



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5702/2019

<u>PETITIONER</u>	Shri Dattatraya Sansthan Shikhar Mahur At Shikhar Mandir, Mahur, Taluka Mahur, District Nanded, through its Secretary Shri Ganesh Tukaram Patil.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. Sub Divisional Officer and Competent Authority of Land Acquisition, National Highway No.361, Yavatmal, District Yavatmal. 2. Nilkanth s/o Motiram Nilawar Aged : Adult, Occ. Cultivator. 3. Abdul Raheman s/o Abdul Gafoor Aged : Adult, Occ. Cultivator. 4. Mohd. Sayed s/o Mohd. Yasin Aged : Adult, Occ. Cultivator. 5. Suresh s/o Ramrao Pilawan Aged : Adult, Occ. Cultivator. 6. Ashok s/o Maroti Gundewar Aged : Adult, Occ. Cultivator. 7. Avinash s/o Ramdas Nilawar, Aged : Adult, Occ. Cultivator. 8. Ramrao s/o Anandrao Ingole Aged :Adult, Occ. Cultivator. 9. Dattaji s/o Nemaji Buchewar Aged : Adult, Occ. Cultivator.

	10. Murlidhar s/o Kisanrao Ingole Aged : Adult, Occ. Cultivator. 11. Swati Pradeep Nilawar Aged : Adult, Occ. Cultivator. 12. Vilas s/o Yashwantrao Nilawar Aged : Adult, Occ. Cultivator. 13. Mohd. Rafique s/o Mohd. Yusuf Khatik Aged : Adult, Occ. Cultivator. 14. Atish s/o Prabhakar Tayade Aged : Adult, Occ. Cultivator. 15. Amol s/o Prabhakar Tayade Aged : Adult, Occ. Cultivator. 16. Surekha Mahadeo Karale Aged : Adult. Occ. Cultivator. Nos.2 to 16, all R/o Village Kolwan, Tah. Arni, District – Yavatmal. 17. Project Director, National Highway Authority of India, Implementation Unit Yavatmal, Plot No.43, Chandan Niwas, Kolhe Layout Part-II, Darwha Road, Yavatmal – 445 001. (Added Respondent no.17 vide Court's order dt. 27.2.20) (Amended as per Court's order dt. 27.02.2020)
Mr. R.L. Khapre, Senior Advocate a/b Mr. S.U. Nemade, Advocate for petitioner Mr. N.R. Patil, AGP for respondent no.1/State Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. P.P. Deshmukh, Advocate for respondent nos.2 to 16 Mr. A.A. Kathane, Advocate for respondent no.17	

WITH**WRIT PETITION NO.5817/2019**

<u>PETITIONER</u>	Shri Dattatraya Sansthan Shikhar Mahur At Shikhar Mandir, Mahur, Taluka Mahur, District Nanded, through its Secretary Shri Ganesh Tukaram Patil.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. Sub Divisional Officer and Competent Authority of Land Acquisition, National Highway No.361, Yavatmal, District Yavatmal. 2. Gajanan Rambhau Kanchalwar Aged : Adult, Occ. Cultivator. 3. Smt. Vimal Subhash Lad Aged : Adult, Occ. Cultivator. 4. Sunil s/o Subhash Lad Aged : Adult, Occ. Cultivator. 5. Vasant Chandrabhan Lad Aged : Adult, Occ. Cultivator. 6. Shobhagchand s/o Shivraj Bora Aged : Adult, Occ. Cultivator. 7. Smt. Ahemadabi Rahup Bhatnase Aged : Adult, Occ. Culativator. 8. Dilip s/o Rambhau Lonsane Aged : Adult, Occ. Cultivator. 9. Anil s/o Rambhau Lonsane Aged : Adult, Occ. Cultivator. 10. Gajanan s/o Shriram Keshawar Aged : Adult, Occ. Cultivator.

	11. Manohar s/o Shriram Keshawar, Aged : Adult, Occ. Cultivator. 12. Arjun s/o Domaji Katpalliwa, Aged : Adult. Occ. Cultivator. 13. Shankar s/o Namdeo Marbate Aged : Adult, Occ. Cultivator. 14. Anil s/o Dadarao Shelar Aged : Adult, Occ. Cultivator. 15. Baba Kambalposh Dargah through its representative/trustee Mastan Baig Hasan Baig Mirza, Aged : Adult, Occ. Cultivator. Baba Kambalposh Dargah, Through its Secretary Resident of Arni, Tah. Arni, Dist. Yavatmal. (Amendment carried out as per Hon'ble Court's order dated 24.1.2020) 16. Motiram s/o Kaniram Banginwar Aged : Adult, Occ. Cultivator. 17. Parvatabai Arjun Katpalliwar, Aged : Adult, Occ. Cultivator (Late) Parvatabai Arjun Katpalliwar Since dead through her legal heirs. (17-i) Rajendra s/o Arjun Katpalliwar (17-ii) Sanjay s/o Arjunrao Katpalliwar (17-iii) Shilpa Suhas Udakwad (17-iv) Asha w/o Narayan Chalpilwar All above respondents 17-i to 17-iv are residents of Arni, Tah. Arni, Dist. Yavatmal. (Amendment carried out as per Hon'ble Court's order dated 24.01.2020) (Added bringing Legal Heirs of respondent
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	No.17 vide Court's order Dt.24.1.20.) 18. Laxmikant Yashwantrao Nilawar Aged : Adult, Occ. Cultivator. 19. Jatin s/o Jayant Nile being minor through his natural guardian father Jayant Vasant Nile, Aged : Adult, Occ. Cultivator. 20. Rashmi Akshay Nilawar Aged : Adult, Occ. Cultivator. 21. Namdeo s/o Banduji Mahure Aged : Adult, Occ. Cultivator. 22. Rajeev s/o Vishwanath Nilawar, Aged : Adult, Occ. Cultivator. 23. Manoj s/o Vasant Shinde, Aged : Adult, Occ. Cultivator. 24. Smt. Maya Anil Yerawar Aged : Adult, Occ. Cultivator. 25. Smt. Rajnibai Ravindra Deshmukh Aged : Adult, Occ. Cultivator. 26. Priyadarshan Rajkamal Bharti, Aged : Adult, Occ. Cultivator. 27. Smt. Manjiri Kanchanrao Gosavi, Aged : Adult, Occ. Cultivator. Nos.2 to 27 all R/o Arni, Tah. Arni, District – Yavatmal. 28. Project Director, National Highway Authority of India, Implementation Unit-Yavatmal, Plot No.43, Chandan Niwas, Kolhe Layout Part-II,
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	Darwaha Road, Yavatmal – 445 001. (Added respondent No.28 vide Court's order Dt. 27.2.2020) (Amended as per Court's order Dt.27.02.2019)
Mr. R.L. Khapre, Senior Advocate a/b Mr. S.U. Nemade, Advocate for petitioner Mr. N.R. Patil, AGP for respondent no.1/State Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. P.P. Deshmukh, Advocate for respondent nos.2 to 5, 7 to 14, 16, 18, 20, 23 to 27 Mr. G.R. Kothari, Advocate for respondent no.6, 15 and 17 (i to iv) Mr. M.M. Agnihotri, Advocate for respondent nos.19, 21 and 22 Mr. A.A. Kathane, Advocate for respondent no.28	

WITH**WRIT PETITION NO.5881/2019**

<u>PETITIONER</u>	Shri Dattatraya Sansthan Shikhar Mahur At Shikhar Mandir, Mahur, Taluka Mahur, District Nanded, through its Secretary Shri Ganesh Tukaram Patil.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. Sub Divisional Officer and Competent Authority of Land Acquisition, National Highway No.361, Yavatmal, District Yavatmal. 2. Sham s/o Rambhau Kapse Aged : Adult, Occ. Cultivator. 3. Syd. Anis Syd. Lal Syd. Ashpak Syd. Lal Aged : Adult, Occ. Cultivator. 4. Prashant Madhukarrao Deshmukh Aged : Adult, Occ. Cultivator. 5. Sakhubai Babulal Rathod Aged : Adult, Occ. Cultivator.

