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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3557 OF 1987

Babu Ganpati Arage,]
village Shiradwad, Taluka]
Shirol, Dist – Kolhapur.] ...Petitioner

VERSUS

1. The Special Land Acquisition]
Officer No.10, Kolhapur.]

2. The Collector & Deputy Director]
of Resettlement (Land), Kolhapur]

3. The Deputy Director of]
Resettlement, Revenue and Forest]
Department, Mantralaya,]
Bombay.]

4. The Additional Commissioner,]
Pune Division, Pune.]

5. The District Resettlement]
Officer, Kolhapur.]

6. State of Maharashtra.]

notices of all the Respondents]
to be served upon the Additional]
Government Pleader, High Court,]
Appellate Side, Bombay] ...Respondents

WITH
INTERIM APPLICATION NO. 978 OF 2022
IN

WRIT PETITION NO. 3557 OF 1987

Babu Ganpati Arage

...Applicant
(Org.Petitioner)

VERSUS

The Special Land Acquisition Officer
No.10, Kolhapur and ors.

...Respondents

**WITH
INTERIM APPLICATION NO. 977 OF 2022
IN
WRIT PETITION NO. 3557 OF 1987**

Babu Ganpati Arage

...Applicant
(Org.Petitioner)

VERSUS

The Special Land Acquisition Officer
No.10, Kolhapur and ors.

...Respondents

**WITH
INTERIM APPLICATION ST. NO. 30949 OF 2024
IN
INTERIM APPLICATION NO. 2456 OF 2021
IN
WRIT PETITION NO. 3557 OF 1987**

The Special Land Acquisition Officer
No.10/12, Kolhapur

...Applicant

In the matter between
Babu Ganpati Arage

...Petitioner

VERSUS

The Special Land Acquisition Officer
No.10/12, Kolhapur and ors.

...Respondents

WITH
CIVIL APPLICATION NO. 2263 OF 1997
IN
WRIT PETITION NO. 3557 OF 1987

Babu Ganpati Araje, ...Applicant

VERSUS

The Spl. Land Acq. Officer and ors. ...Respondents

APPEARANCES-

Mr Prajakt M. Arjunwadkar, a/w Ms Jui B. Gharat, Mr Prathamesh S. Hande, Mr Raj S. Satam, Mr Dhananjay B. Utture, for the Petitioner/Applicant and for Respondent in IAST/30949/2024.

Mr A. I. Patel, Addl.G.P., a/w Ms S. R. Crasto, AGP, for the Respondent-State.

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 24 January 2025

PRONOUNCED ON : 31 January 2025

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. Mr Patel learned Additional GP submitted that we should first take up Interim Application (ST) No. 30949 of 2024 to recall our order dated 27 January 2022, by which we allowed Interim Application No. 2456 of 2021 and restored Writ Petition No. 3557 of 1987 to this Court's file along with interim orders made therein.

3. Mr Patel submitted that the order dated 27 January 2022 made by the co-ordinate bench comprising R D Dhanuka, J. (as His Lordship then was) and S. M. Modak, J., was required to be recalled because Interim Application No. 2456 of 2021 was instituted after considerable delay, and no prayer sought condonation of such delay. He submitted that even otherwise, no sufficient cause was shown for either condonation of delay or restoration of the petition, which was dismissed for non-prosecution.

4. Considering the above two grounds pressed by Mr Patel, we see no reason to recall our order dated 27 January 2022.

5. Since Mr Patel stressed the circumstance that there was no formal application seeking condonation of delay in filing Interim Application No. 2456 of 2021, we are obliged to point out that the order of which Mr Patel seeks a recall was made on 27 January 2022. The Interim Application (ST) No. 30949 of 2024 was filed by the State only on 17 October 2024. On perusal of the interim application, it is apparent that the State seeks a substantive review of the order dated 27 January 2022 made by the co-ordinate bench. The application has been styled for “recall” only to overcome the bar limitation. Even this interim application is not accompanied by any application for condonation of delay. There is not even any prayer for condonation of delay.

6. Therefore, in the above circumstances, it is hardly appropriate that the State seeks a recall of the order dated 27 January 2022 because a formal application for condonation of delay did not accompany the application for restoration.

7. In any event, the reasons set out in Interim Application No. 2456 of 2021 cover both delay and restoration since the cause shown for both purposes was the same. Accepting the cause for restoration would amount to accepting the cause for condoning delay.

8. The order dated 27 January 2022 was passed after hearing learned AGP. As such, there was no question of any breach of principles of natural justice involved. The state also alleged no fraud. In such circumstances, no application would be maintainable only to seek a recall of the order dated 27 January 2022.

