:-

- 1. Sandeep S. Metange and Ors. Vs. State of Maharashtra and Ors. [AIR 2022 Bombay 77]**
- 2. Rajinder Singh Bhatti & Ors. Vs. State of Haryana & Ors. [AIR 2009 SC 2232]**
- 3. Shiv Kumar and Anr. Vs. Union of India and Ors. [AIR 2019 SC 5374]**
- 4. Narayanamma and Anr. Vs. Govindapa and Ors. [(2019) 19 Supreme Court Cases 42]**
- 5. Parshuram Kathod Gaikar Vs. Pandu madhu Hard & Anr. [1993 Mh.L.J. 1570]**
- 6. Lotan Ramchandra Shimpi & Ors. Vs. Shankar Ganpat Kayasth & Ors. [1995 (1) Mh.L.J. 80]**
- 7. Bhimabai Mahadeo Kambekar though LRs vs. Arthur Import and Export Company and Ors. [2019 (2) ABR 501]**
- 8. Mussoorie Dehradun Development Authority Vs.**

Rajesh Goyal & Others. [2014 SCC Online Utt 1630]

9. Meera Sahni Vs. Lieutenant Governor of Delhi and Ors. [(2008) 9 SCC 177]

10. Prakash Vasudeo Deodhar and Ors Vs. State of Maharashtra and Ors. [1993 Mh.L.J. 1768]

11. State of Maharashtra, Through its Secretary, Ministry of Revenue of Forest, Mantralaya, Mumbai and Ors. Vs. Santosh Pralhad Sonkambale and Anr. [2021 SCC Online Bom 9193]

40. Learned counsel for Respondent Nos. 5 to 8 relied upon the Talathi Certificate and submitted that the writ property was under acquisition. He submitted that though the proceedings initiated by issuance of notification under Section 4 of the Land Acquisition Act, 1894 had lapsed, the same was not withdrawn under Section 48 of the Land Acquisition Act. He submitted that even in 7/12 extract issued in favour of the Petitioner, there is a reference to the acquisition proceeding. He submitted that the Petitioner had fraudulently obtained permissions for cultivation in favour of the Petitioner in the month of December, 2012. He relied upon

the Condition No.10 of the said Certificate and submitted that it was clear that if the land would be acquired, permission for cultivation would lapse.

41. It is submitted that the Petitioner purchased the writ property knowing fully well that the land is under acquisition and the Petitioner had never cultivated land and the Petitioner was not the cultivator. He had obtained the certificate about cultivation of land on 30 March, 2010 from the Rajasthan State Authority. He submitted that the same certificate issued by the Authority of the Rajasthan State was referred in Agreement for Sale. He did not dispute that his clients have not challenged the Sale Deed or Agreement for Sale in any proceeding so far. He submitted that said Sale Deed was entered into between **Respondent No.4** and the Petitioner. Respondent Nos. 5,6 and 7 had given consent. He submitted that the writ property is an ancestral property. Respondent Nos. 9 and 10 did not given consent. The objections of the Petitioner was considered in the order under Section 9 of the Land Acquisition Act.

42. It is submitted by the learned counsel that if this Court considers the notification issued under Section 4 in the year 2013, in that case the Petitioner would have locus to file a petition. But if this Court comes to the conclusion that the acquisition proceedings though initiated earlier, lapsed and no order can be passed under Section 48 of the Land Acquisition Act, in that event, the Petitioner would have no any locus to file any petition. He submitted that since the Petitioner has executed the Sale Deed in his own favour by exercising the power of attorney which is given only by Respondent No.4 and not by others, such documents are ex-facie illegal and cannot be relied upon by the Petitioner.

43. It is submitted that the Sale Deed is not signed by any parties as vendors or confirming parties. He submitted that, in any event, the mutation entry in favour of the Petitioner is not conclusive and does not confer any ownership right in favour of the Petitioner. He submitted that the consent could not have been given by the Respondent No.4 father alone. Since name of the father was recorded in the mutation entry, his affidavit was taken for giving consent

for making a consent award.