	6. Ganpat s/o Devisingh Rathod Aged : Adult, Occ. Cultivator. 7. Sandeep s/o Vinod Lolange Aged : Adult, Occ. Cultivator. 8. Dattatraya Vishwanath Bharati Aged : Adult, Occ. Cultivator. 9. Sheshrao s/o Deorao Garad Aged : Adult, Occ. Cultivator. 10. Amol s/o Sheshrao Garad (minor) through his legal guardian Sheshrao Deorao Garad Aged : Adult, Occ. Cultivator. 11. Vikas s/o Sheshrao Garad Aged : Adult, Occ. Cultivator. 12. Arifabegum Hafij Baig Mirza Aged : Adult, Occ. Cultivator. 13. Shabnam Aniz Baig Mirza Aged : Adult, Occ. Cultivator. 14. Shajid Baig Hafiz Baig Mirza Aged : Adult, Occ. Cultivator. 15. Datta s/o Tulshiram Rathod Aged :Adult, Occ. Cultivator (Dead) (Late) Datta s/o Tulshiram Rathod Since dead through his legal heirs. (15-i) Smt. Anita wd/o Datta Rathod (15-ii) Badal s/o Datta Rathod (15-iii) Aarti d/o Datta Rathod (15-iv) Bharti s/o Datta Rathod
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	All above respondents 15-i to 15-iv are residents of Village Sukali, Tah. Arni, Dist. Yavatmal. (Amendment carried out as per Hon'ble Court's order dated 24.01.2020) (Added bring Legal heirs of respondent no.15 vide Court's order dt. 24.1.20) 16. Nilofarbegam Sajid Baig Mirza Aged : Adult, Occ. Cultivator. 17. Mukundraj Benimadhav Yadav Aged : Adult. Occ. Cultivator. 18. Tarabai Benimadhav Yadav Aged : Adult, Occ. Cultivator. 19. Harinarayan Benimadhav Yadav Aged : Adult, Occ. Cultivator. 20. Smt. Parvatabai Namdeo Gundwade Aged : Adult. Occ. Cultivator. 21. Sakharam Govinda Bhaserao Aged : Adult, Occ. Cultivator. (Dead) (Late) Sakharam s/o Govinda Bhalerao Since dead through his legal heirs. (21-i) Raju s/o Sakharam Bhalerao (21-ii) Kisan s/o Sakharam Bhalerao Both above respondents 21-i to 21-ii are residents of Arni, Tah. Arni, Dist. Yavatmal. (Amendment carried out as per Hon'ble Court's order dated 24.01.2020) (Added bring Legal heirs of respondent No.21 vide Court's order Dt. 24.1.2020). 22. Sadashiv s/o Jairam Bhaserao Aged : Adult, Occ. Cultivator.
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	23. Pratap Magasvargiya Gruha Nirman Sanstha, Sukali, Tah. Arni, District - Yavatmal through its President/Administrator. 24. Damodhar Domaji Mundhe Aged : Adult, Occ. Cultivator. 25. Sheikh Sattar Sheikh Rajjak Aged : Adult, Occ. Cultivator. 26. Sanjay s/o Radhelal Jaiswal Aged : Adult, Occ. Cultivator. 27. Ganesh s/o Keshav Rathod Aged : Adult, Occ. Cultivator. 28. Sunil s/o Ram Bharati Aged : Adult, Occ. Cultivator. 29. Vilas Dubalya Jadhav Aged : Adult, Occ. Cultivator. 30. Laxmibai Ganpat Naitam Aged : Adult, Occ. Cultivator. (Dead) Laxmibai Ganpat Naitam, since deceased Through her Legal Representatives. i) Shri Raju Ganpat Naitam ii) Shri Shalik Ganpat Naitam iii) Sau. Vimalbai Sambhaji Marape iv) Sau. Radhabai Banduji Katle v) Sau. Renukabei Sheshrao Atram vi) Sau. Vanitabai Vinod Madavi
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	vii) Sau. Manjubai Manikrao Naitam viii) Shri Arvind Manikrao Naitam ix) Sau. Sushma Vilas Meshram x) Pravin Manikrao Naitam xi) Smt. Sulabha Dipak Madavi. All above Legal Representatives/Heirs from (i) to (xi) are residents of At Post Lonbehal, Tah. Arni, Dist. Yavatmal. (Added Legal Representatives of Respondent No.30 vide Court's Order Dt. 12.2.2020) 31. Vachchala Kshirsagar Telang Aged : Adult, Occ. Cultivator. 32. Latabai Prabhakar Mahajan Aged : Adult, Occ. Cultivator. 33. Sadhana Dadarao Dolarkar Aged : Adult, Occ. Cultivator. 34. Raju Yadaorao Umate Aged : Adult, Occ. Cultivator. 35. Hasmukh Raghejibhai Patel Aged : Adult, Occ. Cultivator. 36. Sayabai Laxman Koli Aged : Adult, Occ. Cultivator. 37. Natthuji Shiva Wastewad Aged : Adult, Occ. Cultivator. Nos.2 to 37 all R/o village Sukali, Tah. Arni, District – Yavatmal.
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	38. Project Director National Highway Authority of India, Implementation Unit-Yavatmal, Plot No.43, Chandan Niwas, Kolhe Layout Part-II, Darwha Road, Yavatmal – 445 001. (Amended as per Court's order Dt. 27.02.2020) (Added respondent No.38 vide Court's order Dt. 27.2.2020)
Mr. R.L. Khapre, Senior Advocate a/b Mr. S.U. Nemade, Advocate for petitioner Mr. N.R. Patil, AGP for respondent no.1/State Mr. G.R. Kothari, Advocate for respondent Nos.2, 4, 9, 10, 12 to 14, 15 (i) to (iv), 16 to 19, 21 (i) and (ii), 22, 25 to 29, 31, 32, 34, 35 and 37 Mr. D.V. Thakre, Advocate for respondent no.20 Mrs. Sonali Saware – Gadhave, Advocate for respondent no.24 Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. P.P. Deshmukh, Advocate for respondent Nos.30 (i) to (xi) and 33 Mr. A.A. Kathane, Advocate for respondent no.38	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 03/11/2023

Date of pronouncing the judgment : 02/02/2024

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J U D G M E N T

1. Heard Mr. R.L. Khapre, learned Senior Counsel for the petitioner-Trust, Mr. S.P. Dharmadhikari, learned Senior Counsel for the respective respondents and Mr. N.R. Patil, learned Assistant Government Pleader for the respondent No.1/State. I, had on an earlier occasion heard the matter, however, the same could not be decided. When the assignment came to me again,

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the learned Counsels for the parties, insisted that since I, had already heard it before I, should decide it, acceding to which request, I have heard the matter again and so also the written notes of arguments have also been placed on record by the learned Counsels.

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2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the rival parties.

3. The parties have argued from Writ Petition 10 Nos.5881/2019 and 5817/2019 and therefore the page numbers reflected in this judgment/order, would be page numbers of those two petitions.

4. The petition challenges the impugned order dated 15 22.07.2019 passed by the Land Acquisition Officer/respondent No.1 rejecting the objections filed by the present petitioner-Trust under Section 3-H (4) of the National Highways Act, 1956 ("N.H. Act, 1956" hereinafter for short), to the award passed in favour of the respondents, holding them entitled to compensation 20

of the lands acquired for expansion of the Nagpur-Tuljapur National Highway under the N.H. Act, 1956.

5. Mr. Khapre, learned Senior Counsel for the petitioner-Trust submits, that the entire land in question belongs 5 to the petitioner-Trust, as the same was granted to the petitioner-Trust by virtue of grant of the year 1810 (pg.76), which is reflected from the order dated 08.09.1860 (pg.76) and dated 17.03.1864 (pg.79), the subsequent order dated 04.01.1937 of the Record of Rights Officer (pg.80) which records that the lands 10 in question as indicated at page 85 were granted on behalf of the Nizam by Raja Chandu Lal when he was the Peshkar for the expenses of the petitioner-Trust. It is submitted, that the status of the head of the petitioner-Trust or for that the matter, anyone controlling the property, was not that of owner but only that of a 15 Manager or Trustee holding on behalf of the Trust or the Deosthan, to substantiate which, reliance is placed upon ***State of Madhya Pradesh and others Vs. Pujari Utthan Avam Kalyan Samiti and another (2021) 10 SCC 222*** (para 23 and 31).

5.1. He further submits, that since the land revenue was not assigned, the petitioner-Trust did not become superior holder of any alienated land as defined in Section 2(2) of the Berar Land Revenue Code, 1928, and therefore, the land being an unalienated land, was not affected by the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 [hereinafter referred to as the “M.P. Abolition Act, 1950”]. It is further contended, that the right which was created by the original grant in favour of the Deosthan, was a conditional right, inasmuch as, it permitted utilization of the income of the lands, for the purpose of the petitioner-Trust and did not grant any power to alienate the land. Any plea of alienation, by the respondents therefore according to him, has to be turned down being contrary to the terms of the original grant and in such cases the worse case scenario would be vesting the land in the State and not in the respondents.

5.2. The State under the circular dated 30.07.2010 (pg. 101), as it stood modified on 29.06.2011 (pg. 104), in such a case was duty bound to return the land to the Deosthan. For the

efficacy of these circulars, reliance is placed upon ***State of Madhya Pradesh Vs. Pujari Utthan Avam Kalyan Samiti*** (supra).

5.3. It is further submitted, that under the circular dated 30.07.2010 (pg.101), the State Government had directed 5 institution of a Committee to enquire into the illegal alienation of the Deosthan land, as a result of which, a Committee was indeed constituted in the instant matter to make an enquiry by the communication dated 20.11.2012 (pg.105). Thereafter, there appears to be a communication by the Sub Divisional Officer 10 Yavatmal dated 23.03.2015 (pg.108), which indicated that though an exemption has been granted under Section 129 (b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (“BTAL Act, 1958”, for short hereinafter) on 02.07.1966 in favour of the petitioner-Trust, however, all 15 alienations prior to the notification exempting the petitioner-Trust from the provisions of the BTAL Act, 1958 should be held to be valid. It is submitted, that thereafter a Committee has been reconstituted by the communication dated 17.07.2017 (pg.132), whose report is yet awaited. 20

5.4. In the meantime, certain lands came to be acquired by the National Highway for expansion of Nagpur-Tuljapur National Highway, in which, lands of the petitioner-Trust, as held by the respondents are claimed to have been acquired. Consequent to an award being passed an objection was sought to be raised under Section 3-H (4) of the N. H. Act, 1956 before the Land Acquisition Officer seeking the compensation, which objection, has been rejected by the impugned order dated 22.07.2019 (pg. 51 to 56), being aggrieved by which, the present petition has been filed.

5.5. It is contented, that since the petitioner-Trust has held unalienated land, the M.P. Abolition Act, 1950, had no effect upon the holding of the petitioner-Trust.