9. The order dated 27 January 2022, by which the restoration was ordered, and positive discretion was exercised in the matter of the delay involved in seeking restoration is not vitiated by any perversity or non-application of mind. Even on such grounds, it would not be open to a co-ordinate division bench to recall the order dated 27 January 2022.

10. In **N. Balakrishnan Vs. In M. Krishnamurthy**¹, the Hon'ble Supreme Court explained that once the Court accepts the explanation as sufficient, it is the result of a positive exercise of discretion, and such an exercise should normally not be disturbed unless it was on wholly untenable grounds, arbitrary, or perverse. Even in such a case, it is for the Superior Court, not merely the Coordinating Bench, to interfere.

11. For all the above reasons, we see no good reason to recall the order dated 27 January 2022. Interim Application

¹ (1998) 7 SCC 123

(ST) No. 30949 of 2024 is liable to be dismissed, and it is hereby dismissed.

12. The petitioner takes out Interim Application No. 977 of 2022 and seeks leave to amend the petition. Learned counsel for the petitioner was heard on the main petition on the premise that such leave was granted. Interim Application No. 978 of 2022 seeks interim relief. Again, since we are finally disposing of Writ Petition No. 3557 of 1987, there was no point in considering this application separately.

13. The petitioner by instituting the present petition challenges Sections 4 and 6 notifications issued under the Land Acquisition Act, 1894 ("**LA Act**") and notifications issued under Sections 14 and 15 of the Maharashtra Resettlement of Project Displaced Persons (Amendment and Validation) Act, 1985 ("**Resettlement Amendment Act**"). The petitioner had also sought a declaration that the provisions of the Resettlement Amendment Act were violative of Articles 14, 19 and 300A of the Constitution of India. However, Mr Arjunwadkar, learned counsel for the petitioner, accepted that such a challenge does not survive, and therefore, the petitioner would not press for such a challenge in this petition.

14. The petitioner claims to be the owner of agricultural land bearing Gat No. 631 admeasuring 56 Ares situated at Shiradwad, Taluka Shirol, District Kolhapur ("**said property**"). The said property was proposed to be acquired by the impugned notification to resettle the displaced persons after acquiring their properties for the Dhoodhganga Project in Kolhapur District.

15. By notification dated 02 November 1978 under Section 11 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (“**1976 Act**”), provisions of the 1976 Act were applied inter-alia, to the petitioner’s village. Special Land Acquisition Officer (“**SLAO**”) of Kolhapur (Respondent No.1) issued a notification under Section 4 of the LA Act on 02 July 1986 proposing to acquire the petitioner’s property for the public purpose of resettling the persons displaced by the Doodhganga Project.

16. The petitioner objected to the acquisition of the said property on the ground that the SLAO had no jurisdiction to issue Section 4 notification dated 02 July 1986 given the notification dated 02 November 1978 issued under Section 11 of the 1976 Act. Without prejudice, the petitioner submitted that the proposed acquisition proceeded on an incorrect assumption that the petitioner owned additional land bearing Gat Nos. 624 and 628 admeasuring 1 Hectare and 12 Ares. The petitioner pointed out that this additional land in fact belongs to one Mr Faiz Mohd. Pathan. The petitioner had only claimed tenancy rights to the same. However, the petitioner’s claim was rejected and therefore, this additional land should not have been considered while determining the entire land holding of the petitioner or his family members. The petitioner submitted that his total holding as a manager of the joint Hindu family was less than 8 Acre limit set by the 1976 Act and therefore, SLAO had no jurisdiction to acquire the petitioner’s property. Mr Arjunwadkar, whilst reiterating the

above objection relies upon **Gulab Shankar Walve Vs. SLAO**² and **Ganpat Pawar Vs. SLAO**³.

17. Despite the petitioner's objections, a declaration under Section 6 of the LA Act was issued on 10 February 1987. Notifications under Sections 14 and 15 were issued under the 1976 Act on 24 December 1981 and 29 May 1982 respectively.

18. Some petitions Writ Petition Nos. 388, 2362, 3444 and 3458 of 1982 were instituted to challenge the notifications under the 1976 Act on ground that such issue was without following the procedure prescribed under the 1976 Act. The above Writ Petitions were withdrawn after recording the statement of the Government advocate that notifications under the LA Act and Sections 14 and 15 of the 1976 Act would be withdrawn. The statement further added that fresh notifications would be issued after following the due process.

19. Mr Arjunwadkar submitted that the order recording the statement made by the Government advocate and permitting withdrawal of the above Writ Petitions was made on 13 July 1987. He submitted that in terms of this order, even the acquisition notifications concerning the petitioner's properties should have been withdrawn. He submitted that not withdrawing the land acquisition notifications amounted to contempt of this Court's order dated 13 July 1987.