44. Upon raising query, 'whether consent not having been given by the legal heirs of the Respondent No.4 for making a consent award according to his clients, whether the consent award made by the Deputy Collector could be final and binding upon his clients,' the learned counsel fairly stated that since the consent was not given by the other legal heirs of the original Respondent No.4, the Deputy Collector could not have made any such consent award only based on the consent affidavit filed by Respondent No.4.

45. Dr. Warunjikar, learned counsel for Respondent Nos.9 and 10 invited our attention to the plaint filed by his clients who are the daughters of the Original Respondent No.4 and submitted that his clients have challenged the Power of Attorney, Agreement for Sale and the Sale Deed in the said suit filed in the year 2022. Respondent Nos.5 to 8 are objecting to the claim of the Respondent Nos.9 and 10. He submitted that his clients are not disputing the fact that the acquisition proceedings had lapsed in view of the award

having being made beyond the time prescribed under Section 11 A of the Land Acquisition Act. He submitted that this Court cannot adjudicate on the issue of title of the Petitioner in this writ petition.

46. It is submitted that the consent of Respondent Nos. 9 and 10 was not taken by the father before executing the Agreement for Sale, Sale Deed and Power of Attorney for making the consent award. Respondent No.4 father alone could not have given such consent for making consent award. He submitted that the writ property is an ancestral property and, therefore, the daughters also have equal share in the said ancestral property. The consent given by the Respondent No.4 is not binding upon his clients. In support of his submissions that the daughter have equal rights in the ancestral property, he relied upon the judgment of the Supreme Court in case of **Vineeta Sharma Vs. Rakesh Sharma and Ors. [(2020) 9 SCC 1]**.

47. Learned Senior Counsel for the Petitioner in his Rejoinder Arguments submitted that the suit is filed in the year 2022 being S.C. Suit (St) No. 4229 of 2022 and no notice

was issued till date in the said suit. He submitted that the name of the Petitioner was already recorded in the mutation entry on **2 July, 2014**. The other legal heirs of Respondent No.4 have put up the Respondent Nos. 9 and 10 and have filed a collusive suit on **30 September, 2022**. Appeal filed by Respondent Nos.8 to 10 against the order passed in the mutation proceedings, has been already dismissed. He submitted that original application filed by Respondent Nos.8 to 10 against the order dated 2 May, 2016 is already dismissed on 4 July, 2018. Respondent Nos. 9 and 10 have thus filed a frivolous suit.

48. It is submitted by the learned Senior Counsel that since the acquisition proceedings had already lapsed, admittedly, there was no question of making any consent award under the Land Acquisition Act and that also in the name of a dead person, much after the death of the original Respondent No.4.

Reasons and Conclusions

49. The short question which arises for consideration

of this Court is to (i) whether the Deputy Collector could have made a consent award though the land acquisition proceedings initiated in the year 1970 and thereafter, in the year 2013 had already lapsed in view of the award not having been rendered within prescribed period under Section 11A of the Land Acquisition Act and that also in the name of a dead person?

(ii) whether the impugned consent award was in violation of the principles of natural justice in view of the Deputy Collector not having issued any notice to the Petitioner before making a consent award, knowing fully well that the name of the Petitioner was already entered into the mutation entry within the knowledge of the Deputy Collector or not?

(iii) whether the Deputy Collector could have made a consent award based on the alleged documents submitted by the Original Respondent No.4 during his life time and more particularly when his legal heirs have opposed the filing of such alleged consent on the ground that the writ property was ancestral property and thus the Respondent No.4 alone could not have executed such consent award or not?