5.6. It is further contended, that even otherwise the claim by the respondents of holding the lands, which originally belonged to the petitioner-Trust, is clearly illegal for the reasons, that since the lands were unalienable and were only granted for the purpose of utilizing its income for the object of the petitioner-Trust, any alienations would be contrary to the terms of the

grant, and therefore, all subsequent actions named in respect of such lands including those under the BTAL Act, 1958, would be null and void and not binding upon the petitioner-Trust and so also would not convey any legal right whatsoever upon the respective respondents.

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5.7. It is further submitted, that the impugned order is liable to be quashed and set aside as there is a case spelt out for making reference to the Civil Court or in the alternative the matter be remanded back to the Land Acquisition Officer, who would be required to keep the matter in abeyance, till the enquiry as directed by the order dated 17.07.2017 (pg. 132) was completed.

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5.8. Insofar as the limitation is concerned, reliance is placed upon *Madhukar Sadbha Shivarkar (Dead) by Legal Representatives Vs. State of Maharashtra and others (2015) 6 SCC 557*, to contend that since a fraud has played upon the statue, the statues of limitation would not be attracted.

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6. Mr. S. P. Dharmadhikari, learned Senior Counsel for the respective respondents in Writ Petition Nos.5702/2019; 5817/2019 and 5881/2019 submits as under:

6.1. The contention of the petitioner-Trust that the provisions of the M.P. Abolition Act, 1950, are not applicable, according to him, is without any merits and substance. He submits, that not only did the petitioner-Trust admitted the applicability of the M.P. Abolition Act, 1950 but also took the benefits under the said Act. He invites my attention, to the impugned order dated 22.07.2019 (pg.53/para 3) which indicates, that under the provisions of Section 68 of the M.P. Abolition Act, 1950 consequent to the abolition having taken place in respect of the lands of the petitioner-Trust, the benefit under Section 68(1) of the M.P. Abolition Act, 1950 has been taken, as a result of which, the title and possession in respect of 258 survey numbers, totally admeasuring 1189.24 acres of agricultural land, still continues with the petitioner-Trust. He further makes a statement, that none of the respondents, holds any land, from and out of the lands, the numbers of which have been given in para 3 of page 53 of the impugned order dated

22.07.2019, which has been permitted to be retained by the petitioner-Trust.

6.2. By inviting my attention to the objection filed by the claimant (pg.150) before the respondent No.1, it is submitted 5 that the grievance was in respect of the lands permitted to be retained in favour of the petitioner-Trust under Section 68(1) of the M.P. Abolition Act, 1950 (para 9/pg.151 and 3rd para/pg. 152) and since the respondents, do not own or claim any land, in respect of the numbers mentioned therein, the objection of the 10 petitioner-Trust, cannot be construed to be an objection in respect of the lands held by the respondents.

6.3. He further submits, that not only this, the petitioner-Trust, has also received compensation from the Compensation 15 Commissioner Yavatmal in Revenue Case No.73/42A (4) 1950-51 under the provisions of M.P. Abolition Act, 1950 which is equally indicated from the objection of the petitioner-Trust (3rd para from the bottom page 152).

6.4. It is further submitted, that it is thereafter the petitioner-Trust has applied for exemption under Section 129(b) BTAL Act, 1958 and received the certificate of exemption on 02.07.1966.

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6.5. He further submits, that from 1950 till 2018, no grievance was ever made by the petitioner-Trust of any nature of whatsoever in respect of the lands held by the respondents.

6.6. By inviting my attention to page 230 in W.P. No. 10 5817/2019, he submits that it is the claim laid by the petitioner-Trust before the Compensation Commissioner, Darwha, in Case No. 42-A (4/70/Arni Jahagir) in which the petitioner-Trust itself has stated that there were tenants of antiquity in the property allotted to it and the amount of rent received from such tenants 15 was 5717/7/3. He submits, that a claim for compensation was also made in respect of the loss of land revenue which indicates that land revenue was collected as its income, as the compensation was calculated on the basis of loss of land revenue for a period of 10 years. It is therefore contended, that this 20 document indicates that right to collect the land revenue was

indeed assigned to the petitioner-Trust and the same was being collected by the petitioner-Trust.

6.7. He further invites my attention to the order dated 22.07.1952 passed by the Compensation Commissioner Yavatmal (pg.256-A in W.P. No. 5817/2019) which indicates, that a compensation of Rs.18,005/- was payable and it was further ordered that Survey Nos.29, 35 and 124 which were admitted to be fallow as on 01.10.1949 as they were kept for grazing, shall vest in the State. Similarly, it was also ordered that the Gaothan area 60 acres 30 gunthas, Gaothan Khalwadi 6 acres 27 gunthas, burial ground area 4 acres 19 gunthas, river area 88 acres 38 gunthas, Nala area 10 acres and 10 gunthas and road area 11 acres 35 gunthas were also directed to be vested in the State.

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6.8. On all these counts, it is submitted that petitioner-Trust is now estopped from claiming inapplicability of the M.P. Abolition Act, 1950, as the right to receive land revenue stood assigned in favour of the petitioner-Trust as was apparent from order dated 22.07.1952 of the Compensation Commissioner, Yavatmal.

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6.9. He further invites my attention to page 76 - Annexure-C in W.P. No.5881/2019, which even according to Mr. Khapre, learned Senior Counsel for the petitioner-Trust, recognizes the grant in favour of the petitioner-Trust, to contend, that the entries in column 4 and 5, would indicate that the land 5 was alienated to superior holders and the land revenue of Rs.4,395/- was also assigned, in respect of Arni No. 5.

6.10. He further invites my attention to page 78 which indicates the same position regarding alienation of 3470 acres 10 and 3 gunthas of land of Village Sukli to superior holders and so also the assignment of land revenue of Rs.1264=00. It is thus submitted, that the lands allotted, to the Petitioner-Trust, were alienated lands.

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6.11. By further inviting my attention to Section 2(g)(3) (i)(ii)(iii) of the M.P. Abolition Act, 1950, it is contended, that the definition of “Home Farm” includes lands included in holdings as defined in clause (i)(ii)(iii) above. By inviting my attention to the definition of ‘specified tenant’ as contained in Section 2(p) of the 20 M.P. Abolition Act, 1950, he submits that the word “tenant” as

used in Section 2(g)(3)(iii) of the M.P. Abolition Act, 1950, would mean an ordinary tenant.

6.12. It is further contended that Section 3 of the M.P. Abolition Act, 1950 contemplates vesting of all proprietary rights in the State and Section 4 consequences of vesting, Section 4(2) creating an exception by permitting the proprietor to continue to retain Home Farm Land. Section 8 enjoins the State Government to pay compensation and Section 12 indicates the statement of claim is to be made by the proprietor.

6.13. It is submitted that a notification under Section 3(1) and 3(2) M.P. Abolition Act, 1950, was issued by the State Government by notification No.627-XII dated 27.01.1951 in which the date of 14.03.1951 was notified as the date in which Section 3(1) would come into effect for Yavatmal District (pg. 77 of the spiral binding of compilation filed by the respondents). It is thus submitted, that consequent to the said notification the petitioner-Trust applied for grant of compensation which was awarded by the order dated 27.02.1952 by the Compensation Commissioner (pg. 256-B in W.P. No. 5817/2019).

6.14. It is thus submitted that consequent to the exemption granted under Section 68(1) of the M.P. Abolition Act, 1950 to the petitioner-Trust, the petitioner-Trust did not retain title to any land, other than those, permitted to be retained by the petitioner-Trust under Section 68 (1) of the M.P. Abolition Act, 1950, which survey numbers are indicated in the complaint dated 19.04.2018 filed by the petitioner-Trust itself (pg. 150), as all other properties stood vested in the State Government as on 14.03.1951 the date notified for coming into force Section 3(1) of the M.P. Abolition Act, 1950. 5 10

6.15. Further reliance is placed upon Section 68(1) of the M.P. Abolition Act, 1950 as it stood then, to contend that only the rights of the superior holder or the holder of the land as on 1.10.1949, which were home farm land, were protected, 15 however, they were liable for payment of land revenue equal to the fair assessment therein. Even the specified tenant holding land before the date of vesting right, was protected being the lessee of such land under Section 68(2) of the M.P. Abolition Act, 1950, which would then be converted to an occupancy right 20 under Section 69(1) by the Dy. Commissioner under Section

69(2) of the M.P. Abolition Act, 1950. It is further contended that from 1950 onwards the petitioner-Trust has not paid any land revenue in respect of the land held by the respondents at any point of time.

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6.16. In order to buttress the submission that occupancy rights were conferred under Section 69(2) of the M.P. Abolition Act 1950, learned Senior Counsel invites my attention to page 268A of W.P. No.5817/19 (Vol. 2) which is in respect of one Yashwant Janardhan Komti, whose name is entered as an occupant under Section 69(2) of the M.P. Abolition Act, 1950 from 7.1.1953. The subsequent document at page 271A indicates an application being made by one Radhu Karje Mahadu claiming himself to be tenant of antiquity for conferral of right under Section 69 (1) of the M.P. Abolition Act, 1950 (pg.271), the declaration in respect of which is in Form-C and is at page 271C A, the proclamation in Form-B is at page 275A and the recommendation by the Naib Tahsildar dated 20.12.1952 is at page 276A and the order of conferrer of right of an occupant in Form-C is at page 278A. It is further submitted that similar is the position in respect of the other respondents who from time to

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time have been recognized as occupants of the land. Their names have been entered in the 7/12 extracts as well as the record of rights as the owner and cultivator of the same land as occupants Class-I.