20. Mr Arjunwadkar submitted that notification under Section 15 of the 1976 Act was issued in breach of the principles of natural justice and fair play. He submitted that

² 1981 MAH LJ 881

³ 1984 MAH LJ 783

no opportunity for a hearing was given to the petitioner. The map and the survey numbers relevant to the impugned notifications were never published or made available to the petitioner so as to enable the petitioner to object to the same. He submits that these are good grounds to quash the impugned notification under Section 15 of the 1976 Act.

21. Mr Arjunwadkar submitted that even the notification under Section 6 of the LA Act warranted interference because the petitioner was not granted any adequate opportunity before such a declaration was made. He submitted that the petitioner was not heard during the Section 5A enquiry, and a copy of the report was also not furnished to the petitioner. He submitted that an opportunity of hearing as contemplated under Section 5A of the LA Act is mandatory, and without granting such opportunity, Section 5A report and Section 6 declaration made based thereon is vitiated and liable to be set aside.

22. Mr Arjunwadkar submitted that though some challenges to the Resettlement Amendment Act were included in the written submissions tendered to this Court, the petitioner was not pressing those challenges. Mr Arjunwadkar however, submitted that the public purpose indicated in the notifications under Sections 4 and 6 of the LA Act did not amount to any public purpose or any acquisition for the purposes of the 1976 Act. He submitted that similar such notifications were withdrawn by the State Government.

23. Mr Arjunwadkar submitted that the 1976 Act bars the acquisition of lands less than 8 Acres for the purposes of resettlement of persons displaced by the irrigation projects.

He submitted that in the present case, the petitioner's property was less than 8 Acres. Therefore, the acquisition of the petitioner's properties violated the provisions of the 1976 Act, the LA Act and the Constitutional provisions under Articles 14 and 300A.

24. Mr Arjunwadkar submitted that the petitioner was being discriminated against and consequently, there was a violation of Article 14 of the Constitution. He submitted that the impugned notifications under the LA or 1976 Act were violative of Articles 14 and 300A of the Constitution as they involved the acquisition of the petitioner's property without following due process of law.

25. Mr Arjunwadkar relied on the following decisions in support of his contentions: -

(a) **Dhulgonda Dada Patil and etc. Vs. Special Land Acquisition Officer No.15, Kolhapur and others.**⁴

(b) **My Palace Mutually Aided Co-operative Society Vs. B. Mahesh and Others.**⁵

(c) **Sharad Mukunda Patil Vs. State of Maharashtra and Others**⁶

(d) **Nivrutti s/o Shankar Shewale since deceased through LRs. Chandrakant s/o Nivrutti Shewale Vs. State of Maharashtra and Others**⁷

⁴ AIR 1989 BOMBAY 286

⁵ 2022 SCC OnLine SC 1063

⁶ 1992 Mh.L.J. 443

⁷ 2004 (4) Mh.L.J. 147

(e) **Sharad Jijaba Kakade and another Vs. Land Acquisition Officer, Pune and another**⁸

26. Mr Patel, the learned AGP, submitted that none of the grounds raised supporting the petition were tenable. He submitted that full opportunity was granted to the petitioner during the Section 5A enquiry. He submitted that the petitioner chose not to participate in the Section 5A enquiry despite notice. He submitted that Section 6 notification was published in the gazette on 10 February 1987 and on the Chawadi Board on 20 April 1987. He submitted that Section 9 notices were issued to the petitioners.

27. Mr Patel submitted that the petitioner challenged Sections 4 and 6 of the LA Act by instituting this petition and obtained interim relief on 22 July 1987 restraining the respondents from taking over possession of the petitioner's property. However, there was no stay on further proceedings under the LA Act. Mr Patel submitted that the SLAO declared an award on 30 March 1988. The compensation amount was also deposited in the Court since there was an interim stay from dispossessing the petitioner. He submitted that it is always open to the petitioner to pursue the issue of compensation, however, no case is made out to interfere with the impugned notifications under the LA Act or the 1976 Act.

28. Mr Patel submitted that this petition may, therefore, be dismissed leaving it open to the petitioner to pursue the issue of compensation.

29. The rival contentions now fall for our determination.

⁸ 2005 (2) Mh.L.J. 429

30. The petitioner's main contention in this petition was that the notifications under Sections 4 and 6 issued under the LA Act were without jurisdiction because the SLAO lacked jurisdiction to acquire the petitioner's property which was less than eight acres. Mr Arjunwadkar contended that property under Gat Nos. 624 and 628, which did not belong to the petitioner, or his family was incorrectly assumed as belonging to the petitioner and his family on account of the tenancy claim made by the petitioner against the landlord Mr Faiz Pathan. He submitted that the petitioner and his family lost this claim and therefore, had no rights to the property bearing Gat Nos. 624 and 628.