50. It is a common ground that the proceedings initiated under Section 4 of the Land Acquisition Act acquiring the writ property in the year 1970 did not culminate into an award within the time prescribed under Section 11A of the Land Acquisition Act, 1894. The proceedings thus stood lapsed. The Special Land Acquisition Officer, however, initiated fresh acquisition proceedings by issuing notification under Section 4 of the Land Acquisition Act on 7 December, 2013. Admittedly, Section 6 notification was published in the Maharashtra Government Gazette on 20 May, 2015 in respect of the writ property. Admittedly, the consent award came to be made much after expiry of the period prescribed under Section 11A of the Land Acquisition Act.

51. Learned counsel for the private Respondents did not dispute that even this acquisition proceeding commenced under the notification issued under Section 4 on 7 December, 2014, also stood lapsed in view of the award not having been made within time prescribed under Section 11A of the Land Acquisition Act. In our view since the acquisition proceedings have already been lapsed, much prior to the date of passing

the consent award, no such consent award could have been made after lapsing of the acquisition proceedings. The consent award deserves to be quashed and set aside on this ground itself.

52. A perusal of the affidavit filed by the Deputy Collector clearly indicates that the award has been made admittedly in the name of the dead person. The Deputy Collector in the Affidavit in Reply, affirmed on 30 June, 2017 has contended that if there is a dispute regarding ownership under the land under acquisition, the rival pleadings can be decided by the Civil Court and the machinery under the Land Acquisition Act does not have requisite jurisdiction to do so and thus, no legal fault can be found in the order dated 28 August, 2015 that has been belatedly challenged by the Petitioner after more than one year.

53. The Deputy Collector in his affidavit dated 26 May, 2022 has admitted that the Notification dated 7 December, 2013 under Section 4 of the Land Acquisition Act came to be issued through inadvertence in the name of Respondent No.4 though the Petitioner was the owner of the land on that date.

He also stated that the Petitioner made an application requesting that the Notification under Section 4(1) issued in the name of Respondent No.4 be cancelled and the same be issued in the name of the Petitioner. He further admitted that even declaration under Section 6 of the Land Acquisition Act dated 20 May, 2015 came to be issued inadvertently in the name of the deceased Respondent No.4. The Petitioner had raised an objection on 23 June, 2015 by making an application.

54. The Deputy Collector, however, has made a perverse statement that order under Section 9(3) and (4) of the Land Acquisition Act was passed pointing out that since there was dispute about ownership, award would be passed in the name of the original owner and the amount of compensation would be given as per Section 30 of the Land Acquisition Act. In our view, since land acquisition proceedings had already lapsed, the said order passed on 28 August, 2015 is contrary to the facts on record and more particularly that the name of the Petitioner was already recorded in the mutation entry. The Deputy Collector has

further admitted in the said affidavit that as could be seen from the documents produced on record, the award could not have been passed in the name of the deceased Respondent No.4.

55. The Full Bench of this Court in case of **Sandeep S. Metange and Ors. (Supra)** has held that publication of preliminary notification under Section 4 of the Land Acquisition Act amounts to initiation of the land acquisition proceedings for the purposes of Section 24(1) of the Fair Compensation Act. In our view, this judgment would advance the case of the Petitioner and not the case of the Respondents. In this case notifications under Section 4 were issued much prior to 1 January, 2014 and thus land acquisition proceedings for the purposes of Section 24(1) of the Fair Compensation Act commenced much prior to 1 January, 2014.

56. Supreme Court in case of **Rajinder Singh Bhatti and Ors. (Supra.)** has held that if an award under Section 11 is not made by the Collector within a period of two years from the date of the publication of the declaration, the entire proceedings for the acquisition of the land shall lapse

under Section 11A. In that matter, the State Government did not grant approval to the proposed award and thus award could not be made within the time prescribed under Section 11A. The Supreme Court held that Section 11A provides maximum period within which the award from the date of the publication of the declaration has to be made. In default, the consequence is that the entire proceedings for the acquisition would lapse.