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6.17. It is further contended that the order of exemption under Section 129 of the BTAL Act, 1958, does not include any of the lands of the respondents. Similar is the position, in respect of entries in Schedule-I under the Maharashtra Public Trusts Act, 1950 (“MPT Act, 1950”, for short hereinafter) in respect of the petitioner-Trust, which does not include the lands held by the respondents.

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6.18. It is further stated that since the compensation was accepted by the petitioner-Trust of Rs.18005/-as indicated above, for the lands of Arni village and Rs.3115/- for Sukli village as compensation under Section 5 and 8 of the M.P. Abolition Act, 1950, the petitioner-Trust is now estopped from contending otherwise.

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6.19. It is also submitted that two circulars referred to are of no use as the lands of the respondents are no longer Trust land and the said circulars are only applicable to Trust lands.

6.20. It is further submitted that the judgment in *Madhukar Shivarkar* (supra), which speaks about fraud, is clearly not attracted, on the facts of the case as except for two fleeting references in the petition, neither there is any material nor any particulars of the fraud alleged to have been practiced and by whom.

6.21. By relying upon paras 2 and 3 of the judgment in *Himmatrao Vs. Jaikisandas and others AIR 1966 SC 1974* it is contended that it was permissible for every co-sharer/ex-proprietor, in their capacity as owners of property to obtain the declaration from a Civil Court as to his share and to the extent thereof in the pre-existing property rights of that village, so that he would lay claim to the appropriate amount of compensation and to appropriate extent of home farm land in that village, which has not been done by the petitioner-Trust by filing any suit.

6.22. It is therefore submitted that the competent authority has rightly passed the impugned order as the referral claim by the petitioner-Trust necessarily is based upon some material being brought to his notice which does not indicate existence of a right and his satisfaction regarding such material, 5
for which reliance is placed upon *Sheeraz Ahmed s/o Sarfaraz Ahmed Vs. The Competent Authority & Deputy Collector, Land Acquisition (General), Nagpur in Writ Petition No.6197/19 decided on 11.10.2019* and *Writ Petition No.778/1999 decided on 24.08.2005* (para 8) [*Sayed Mohamed Shah Abdul Hamid 10 Kadri Vs State of Maharashtra and another*].

6.23. He therefore submitted that the petitions are required to be dismissed.

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7. Mr. Agnihotri, learned counsel representing the respondent nos.19, 21 and 22 in W.P. No.5817/2019 submits that the respondent no.19 was the owner of Survey No.7/1, respondent no.21 was the owner of Survey No.15/1 and respondent no.22 was the owner of Survey Nos.15/1 and 26/1. 20
He submits that these properties were acquired by their

predecessors by way of decree dated 7.11.1999 passed in Civil Suit No.218/09 (pg. 397) in which the possession was delivered to their predecessors (pg. 402). He further submits that the same came to be partitioned between respondent nos.19, 21 and 22 and since that date i.e. 19.12.1930 onwards, the respondent 5 nos.19, 21 and 22 and their predecessors-in-title have been in continuous possession of the property in question and their names have also been mutated in 7/12 extracts as Class-I holder as well as in the record of rights also. He further relies upon the proclamation under Section 19(1) of the M.P. Abolition Act, 1950 10 in respect of these lands (pg.416) dated 30.06.1953 and the order thereafter under Section 69 of the M.P. Abolition Act, 1950 conferring the right of an occupant upon the predecessors of the these respondents (pg. 422). In support of his contention, he further submits that the land is neither included in Schedule-I 15 nor is mentioned in the objections filed by the petitioner-Trust, nor is included in the exemption granted to the petitioner-Trust from time to time under Section 129(b) of the BTAL Act, 1958. It is, therefore, contended that the petitions need to be dismissed.

8. Mr. Kothari, learned counsel for the respondent no.6, 15 and 17 (i to iv) in W.P. No.5817/2019 and respondent nos.2, 4, 9, 10, 12 to 14, 15 (i) to (iv), 16 to 19, 21 (i) and (ii), 22, 25 to 29, 31, 32, 34, 35 and 37 in WP No.5881/19, Mrs. Saware, learned Counsel for respondent no.24 in W.P. No.5881/2019, Mr. 5 Kathane, learned Counsel for respondent no.17 in W.P. No.5702/19; respondent no.28 in W.P. No.5817/19 and respondent no.38 in W.P. No.5881/2019 - National Highway Authority i.e. the acquiring body support the award passed in favour of the respondents by the competent authority. Mr. S.P. 10 Dharmadhikari learned Senior counsel assisted by Mr. Pravin Deshmkuh, learned Counsel for respondent nos.2 to 16 in W.P. No.5702/2019; respondent nos.2 to 5, 7 to 14, 16, 18, 20, 23 to 27 in WP No.5817/19 and respondent no.30 (i) to (xi) and 33 in W.P. No.5881/19 and respondent nos. 5 to 12, 17, 27 to 30, 35, 15 36, 43 to 46, 48, 53 legal representatives 57 to 61 to 80, 82, 84 in W.P. No.1866/2020, respondent nos.5 to 11, 15 to 18, 25 legal representatives 26, 28 to 30, 32, 34 to 40, 42 to 52 to 54, 56 to 60, 62 to 64, 67, 68, 70, 73 to 75, 77, 80 to 82, 84 to 88, 90 to 96, 98, 99, 101 in W.P. No.1867/2020, respondent nos.4 to 20, 20 24, 26, 29 to 38, 40 to 43, 48, 50 to 56, 58 to 60, 63, 64, 66 to

70, 72 to 75 in W.P. No.1921/2020 respondent no.16 in W.P. No.5702/19, respondent no.27 in W.P. No.5817/19, respondent no.37 in W.P. No.5881/2019, respondent no.84 in W.P. No.1866/2020, respondent no.104 in W.P. No.1867/2020 and respondent no.75 in W.P. No.1921/2020 also supports the 5
impugned order.

9. Mr. Patil, learned Assistant Government Pleader for the respondent no.1/State also supports the impugned order and submits that in view of the applicability of the M.P. Abolition Act, 10
1950, the petitioner-Trust having already submitted to the provisions of the said Act cannot now approbate and reprobate.

10. Mr. Patil, learned Assistant Government Pleader submits that under the terms of the grant, the land was granted 15
for a particular purpose and no transfers were permissible, which having been done, the lands are now required to be resumed by the Government.

11. Mr. Khapre, learned Senior Counsel in rebuttal 20
submits that the terms “superior holder” and “alienable” as used

in the document referring to the grant (pg.76 & 79) by themselves do not indicate that this was the nature of the rights conferred, as the original grant is not available and these are merely entries made by the revenue authorities. The grant, according to him, was only for the purpose of managing the property, so as to apply the revenue for the objects and purpose of the petitioner-Trust. He further invites my attention to Rule IV of the Berar Inam Rules, 1859, to contend that since the grant was for religious purpose, it in fact created a license in favour of the petitioner-Trust/Deosthan, the title to the lands being continued to be held by the Government and the resumption, was only permissible, on account of violation of the term of the grant and not otherwise. By further inviting my attention to the definition of “superior holder” and “alienated” as occurring in Section 4 (11) and 17 of the Berar Land Revenue Code, 1896 as corrected upto 1928, it is contended that the grant was not of alienated lands, as the rights of ownership were retained by the Government and therefore, neither the petitioner-Trust nor the Mahant thereof would be said to fall within the aforesaid definitions. It is further contended that the Deosthan was merely granted a license for keeping the temple in good condition

subject to the income being applied to the object and purpose of the petitioner-Trust and therefore, the act of the Mahant or any trustee in creating the tenancy/lease in favour of third parties was clearly contrary to the terms of the license, as it was expected that the petitioner-Trust would cultivate the lands either 5 itself or through servants. The petitioner-Trust being a licensee, could not further create a license in favour of third party and that too in the form of a lease or tenancy. It is therefore submitted that the act of the Deosthan/Mahant in creating tenancy was clearly illegal and in fact in collusion with the persons in whom 10 tenancy/lease was created. It is further contended that the stand of the petitioner-Trust/Mahant in the proceedings under Section 68(2) of the M.P. Abolition Act, 1950 was clearly illegal and contrary to the license created in favour of the petitioner-Trust and therefore all consequent orders passed in that regard were 15 *non est*, void and not binding upon the petitioner-Trust, as the Deosthan itself being a licensee, not having any title, could not have created a sub-license or for that matter lease in favour of the respondents. It is further contended that the M.P. Abolition Act, 1950 does not abolish the title of the Government which 20 continues to hold and retain the title as there was no transfer of

the title whatsoever in favour of the petitioner-Trust and therefore, there is no question of any forfeiture, as it is the Government who is the superior holder and the contrary entries in that regard at pages 76 and 78 were clearly incorrect and merely based upon these entries the land could not treated to be 5 alienated land and holder therefore as superior holder.