31. The petitioner could not point out any provisions under the LA Act based upon which the above contention could be sustained. The petitioner made general averments about violating natural justice or denying adequate opportunity because certain details of measurements and maps were allegedly not supplied to the petitioner. However, the record shows that the petitioner was served with a notice to attend the 5A proceedings. The petitioner may not have attended or participated in these proceedings. But, the affidavit filed by the State Government in response to the Interim Application states that a 5A report was prepared and even an award was made.

32. The purpose of rehabilitation of persons whose lands were submerged in the Dhoodhganga project is certainly a public purpose. Therefore, the arguments that the lands of the displaced persons were never submerged or that the acquisition was for persons unaffected by any project cannot be accepted. The petitioner has not placed any material to

support such contentions. Such contentions cannot be entertained based on mere averments without any backing documents or other evidence. Thus, no case is made out to interfere with the notifications under Sections 4 and 6 of the LA Act.

33. By seeking leave to amend the petition, the petitioner wishes to challenge the award dated 30 March 1998. Significantly, this amendment application was filed on 18 February 2022 i.e., after 34 years since the award was made. There is no explanation for this inordinate delay for 34 years. The application seeking leave to amend the petition merely refers to 'subsequent facts' and claims that no prejudice will be caused to the respondents if the amendment is allowed.

34. Even after taking the most liberal view, we note that the amendment application contains no additional grounds to challenge the impugned award dated 30 March 1988. The award is challenged on the same grounds on which the notifications under Sections 4 and 6 of the LA Act were sought to be challenged. Since the said grounds nowhere point out any breach of the provisions of the LA Act, the challenge to the impugned award dated 30 March 1988 on the grounds of either the violation of principles of natural justice or the breach of the provisions of the LA Act would not sustain.

35. Regarding the challenge about the SLAO having no jurisdiction to initiate the acquisition proceedings Mr Arjunwadkar referred to the provisions of Sections 16 and 17 of the 1976 Act, which we transcribe below for the convenience of reference: -

“16. Power to require land for purposes of this Act.”-(1) The State Government may enter into an agreement with any person for the purchase or exchange, of any land required for carrying out the purposes of this Act.

(2) Subject to the provisions of this section, the State Government may also for carrying out the purposes of this Act compulsorily acquire land under the Land Acquisition Act, 1894 (1 of 1894) and the acquisition of any land for the said purposes shall be deemed to be a public purpose within the meaning of that Act.

(3) The State Government may also acquire lands included in *gaothan* in the affected zone as far practicable according to the provisions of Part I of Schedule-A hereto.

(4) For the purpose of resettling displaced persons on land, the State Government may, subject to any rules made in this behalf, acquire land from holdings in the benefited zone or from any village or area specified under Section 10 as far as practicable according to the provisions of Part II of Schedule A hereto.

(5) All lands acquired under this section shall form part of the land pool.

17. Extent of land to be granted to displaced persons according to certain provisions.”-(1) The State Government may, subject to the provisions of this section, grant land (not being *gaothan* land) to displaced persons as far as practicable according to the provisions of Part I of Schedule B hereto and subject to such conditions as may be prescribed.

(2) If the number of members in a family exceeds 5, an additional 40.47 areas of land may be given for every 3 additional members, subject to the condition that the total area of land granted to a family does not exceed 2 Hectares and 83.28 areas (7 acres).

(3) Land equal to 40.47 areas in extent may be granted to displaced agricultural laborers if they leave their village in the affected zone along with the other displaced persons and

such other displaced persons are resettled on land under this Act.

(4) Dry (Jirayat) lands from sources other than the benefited zone may be granted at the rate of a minimum of 1 Hectare and 61.87 areas (4 acres) to each displaced person or agricultural labourer provided that the maximum limit is in accordance with any rule made under the Code for disposal of Government land.

(5) The State Government may grant plots of land to displaced persons in a new *gaothan* or extended part of an existing *gaothan* according to the provisions of Part II of Schedule B hereto.

(6) In granting alternative land to a displaced person, the value of such land shall ordinarily be of the same amount which the displaced person has received in respect of his land in the affected zone which is acquired for the Project and the act of the alternative land to be granted shall, notwithstanding anything contained in this section, be so determined that the total extent of the holding of the displaced person after such grant does not exceed the economic holding provided by the rules made under the Code for the disposal of Government land.