57. Section 48 empowers the State Government to withdraw from the acquisition of any land subject to two conditions namely; (i) the case is not provided under Section 36 and (ii) that possession has not been taken. Section 11A and the consequence provided therein i.e. lapse of acquisition proceedings in the event of the award having not been made within a period of two years from the date of publication of the declaration under Section 6 is entirely distinct and different than the decision that the Government may take for withdrawal from the acquisition under Section 48(1).

58. It is not the case of the Respondent Nos. 5 to 8 that any application for withdrawal of the land under acquisition

was made under Section 48(1) of the Land Acquisition Act. The said Judgment would advance the case of the Petitioner and not the case of the Respondent Nos. 5 to 8.

59. Insofar as the judgment of the Supreme Court in case of **Shiv Kumar and Anr. (Supra)** relied upon by the learned counsel for the Respondent Nos. 5 to 8 is concerned, it is held by the Supreme Court that purchase of land after Notification under Section 4 of the Land Acquisition Act, 1894, renders the Sale Deed void and thus higher compensation or benefit under Section 23 of the Fair Compensation Act is not contemplated for such purchaser. The Supreme Court in the said judgment held that if any subsequent purchaser acquires land, his/her only right would be subject to the provisions of the Act and/or to receive compensation for the land. In this case, the Sale Deed was executed prior to the notification under Section 4 of the Land Acquisition Act, 1984 issued in the year 2013. Be that as it may, we do not propose to adjudicate upon the validity and legality of the said Sale Deed in these proceedings.

60. Supreme Court in the case of **Narayanamma and**

Anr. (supra) has held that the issue whether specific performance of Agreement to Sell can be granted when Agreement to Sell is contrary to the statutory provisions i.e. when interest of seller is a non-alienable grant. In our view, the said case would not apply to the facts of this case even remotely. This Court is not considering a plea of specific performance of the Sale Deed in this case. The reliance placed by the learned counsel for Respondent Nos. 5 to 8 in the case of **Narayanamma and Anr. (supra)** is thus misplaced.

61. Insofar as the judgment in a case of **Parshuram Kathod Gaikar (supra)** relied upon by the learned counsel for the Respondent Nos. 5 to 8 is concerned, this Court in the said judgment has held that there is total and complete bar on alienation of agricultural lands in question without previous sanction of Collector which bar includes any attempt of doing so or execution of document in pursuance thereof. In our view, the said judgment delivered by the Learned Single Judge of this Court also does not apply to the facts of the case. The reliance placed by the learned counsel

for Respondent Nos. 5 to 8 in the case of **Parshuram Kathod Gaikar (supra)** is thus misplaced.

62. Insofar as the judgment in case of **Lotan Ramchandra Shimpi and Ors (supra)** relied upon by the learned counsel for the Respondent Nos.5 to 8 is concerned, the said judgment deals with the provisions of the Bombay Tenancy and Agricultural Lands Act and also transfer of Property Act. In our view, the said judgment does not apply to the facts of this case even remotely. Since this Court is not adjudicating upon the legality and validity of the said Sale Deed in this Writ Petition, the reliance placed by the learned counsel for Respondent Nos. 5 to 8 in the case of **Lotan Ramchandra Shimpi and Ors (supra)** is totally misplaced.

63. Insofar as the judgment of the Supreme Court in case of **Bhimabai Mahadeo Kambekar (supra)**, relied upon by the learned counsel for Respondent Nos.5 to 8 is concerned, it is held by the Supreme Court that mutation and revenue records does not create or extinguish title nor it has presumptive value on title. It only enables persons in whose favour mutation is ordered to pay land revenue in question.

There is no dispute about the proposition of law laid down by the Supreme Court in the said judgment.