11.1. Reiterating his reliance upon the judgment of the Hon'ble Apex Court in *State of Madhya Pradesh and others Vs. Pujari Utthan Avam Kalyan Samiti and another (2021) 10 SCC 10 222*, it is submitted that the Pujari of a Temple does not get any right in the property of the temple and his status is merely that of a Manager empowered to act according to the rules and regulation of the Trust and the terms of the grant/license, considering which, he is also not empowered to grant any land 15 on lease or create a tenancy thereof. It is, therefore, submitted that a mere entry in the 1810 documents as recognized by the documents at pages 76 and 78, would not carry any meaning whatsoever and all persons holding land through the Mahant/petitioner-Trust were clearly trespassers, as no 20 ownership was created in favour of the petitioner-Trust, as a

result of which, it was not holder of alienated land therefore did not have any right to transfer. He further submits that the collusion between the then office bearers of the petitioner-Trust and tenant/lessee is writ large on the face of record which is also reflected from the communication dated 30.12.2015 (pg.125) 5 written by the then Naib Tahsildar, who was appointed to administer the petitioner-Trust to the authorities, who had requested for an enquiry in that regard, which has been accepted by the Government by directing an enquiry to be held in that regard. 10

11.2. He therefore submitted that under Section 3-H (4) of the N.H. Act, 1956 once this position was brought to the knowledge of the Land Acquisition Officer, it was necessary for him to have referred the matter to the Civil Court for a decision 15 in that regard and the Land Acquisition Officer himself was incompetent to take a decision in that regard. He, however, fairly concedes that as of today Schedule-I of the petitioner-Trust does not include the properties over which right is claimed by the respondents, however, according to him, that is for the reason 20 that it merely records what was reported to the then Assistant

Charity Commissioner and till date there has been no enquiry regarding the entitlement of the petitioner-Trust to the rest of the lands including the lands held by the respondents, which is necessary according to him. He further places reliance upon ***The Chief Revenue Controlling Authority (Revenue), Secretariat, Panaji Vs. Luis Guilherme Dias Colaco and others AIR 1986 BOMBAY 370: 1986 SCC Online (Bom) 163*** (para 9) and ***Lachhman Dass Vs. Jagat Ram and others (2007) 10 SCC 448*** (para 19), in support of his contention regarding fraud and collusion. He therefore submits that the impugned order is liable to be quashed and set aside and the matter is required to be referred to the Court under the provisions of the National Highways Act, 1956.

11.3. In his written notes of arguments filed by Mr. Khapre learned Senior Counsel for the petitioner-Trust, apart from reiterating his submissions he contends that in view of the directions of this Court in W.P. No.13488/2017 and the consequent circulars issued by the State of Maharashtra dated 6.11.2010, the third Enquiry Committee is already constituted on 17.7.2017, which has been directed to implement the circulars

issued by the State of Maharashtra. He further submitted that as per the Government Circulars dated 30.7.2010 and 29.6.2011, if the fields are illegally transferred either on account of claim of the petitioners under the M.P. Abolition Act, 1950 or in accordance with the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, the authorities are granted right to initiate the proceedings against all these illegal transferees and claim back land from the said illegal transferees and thereafter put the same in possession of Deosthan. It is further submitted that the record would show that 1189.24 acres of land was given to the petitioner-Trust, however, it appears that the said lands are also transferred in favour of the respondents by invoking the provisions of the BTAL Act, 1958. It is submitted that the lands which are released in favour of the petitioner-Trust are also shown to be released thereafter in favour of the respondents by showing orders under Section 68 (2) of the BTAL Ac, 1958t. It is submitted that all these orders are illegal and liable to be quashed and set aside. It is further submitted that the grants are recognized by the Inam Commissioner by his order dated 17.3.1864 and 8.8.1964 and as per Imam Rules if the grants recognized by the Inam Commissioner are not applied for the

purposes of the Trust and if there is a breach of conditions, then only the land is liable to be resumed by the Government. Therefore, all the orders, in view of which, the respondents are claiming title are illegal and the lands are liable to be resumed by the Government and thereafter put in possession of Deosthan, in view of the Government circulars. Hence, the board of trustees of the petitioner-Trust has passed the resolution not to give the consent for release of the compensation amount in favour of any of the respondents. He further submitted that since the proceedings before the third Committee are pending, the Land Acquisition Officer had no jurisdiction to finally determine the compensation as the said points were raised before him. It is therefore submitted that the orders impugned be quashed and set aside by directing the Land Acquisition Officer to invest the amount in fixed deposit for such period as deems fit.

12. In the written notes of arguments of Mr. Agnihotri, learned counsel for the respondent nos.19, 21 and 22 it is submitted that the present petitioner-Trust has no right to file the present petition and no documents like resolutions have been filed which would reflect that Mr. Ganesh Tukaram Patil is being

authorized by the petitioner-Trust Shri Dattatraya Sansthan Shikhar, Mahur to institute the present petition. It is further submitted that there are various disputed questions of facts involved in the present petition which cannot be gone into under Article 226 and 227 of the Constitution of India. The petitioner-Trust has an alternate remedy available with him for redressal of their grievance. Even otherwise the respondent-authority has already directed the petitioner-Trust to approach the Civil Court for redressal of its grievance. He further submitted that the claim of the petitioner-Trust is barred by limitation and therefore is hit by delay and laches. He invites attention of this Court to the various survey numbers of village Arni, which belong to the respondents and prayed for dismissal of the petition.

13. The written notes of arguments of Mr. P.P. Deshmukh, learned counsel for the respondent nos.2 to 5, 7 to 14, 16, 18, 20, 23 to 27 points out the notification No.627-XII dated 27.1.1951 issued in exercise of powers conferred by Sub Section (1) and (3) of Section 3 of the M.P. Abolition Act, 1950 to state that the provisions thereof were made applicable to the Districts of Amravati, Akola, Buldhana and Yavatmal from 14.3.1951. It is

stated that the issuance of any notification under Section 3 of the M.P. Abolition Act, 1950 in respect of any area, results in all rights, title and interest, therein as vesting in the proprietor or any person having interest in such proprietary rights, ceasing to be so vested and are vested in the State for the purposes of the State free from all encumbrances. Insofar as the District of Yavatmal is concerned as and on from 14.3.1951 all rights, title and interest of a proprietor in the estates, mahals, alienated villages and alienated lands ceased to exist and stood vested in the then State of Madhya Pradesh and all rights of the petitioner-Trust in the lands alienated to it as "Inam" in Yavatmal District ceased to exist as and from that day and stood vested in the State of Madhya Pradesh. It is stated that the statement made by the petitioner-Trust in para 6 of the petition that in view of Section 68 (1) of the M.P. Abolition Act, 1950 the petitioner-Trust can retain the lands is incorrect and erroneous. It is stated that Chapter III of the M.P. Abolition Act, 1950 provides for assessment of compensation to be paid to the proprietor and it is an admitted fact that the petitioner-Trust was paid the compensation as claimed by it, but unfortunately, the petitioner-Trust has not produced any authentic material to show which of

the lands were claimed by the petitioner-Trust as home-farm land under Sub Section (1) of Section 68 of the M.P. Abolition Act, 1950. It is further stated that in view of Sections 66 to 70 of the M.P. Abolition Act, 1950 the petitioner-Trust has not made any statement in the petition as to which lands were claimed to be 5 home-farm land by the petitioner-Trust and were retained by it. The petitioner-Trust has not disclosed whether any of these lands were subjected to determination of the land revenue nor produced any document pertaining to the period after March 1951 showing that the petitioner-Trust was in occupation of any 10 of the lands involved in the petition in view of provisions contained in Sub Section (1) of Section 68 of the M.P. Abolition Act, 1950. No document has been placed on record regarding records of rights including 7/12 extracts pertaining to period after 13.3.1951 nor any assertion is made in the petition that any 15 land revenue has been paid by the petitioner-Trust in respect of the lands involved in the petition after 13.3.1951. The respondents have produced copies of the orders made in their favour under Sub Section 2 of Section 69 of the M.P. Abolition Act, 1950 along with pursis dated 23.1.2023, whereby they have 20 been shown in occupation of the respective lands after these

orders which have been passed in their favour and the respondents have been paying land revenue and are in absolute peaceful possession of these lands. For claiming the land under Sub Section 4 of Section 3-H of the N.H. Act, 1956 the claimant is required to show at least some *bona fide* claim to the land and 5 the existence of *bona fide* dispute about the disbursement of the compensation amount and the petitioner-Trust has failed to make out a claim to the lands involved in this petition, which being absent the petition be dismissed.

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14. In his written notes of arguments Mr. G.R. Kothari, learned counsel for the respondent nos.2, 4, 9, 10 to 19, 21, 25 to 29, 31, 32, 34, 35 and 37 states that the petitioner-Trust approached this Court by ignoring the jurisdiction and alternate remedy available to it. The authorities below have no power to 15 decide the issue involved in the petition and therefore the petition itself being untenable and deserves to be dismissed. The petition is being filed with ulterior motive to deprive the poor landowners for getting payment of compensation for their acquired lands. Not a single document has been filed neither 20 before the authorities below nor before this Court which would

show the ownership of the petitioner-Trust over the lands in question, who has also suppressed several material facts from this Court by making false averments. The objection taken by the petitioner-Trust before the respondent no.1 is hopelessly time barred. The petitioner-Trust filed objection before the respondent 5 no.1 on 4.5.2019 wherein the award came to be passed on 23.2.2019. The petitioner-Trust has not approached the learned authority below when the notification for acquisition of lands was issued by the National Highway Authority of India. As per the provisions of the N.H. Act, 1956 any objection on the 10 acquisition of the land is to be raised within a period of 21 days from the date of notification in official gazette, but the petitioner-Trust failed to approach the Court within time provided and as such the objection raised by the petitioner-Trust is time barred and therefore it was rightly rejected by the learned authority 15 below. The petitioner-Trust has not filed copy of public trust register which would show its title to the acquired lands belonging to the respondents. To claim ownership over the tenancy land, the public trust is required to hold exemption certificate as per Section 129 (b) of the BTAL Act, 1958 and in 20 absence of such exemption certificate the petitioner-Trust cannot

demand restoration or claim ownership over the acquired lands of the respondents. After the M.P. Abolition Act, 1950 came into force, the alleged lands which were received by the petitioner-Trust in Inam from the Government of India vested in the State as per the provisions of Section 3 of the M.P. Abolition Act, 1950. 5

The learned Compensation Officer, Yavatmal vide its order dated 27.2.1952 allowed the application filed by the petitioner-Trust for getting compensation and granted Rs.3115/- as total compensation payable to them. In support of his contention, learned counsel relied upon *Sulochana Chandrakant Galande Vs.* 10

Pune Municipal Transport and others AIR 2010 SC 2962. The petitioner-Trust deliberately suppressed from this Court the fact of filing the proceedings by it for compensation. The respondents are the lawful owners and possessors of the acquired lands since 5 to 7 decades and are cultivating their respective lands and area 15

also regularly paying the taxes. The petition, according to him, therefore needs to be dismissed with costs.