64. Be that as it may, since the Petitioner claims his rights not only on the basis of mutation entry in his favour, but also on the basis of Sale Deed and Agreement for Sale, the Petitioner is one of the person interested in making a claim in the writ property for the purposes of claiming right in the property. Whether the Petitioner would be able to succeed in establishing his claim or not, would be decided in the appropriate proceeding. Certainly it cannot be urged by the learned counsel for the Respondent Nos. 5 to 8 that the Petitioner was not even a person interested and has no locus in filing this Writ Petition, inter alia, impugning the consent Award. The Sale Deed was executed in favour of the Petitioner itself and thus the Petitioner has locus to file this Petition and also was entitled to be served with all notices by the Special Land Acquisition Officer in respect of the land in question under the provisions of the Land Acquisition Act, 1894 or even under the Fair Compensation Act.

65. Insofar as the judgment of the Uttarakhand High

Court in case of **Mussoorie Dehradun Development Authority (Supra)** relied upon by the learned counsel for Respondent Nos. 5 to 8 is concerned, it is held that neither in Section 24(1)(a) nor in Section 24(1)(b) of the Fair Compensation Act, there is no question of lapse of proceedings. It only speaks when the compensation has been given under the Land Acquisition Act, 1894 and when it has to be given under Fair Compensation Act. The said judgment is also not applicable to the facts of this case. Admittedly in this case, the land acquisition proceedings were initially initiated under the provisions of the Land Acquisition Act, 1894 and thereafter under the Fair Compensation Act and have already lapsed under the provisions of the said Acts. The judgment of the Uttarakhand High Court in case of **Mussoorie Dehradun Development Authority (Supra)** would not assist the case of the Respondent Nos. 5 to 8.

66. Insofar as the Judgment of the Supreme Court in case of **Meera Sahni (supra)** relied upon by the learned counsel for Respondent Nos. 5 to 8 is concerned, it is held by the Supreme Court that challenge to acquisition proceedings

by subsequent purchaser after issuance of Notification under Section 4,6 and 9 is impermissible. There is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. In our view, since in this case Sale Deed was already executed in favour of the Petitioner prior to the issuance of notification under Section 4 of the Land Acquisition Act, which was issued in the year 2013, the judgment in the case of **Meera Sahni (supra)** is distinguishable on the facts of this case and would not advance the case of the Respondent Nos. 5 to 8.

67. Insofar as the judgment of the Division Bench of this Court in case of **Prakash Vasudeo Deodhar (supra)** relied upon by the learned counsel for Respondent Nos.5 to 8 is concerned, it is held by the Division Bench of this Court that once the notification under Section 6 of the Land Acquisition Act is published and notices under Section 9 are served, the only mode of withdrawal of lands from acquisition is by resorting to powers under Section 48 of the Land Acquisition Act, 1894. This judgment of the Division Bench of this Court does not apply even remotely to the facts of this

case.

68. Insofar as the judgment of the Supreme Court in case of **State of Maharashtra, through its Secretary, Ministry of Revenue of Forest, Mantralaya, Mumbai and Ors. Vs. Santosh Pralhad Sonkambale and Anr. (Supra)** relied upon by the learned counsel for Respondent Nos.5 to 8 is concerned, the said judgment does not apply even remotely to the facts of this case.

69. Insofar as the judgment of the Supreme Court in case of **Vineeta Sharma (supra)** relied upon by Dr. Warunjikar, learned counsel for Respondent Nos. 9 and 10 is concerned, there is no dispute about the proposition of law declared by the Supreme Court in the said judgment that daughter's right in coparcenary property under substituted Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on daughter born before or after the amendment in the same manner as son with same rights and liabilities. The Petitioner has not disputed this proposition of law. The reliance placed on said judgment is totally misplaced. The said judgment does not apply even remotely to the facts of this

case.

42. In our view, the Petitioner has made out a case for grant of relief.

43. We, therefore, pass the following order:

- (i) Writ Petition is allowed in terms of prayer clause **(b), (c) and (cc)**. Rule is made absolute.
- (ii) No order as to costs.
- (iii) Parties to act on an authenticated copy of this judgment.

(GAURI GODSE, J.)

(R.D.DHANUKA, J.)

Judgment dated 2 May, 2023 is corrected and uploaded as per the order dated 4 May, 2023 for speaking to the minutes.