15. In her written notes of arguments Mrs. Sonali Saware (Gadhawe), learned counsel for the respondent no.24 20

states that according to notification the agriculture land of the

petitioner-Trust has been acquired by the respondents and as per published notice dated 6.5.2017 the authority did not receive any objection regarding the land of the respondents within stipulated period. After publication of notification under Section 3-D of the N.H. Act, 1956 the meeting of concerned farmers have been 5 called to inform them the procedure to be followed to acquire the land. The respondent no.1 has already received the compensation amount from the respondent no.38. Since the land of the answering respondent no.24 was taken by the respondent nos.1 and 38, the respondent no.1 has issued notice under Section 3-H 10 (2) of the N.H. Act, 1956 by which it is informed to the respondent no.24 that since amount of Rs.42,68,880/- has been granted to him as compensation by passing award, the respondent no.24 is required to remain present on 15.4.2019 before the Sub Divisional Officer, Yavatmal. The respondent 15 no.24 had approached to the said authority as per notice, but he has not received any compensation. In spite of request to the Land Acquisition Officer for disbursement of the compensation amount the respondent no.1 has ignored the present respondent no.24 and did not pay him compensation as per award, for the 20 best reasons known to him. The respondent no.24 sent notice on

23.7.2019 under Section 80 of the Code of Civil Procedure to the respondent. The respondent no.38 – National Highway Authority replied to the notice and informed that amount of Rs.42,68,880/- has been granted to him as compensation and the said amount has already been deposited with the Land Acquisition Officer, 5 Yavatmal but the Land Acquisition Officer did not pay any heed to the requests made by the respondent no.24 for releasing the compensation amount nor replied to his written communication dated 5.2.2021. As per Section 3-H (2) of the N. H. Act, 1956 it is the duty of the competent authority to pay the amount of 10 compensation to the person entitled as soon as the amount is deposited by the Central Government and if any dispute arises in regard to apportionment of the amount payable, the competent authority is required to refer the dispute for the decision to the Civil Court. As per respondent no.24, there is no dispute 15 regarding the apportionment of the amount of compensation. The respondent no.1 has already received the amount from the respondent no.38 and therefore the respondent no.1 is duty bound to release the amount. The procedure of acquisition of land is completed and the expansion work of highway no.361 of 20 particular area is over, still the compensation is not received by

the respondent no.24. Complaint filed by the respondent no.24 before the Maharashtra Human Rights Commission, Mumbai on 5.3.2021 as well as the application before the Divisional Commissioner are still pending for decision. Since the present respondent no.24 did not receive any reply from the respondent 5 no.1 till date, he had no option but to file petition bearing Writ Petition No.2730/2021 for direction to release the amount of compensation. In the said writ petition the respondent nos.1 and 38 appeared and submitted that since the petition challenging the award is pending before the High Court they did not release 10 the amount of compensation. The present respondent no.24 is the real owner and possessor of the acquired land and he has produced the valid documents showing his ownership before the acquiring authority. After the inspection of all the documents filed by him, the land was acquired under the N.H. Act, 1956 and 15 as per the provisions of this Act the objection should be raised within 21 days from the date of notification. The respondent no.1 has informed the petitioner-Trust by issuing a letter that the award is passed on 22.7.2019 and the same can be challenged before the Civil Court within 30 days from the date of the 20 judgment. It is further submitted that the petitioner-Trust failed

to approach the competent authority within the stipulated period and therefore he has no right to raise any objection at the later stage and therefore the petitioner-Trust is not entitled to claim any relief as prayed in the instant petition and the petition is liable to be dismissed. The petitioner-Trust has failed to file the documents regarding the ownership of the land in question and the petitioner-Trust has made claim on invalid documents. As per the M.P. Abolition Act, 1950, the lands were removed from the possession and in case any exemption is granted the certificate of exemption was issued by the authority. It was the petitioner-Trust who was required to produce the certificate of exemption before the concerned authority for the alleged claim and the petitioner-Trust has no such exemption certificate at all which falsifies the claim of the petitioner-Trust. The petitioner-Trust is unable to prove the ownership as well as possession over the land as claimed and is making vague submissions only to create the doubt in the minds of this Court. The petitioner-Trust has filed detailed chart of the land acquired which is situated at Sukli with new survey numbers along with list of the owners but in the said list the name of the respondent no.24 is not mentioned and the land owned by the respondent no.24 is also not mentioned,

which clearly reflects that the petitioner-Trust has not claimed any right on the land owned by the respondent no.24. The petitioner-Trust has wrongly made party to the respondent no.24 in the petition and for that reason also the petition is liable to be dismissed with heavy costs.

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16. The entire controversy revolves around the claim of the petitioner-Trust, to receive the compensation, in respect of the lands in question, which have been acquired for the National Highway, which claim has been rejected.

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16.1. The basic contention in this regard by Mr. Khapre, learned Senior Counsel for the petitioner-Trust is that since the land revenue was not assigned, the petitioner-Trust did not become superior holder of any alienated land as defined in Section 2(2) of the Berar Land Revenue Code, 1928, and therefore, the land being an unalienated land, was not affected by the M.P. Abolition Act, 1950.

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16.2. Section 2(2) of the Berar Land Revenue Code, 1928, reads as under :

"2. (2) "alienated land" means land in respect of which the Government has assigned in whole or in part its right to receive land-revenue equal in amount to the fair assessment, and the person to whom such assignment is made is called the "superior holder".

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16.3. The grant of the entire land in question to the petitioner-Trust, by virtue of grant of the year 1810 (pg.76), which is reflected from the order dated 8.9.1860 (pg. 76) and dated 17.3.1864 (pg. 79), the subsequent order dated 4.1.1937 of the Record of Rights Officer (pg. 80) which records that the lands in question as indicated in page 85 was granted on behalf of the Nizam by Raja Chandu Lal when he was the Peshkar, for the expenses of the petitioner-Trust, is not disputed. What is therefore required to be considered is whether the petitioner-Trust was a holder of unalienated land, so as not to become a 'superior holder'.

16.4. This contention in my considered opinion does not hold any water for the following reasons :

(a) The extract of Form of Inam Register-A, (pg.76 in W.P. No.5881/2019), indicates that in respect of the lands of village Arni, admeasuring 6804 acres, the land revenue of Rs.4,395/- has been assigned to the petitioner-Trust. Not only this, the said

Form, records the alienation of land to the superior holder, which is the petitioner-Trust.

(b) Similar is the position in respect of the lands of Village: Sukali, admeasuring 3,470 acres and 3 gunthas, in respect of which the land revenue assigned is Rs.1,264/- [pg.239 in W.P. 5 No.5881/2019].

(c) The petitioner-Trust in its objections raised before the acquiring authority, admits that 1189 acres and 24 gunthas of agricultural land at Village : Arni and 1344 acres and 15 gunthas of land at Village: Sukali, have been given to it under 10 Section 68(2) of the M.P. Abolition Act, 1950 (pg.178 in W.P. No.5817/2019). The Notification under Section 68(1) of the M.P. Abolition Act, 1950 in respect of Farm Lands, of Village: Sukli, in Revenue Case No.73/42-A(4) of 50-51, held by the petitioner-Trust is at page 90 in W.P. No.5881/2019 and that in respect of 15 Village Arni, in Revenue Case No.70/42-A(4) of 50-51, is at page 85 in W.P. No.5881/2019.

(d) The petitioner-Trust, further admits in its objection that compensation is also received by the petitioner-Trust on account

of abolition of its rights, in Revenue Case No.73/42A(4) 1950-51. A claim for compensation, made by the petitioner-Trust in Case No.70/42-A(4)/50-51 of Arni Jahagir, dated 25.7.1951, is at page 266 in W.P. No.5817/2019. A perusal of this claim would indicate that there is an admission as regards most of the lands out of this 5 6804 acres, being occupied by tenants, named as tenants of antiquity, from whom the amount of rent receivable by the petitioner-Trust was at that time Rs.5717/7/3, which was the position as recorded in the enquiry which is stated to have taken place in 1935. In this respect it was stated that the area of 10 tenants as recorded as permanent tenants in the enquiry as conducted in 1935 by one Shri Parmanand R & R Officer, be excluded from being recorded as home farm land and the other lands be classed as home farm land of the petitioner-Trust. It was also claimed that the tenancies created after 16.3.1950 be 15 declared as void. After giving the details, of the loss caused and which may be caused, compensation on account of loss of income was claimed at Rs.31,850/-. Compensation was also claimed under other heads. Though there were also tenants in some lands whose tenancy was claimed to be less than 10 years as created 20 under the Act No.19/1950, it was contended that these tenants

were not in continuous possession for the last 10 years. A claim for loss of income, on account of the petitioner-Trust being deprived from holding Bazar, due to loss of rights in land was also claimed before the Civil Judge-II Class, Darwha, on 19.9.1951 (pg.274 in W.P. No.5817/2019/Vol-II). A further claim 5 was made before the Compensation Commissioner, Darwha (pg.294 in W.P. No.5187/2019), on 18.2.1952, regarding certain survey numbers as stated therein on the ground that they were leased out to tenants and therefore were not fallow (Padit) lands so as to vest them in the Government. This would clearly indicate 10 that the petitioner-Trust, accepted the position regarding the applicability of the M.P. Abolition Act, 1950 to lands granted to it and had thus sought compensation, in that regard.

(e) The Compensation-cum-Claims Officer, Yavatmal, in Revenue Case No.70/42-A(4)/1950-51, Village Arni, by his order 15 dated 27.2.1952 (pg.302 in W.P. No.5817/2019) granted a compensation of Rs.18,005/- on account of loss of income to the petitioner-Trust. In respect of the claim that tenancies below 10 years ought not to be considered, the claim was rejected on account of the fact that such tenancies had been certified by the 20

Tahsildar (pg.300 in W.P. No.5187/2019- there is incorrect typing in this regard at pg.304/para 4). Survey Nos. 8/1, 12, 24, 59, 61, 101, 102, 108, 110, 118, 119, 120, 125, 127, 143 were treated as Home farm lands. Lands of Survey nos. 29, 35, 124, as well as Gaothan, Gothan, Burial, River, Nalla and road areas were declared to have vested in the State. 5

(f) What is material to note is that this is compensation awarded to the petitioner-Trust under Section 18 of the M.P. Abolition Act, 1950 for being divested of its proprietary rights under the M.P. Abolition Act, 1950. The Statement of compensation in Form-II dated 27.2.1952 is at page 306 in W.P. No.5817/2019, and would demonstrate that not only the petitioner-Trust has lost proprietary rights in the lands held by it, but had also claimed compensation for such divesting, which had been granted and received by it. A similar order and statement in respect of the lands at village : Sukli, is at page 204; Form No.II at page 205 and Form No.III at page 206 of W.P. No.5881/2019, which demonstrates that compensation of Rs.3115.7 was paid for loss of income from the lands at Village : 10 15

Sukli on account of the notification under Section 3(1) of the M.P. Abolition Act, 1950.

(g) The statement in Form-III (Rule 5) showing the details of the land vesting in the State, under Section 3(1) of the M.P. Abolition Act, 1950 dated 27.2.1952 (Pg.310 in W.P. No. 5817/2019) in respect of Revenue Case No.70/42-A(4)/50-51, for village Arni, would indicate that more than 5380 acres of land stood vested in the State. Similar vesting also stands in respect of the lands at Village Sukli, which position is not disputed by the petitioner-Trust. 10

(h) It has not been pointed out to me that the vesting, as indicated above, has at anytime been questioned by the petitioner-Trust, by initiating appropriate proceedings, which would indicate that the vesting is complete.

(i) Section 68(2) of the M.P. Abolition Act, 1950 as it then 15 stood, declared every person holding land as a specified tenant before the date of vesting, on and from the date of such vesting to be a deemed lessee of such land and except where the State Government otherwise directed, to hold the same on payment by

way of lease money annually, the same amount as was payable by him as rent and on such other terms and conditions on which he was holding before such date. Thus, all those tenants of antiquity, who were holding lands as specified tenants on the date of vesting became the lessees of the State, on payment of lease money, equivalent to the rent paid by them earlier. 5

(j) Section 69 (1) of the M.P Abolition Act, 1950 as it then stood granted a right to a person becoming a lessee under Section 68(2) of the M.P Abolition Act, 1950 to apply to the authority indicated in that behalf, to apply for conferral upon him 10 the right of an occupant, by making a deposit by way of premium to be calculated as indicated therein.

(k) It is subsequent to such vesting that in proceedings initiated by the various tenants for conferral of right upon them, that orders have been passed deciding the premium and rights 15 been conferred upon such lessees. [see pages 268-A to 278-A & 327 and onwards in W.P No.5817/2019].

(l) It is thereafter that the petitioner-Trust has applied for and been granted right to lands under Section 68(2) of the M.P

Abolition Act, 1950 to certain lands as is indicated by one such certificate in that regard dated 11.4.1975, (pg. 394 in W.P. No.5817/2019).

16.5. This being the position, the petitioner-Trust in sum and substance admits the applicability of the M.P. Abolition Act, 1950 to it and the lands held by it and so also receiving the benefit under Section 68(2) thereof. Thus, the claim of the petitioner-Trust that it held unalienated land and therefore was not a superior holder, on account of which the M.P. Abolition Act, 1950 did not become applicable to it, cannot be sustained.

16.6. It is also material to note that though in its objections, the petitioner-Trust has raised a plea that the applicability of the M.P. Abolition Act, 1950 to it and its holdings was illegal, no proceedings of whatsoever nature had been initiated by it, to question such applicability of the M.P. Abolition Act, 1950. Rather on the contrary, it has remained content with taking the benefit under Section 68(2) of the M.P. Abolition Act, 1950 in the matter of retaining the lands to the extent as indicated above. The petitioner-Trust thus cannot be permitted to

approbate and reprobate. For all the above reasons, the plea therefore is without any merits.

17. The plea that all these lands, in respect of which a claim is now being raised by the petitioner-Trust, were lands vested in the State and therefore the State should now repossess, 5 them and deliver title and possession to the petitioner-Trust, is not only without any merit but is also contrary to the stand taken by the petitioner-Trust, itself, as in that case, the petitioner-Trust would also not be entitled to continue to hold the lands mentioned in the orders of exemption under Section 68(2) of the 10 M.P. Abolition Act, 1950. The petitioner-Trust, thus cannot be permitted to say that on the one hand it will continue to exercise rights of ownership over the lands which are the subject matter of the orders of exemption under Section 68(2) of the M.P. Abolition Act, 1950 and on the other hand claim that the M.P. 15 Abolition Act, 1950 itself, was not applicable to it, and therefore all orders passed thereunder are null and void.

18. It would thus be apparent that except for the lands in respect of which an order under Section 68(2) of the M.P.

Abolition Act, 1950 has been passed in favour of the petitioner-Trust, it cannot claim entitlement to any other land.

19. There is yet one other aspect of the matter to be considered, namely that the petitioner-Trust was granted exemption under Section 129(b) of the BTAL Act, 1958 for holding agricultural lands which certificate of exemption is dated 2.7.1966. However, prior to that the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, had already come into force and therefore the effect of tillers day, would be something which would be required to be considered.

20. Even if the petitioner-Trust has made representations, to the State and an Enquiry Committee is stated to have been formed, which has since been claimed to be re-constituted, that by itself, is of no benefit to the petitioner-Trust as this cannot become an impediment in the way of the persons who have been granted tenancy rights under the various statutes from claiming such rights. If the petitioner-Trust was in any way aggrieved by such grants/recognitions, it was necessary for it to have challenged them by initiating appropriate proceedings in a Competent Court of law, which alone could have

decided the legality and validity of such a plea. This however does not appear to have been done by the petitioner-Trust, which speaks of a saga of lost opportunities, as the record indicates that such rights have been conferred upon the respondents and their predecessors-in-title, several decades earlier.

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21. The above discussion would also demonstrate that the plea of fraud being now raised by the petitioner-Trust relying upon *Madhukar Shivarkar* (supra), is clearly misplaced, as for decades together the petitioner-Trust has not taken any steps to claim and assert any right, in case it thought that such a claim or right existed in it, for it cannot be said to be oblivious of such a claim or right, as is being sought to be asserted now.

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22. The Circulars dated 30.7.2010 (pg.101 in W.P. 5881/2019) and its corrigendum dated 29.6.2011 (pg.104 in W.P. No.5881/2019), are general circulars which speak about the necessity of recording the correct position in the revenue records and correcting them, where necessary. They do not assist the petitioner -Trust in its claim that it still continues to hold title to the lands which it did, prior to the notification under Section 3(1) & (2) of the M.P. Abolition Act, 1950 dated 27.1.1951, in

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which the date of 14.3.1951 was notified as the date on which Section 3(1) of the said Act, would come into effect for Yavatmal District.

23. It is thus apparent that except for the lands which are claimed to have been exempted in favour of the petitioner-Trust by virtue of orders under Section 68(1) and (2) of the M.P. Abolition Act, 1950 all rights in the lands which the petitioner-Trust, claimed to have possessed earlier by virtue of the grant by the Peshkar to the Nizam, stood lost and vested in the State, which has since considering the possession of the cultivators of such lands and the legal position as applicable, granted them rights, thereto on payment of land revenue by recognising their rights therein. 5 10

24. That takes me to the plea by Mr. Khapre, learned Senior Counsel for the petitioner-Trust, that since an objection was raised, the respondent no.1, was duty bound to refer the dispute to the Civil Court. In *Sayed Mohamed Shah Abdul Hamid Kadri* (supra) though it was a case under Section 30 of the Land Acquisition Act, the learned Division Bench of this Court, while 15

considering the issue as to when reference can be made, in case of a dispute, has held as under :

“8. Bare perusal of the impugned award, therefore, discloses that the Land Acquisition Officer being unable to arrive at the finding about the entitlement of the petitioner as a person interested to claim the amount awarded on account of acquisition of the land and, on the claim made by the CIDCO that the land in question has already been acquired for the Forest Department, proceeded to pass the order for reference under section 30 and directed that the amount be deposited in Reference Court in such proceedings. Section 30 of the Land Acquisition Act provides that when the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Obviously, in cases where dispute arises before the Land Acquisition Officer regarding the apportionment of the compensation fixed by him in relation to the land sought to be acquired, certainly the matter will have to be referred to the Reference Court in terms of section 30. However, it is to be noted that section 30 specifically speaks of if any dispute arises as to the apportionment of the compensation. In other words, there has to be a dispute arising before the Land Acquisition Officer before he can exercise the powers under section 30 and dispute should be in relation to the apportionment of the compensation. The apportionment of the compensation spoken of under section 30 necessarily relates to the apportionment between the persons interested. Under section 11(1), the Collector consequent to the replies received to the notices under section 9 of the said Act has to make an award in relation to the true area of the land, compensation of which, in his opinion, should be allowed for the land and the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. In other words, while deciding the exact area which is the subject matter of acquisition and ascertaining market value of such land in terms of sections 23 and 24 of the said Act,

the Land Acquisition Officer has necessarily to decide about the apportionment of the compensation to all the persons known or believed to be interested in such land. The very fact that the Land Acquisition Officer is expected to decide about apportionment of the compensation among the persons interested, disclose the power of the Land Acquisition Officer to look into the rights of the interested persons in relation to the land sought to be acquired and, based on such rights, to decide about the apportionment of the compensation. In order to ascertain rights of the persons interested for the purpose of apportionment of compensation, obviously, the Land Acquisition Officer will have to look into the material to be produced by the person interested in support of their claim as the person interested and their share in the land acquired. Needless to say that apportionment of compensation to the persons interested would not be possible without application of mind by the Land Acquisition Officer to the claim put forth by the interested persons and substantiated by them with necessary materials in that regard. From this, it also follows that when any person interested wants to raise a dispute as regards the entitlement of the compensation to himself or disentitlement of compensation to any other person interested in the matter, such person has necessarily to substantiate his claim or dispute by necessary material or evidence in support of such objection. It is not a mere objection for the sake of objection that would empower the Land Acquisition Officer to blindly exercise powers under section 30. In order to exercise powers under section 30, the Land Acquisition Officer will have to disclose the application of mind to the dispute sought to be raised and the necessity of adjudication of that dispute by the Court of competent jurisdiction and, therefore, the matter being needed to be referred to the Reference Court in exercise of powers under section 30. It cannot be done in the manner of postman's job to deliver letters but it must necessarily disclose application of mind by the Land Acquisition Officer in the award itself that there is a need for reference of the matter to the Reference Court under section 30.

9. Bearing in mind these provisions of law, if one peruses the impugned award, it would disclose that apart from the letter filed by CIDCO informing that the land in question has already been acquired for the Forest Department, there

was no material placed before the Land Acquisition Officer to exercise the powers under section 30 and deny the compensation to the petitioner who was clearly shown to be the owner of the property pursuant to the Sale Deed in his favour in relation to the land in question.

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10. Attention was drawn to section 3 of the Maharashtra Private Forests (Acquisition) Act, 1975 to contend that all private forests stand acquired under the said provision and, therefore, the petitioner could not have claimed the compensation in relation to the land in question, the same having already been acquired in exercise of powers under section 3 of the Maharashtra Private Forests (Acquisition) Act, 1975. Undoubtedly, sub-section (1) of section 3 of the Maharashtra Private Forests (Acquisition) Act, 1975 provides that notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished. The Act came into force with effect from 1-10-1975. However, the fact remains that apart from merely claiming that the land has been acquired for the Forest Department in exercise of powers under the said provision, the respondents have unable to show that the land in question did form a forest land for the purpose of acquisition under the said Act at any point of time. It is pertinent to note that even in the impugned award there is no finding about the nature of the land in question to be a forest land or that it was a forest land at any point of time earlier to passing of the impugned award. On the contrary, a description regarding the land disclosed that it did not have any wild trees nor any fruit bearing trees. In the absence of any finding that the land in question was at any point of time a forest land to which the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 apply as well as in view of the specific finding by Land Acquisition Officer that the land did not have any wild trees or fruit

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bearing trees therein, it is difficult to accept the contention of the respondents that the Land Acquisition Officer was justified, on the basis of the letter of CIDCO, to refer the matter for decision of the Reference Court in exercise of powers under section 30.

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11. Neither the impugned award on the face of it justifies the order under section 30, nor the respondents have been able to justify the action on the part of the Land Acquisition Officer in referring the matter to the Reference Court under section 30 in the case in hand. Therefore, the impugned award, to the extent it directs the matter to be referred to the Reference Court under section 30 and consequential deposit of the amount of compensation awarded therein in Reference Court, cannot be sustained and is liable to be quashed and set aside.”

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It is, therefore, apparent that the dispute as contemplated, ought to be a real and genuine dispute and the job of the competent authority, is not a mere mechanical one, but requires application of mind, to the facts placed before it, so as to at least form a *prima facie* opinion, whether a dispute genuinely and *bona fide* exists and only then, refer the matter, for otherwise, it would become permissible for any person, even without any semblance of a right, to file an objection and claim that since a dispute existed, the same be referred, leading to drastic consequences, for the person acknowledged to be the owner of the land acquired, upon an enquiry already having been conducted in that regard, to the satisfaction of the competent authority.

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24.1. In *Sheeraz Ahmed s/o Sarfaraz Ahmed* (supra), which was a case under the National Highways Act, while considering a similar position as to referral of a dispute, a learned Single Judge of this Court has held that at least a *prima facie* entitlement or any semblance of dispute existing with regard to 5 apportionment of compensation has to be made out, with which view, I, have no hesitation in concurring.

24.2. As indicated above, the dispute which is claimed must be genuine and *bona fide*, as that tends to deprive the person in whose favour the award has been passed, on account of 10 acquisition of his lands, which award, upon an enquiry, holds such person legally entitled to the compensation for such acquisition, from the fruits of compensation and therefore the requirement for the objector, which in this case is the petitioner-Trust to at least *prima facie* establish that such dispute was 15 *bona fide* and genuine becomes all the more important. Thus, the dispute which is now being sought to be created by the petitioner-Trust for claiming any right in the compensation, which has now been determined in respect of the lands acquired,

has necessarily to be viewed in the contextual background of the above conduct of the petitioner-Trust.

24.3. A perusal of the documents placed on record, demonstrate that all throughout, the petitioner-Trust, was clearly aware that the parcels of the lands in question, were not in its possession, not only from 1968, but even prior thereto, but were in actual cultivating possession of the respondents or their predecessors, since last several decades. Such cultivating possession of the respondents or their predecessors, also stood recorded in the 7/12 extracts and other revenue records. The cultivating occupation of these parcels of lands by the respondents, or their predecessors, was duly accepted by the State in its Revenue Department by taking land revenue from them.

24.4. All this went on for more than the last seventy years, preceding the date of the notice of acquisition. All through this time, the petitioner-Trust, never approached any Court of law, for asserting its rights in these properties. Mere making representations/applications to the State Government or its constituting any Committee, cannot amount to the petitioner-

Trust, approaching any legal forum, claiming or asserting any rights in the lands in question, of which it stood divested of on account of the applicability of the provisions of the M.P Abolition Act, 1950 by virtue of the notification under Section 3 of the M. P Abolition Act, 1950 which is dated 14.3.1951, which applicability 5 was never questioned at any point of time.

24.5. It is also material to note that it is not the claim of the respondents that the lands in respect of which they are claiming entitlement to compensation, on account of its acquisition, are either included in the orders under Section 68(2) 10 of the M.P Abolition Act, 1950 or in the order passed under Section 129 of the BTAL Act, 1958. Rather it is their specific claim, that the lands for which they claim entitlement for compensation are not included in such orders of exemption.

25. In view of what has been discussed in respect of the 15 factual position, availing on record, I, do not feel it necessary to go into the reliances relied upon, by the learned Counsels.

26. In view of the above discussion, in my considered opinion, these petitions are therefore disposed of in the following terms :

(A) In all cases in which rights have been conferred/ recognised by the State/Revenue Officials, by passing orders, in 5
favour of the respondents, if such lands are included in the survey numbers permitted to be retained by the petitioner-Trust in the orders under Section 68(2) of the M.P. Abolition Act, 1950 the impugned order dated 22.7.2019 by the respondent no.1, refusing to refer the matter, is set aside and the respondent no.1 10
is directed to refer such matters to the Civil Court, as *prima facie* a dispute would exist.

(B) In all cases, where rights are claimed to have been accrued in favour of the tenants under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, 15
on account of the tillers day and the date of exemption granted to the petitioner-Trust under Section 129(b) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, for holding agricultural lands which certificate of exemption is dated 2.7.1966, the respondent no.1, would make a preliminary 20

enquiry and in case he is satisfied that the matter needs referral, do so. If he finds otherwise, he can decline to refer.

(C) In all cases where it is found that the lands held by the respondents, do not fall, within those survey numbers permitted to be retained by the petitioner-Trust in the orders 5 under Section 68 (2) of the M.P. Abolition Act, 1950 the impugned order dated 22.7.2019 by the respondent no.1, refusing to refer the matter would stand, as the petitioner-Trust has already lost title to such lands and the holders of those lands are entitled to the release of compensation in their favour, with 10 accrued interest, if any, in case the amounts are deposited in an interest carrying mode.

(D) In any other case not covered by the above, if on a preliminary enquiry the respondent no.1, is satisfied that the matter needs referral, he would be entitled to do so. 15

Rule accordingly. No order as to costs.

(AVINASH G. GHAROTE, J.)

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