(7) Notwithstanding anything contained in this section, the State Government may, subject to the condition of previous publication by notification in the Official Gazette amend Schedule A, regard being had to the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, (Mah. XXVII of 1961) the number of displaced persons to be resettled, and the extent of land available according to Schedule A for resettlement.”

36. Section 16(1) empowers the State Government to enter into an agreement with any person for the purpose of exchange of any land required for carrying out the purposes of the 1976 Act. This Section does not say that the State Government is bound only to acquire lands for the purposes of

1976 Act by entering into an agreement with any person. This Section only clarifies that it would be open to the State Government to enter into such agreement where any land is required for carrying out the purposes of the 1976 Act. Therefore, based upon the Section 16(1) of the 1976 Act, no jurisdictional bar can be inferred restraining the SLAO from issuing the impugned notifications under Sections 4 and 6 of the LA Act.

37. Section 16(2) of the 1976 Act specifically empowers the State Government to compulsorily acquire land under the Land Acquisition Act, 1894 for carrying out the purposes of the 1976 Act. This Section further provides that the acquisition of any land for the purposes of 1976 Act “*shall be deemed to be a public purpose within the meaning of that Act*”.

38. Section 16(3) refers to acquisition of lands in Gaothan. This is an issue with which we are not concerned in this petition because the petitioner has not claimed that the property which is the subject matter of this petition was a Gaothan land.

39. Section 16(4) provides that for the purpose of resettling displaced persons on land, the State Government may, subject to any rules made in this behalf, acquire land from the holdings in the benefited zone or from any village or area specified under Section 10 as far as practicable according to the provisions of Part II of Schedule A hereto. Section 16(5) provides that all lands acquired under this section shall form part of the land pool.

40. The provisions of Section 16(4) are only enabling in nature. In any event, there are no clear pleadings regarding the benefitted zone and how the provisions of Section 16(4) are applicable to the facts of the present case. The argument about the petitioner not owning property in excess of eight acres and therefore, there being some statutory bar to acquiring the petitioner's property was not substantiated by the petitioner either on facts or by reference to any of the provisions of the 1976 Act.

41. The petitioner did refer to Section 17 of the 1976 Act but again, failed to substantiate how or why the said provisions constituted a statutory bar on the SLAO issuing notifications under Sections 4 and 6 of the L A Act. In the absence of proper pleadings backed by proper material to support the pleadings, we cannot hold that the SLAO exceeded its jurisdiction in issuing the impugned notifications. Neither the provisions cited by Mr Arjunwadkar nor the decision relied upon by him further the case of the petitioner.

42. We have perused the decisions cited by Mr Arjunwadkar as allegedly supporting the petitioner's case. However, we fail to understand how the cited precedents are relevant to the petitioner's case. No material was shown to us based upon which we could hold that the factual and legal issues involved in the present petition were those that were involved in the cases relied upon by Mr Arjunwadkar and therefore, the ratio of the said decisions would assist the petitioner in questioning the jurisdiction of the SLAO in issuing the impugned notifications. Accordingly, based upon the legal provisions referred to or the precedents cited, we find it difficult to interfere with the impugned notifications.

43. The challenge was also thrown to the notifications issued under Sections 14 and 15 of the 1976 Act. Again, these challenges were far from elaborated or substantiated. Nothing was shown to us based upon which we could have considered or concluded any infirmity regarding notifications under the 1976 Act.

44. The argument about the incorrect assumption regarding the petitioner's land holding or total land holding was raised but not substantiated. Since there was no clarity about either the interpretation or application of the provisions of Sections 16 and 17 of the 1976 Act, neither the notifications under the 1976 nor the notifications under the LA Act warrant interference on the ground about any alleged incorrect assumption in determining the petitioner's total land holding. Nothing is on record to show that the petitioner raised such pleas before the land acquisition authorities. Even though the petitioner was notified about the Section 5A hearing, no grounds have been made out even to challenge the award made under the LA Act.

45. Mr Patel relied on **Jiten Agro Land and Farm Pvt. Ltd and Ors Vs The Ministry Of Environment and Forest and Ors**⁹ to submit that time-barred objections for the acquisition of land should not be entertained. This decision was in the context of the peculiar provisions of the Railways Act and therefore, may not be much relevant. However, the fact remains that no objections of the kind now sought to be raised appear to have been raised before the land acquisition authorities during the Section 5A enquiry. Besides, there is no

⁹ 2022 (2) ABR 145

clarity about the objections. The objection about the jurisdictional bar is raised in this petition but not made good by reference to the legal provisions or the precedents.

46. Upon cumulative consideration of the aforesaid facts and circumstances, we see no reasonable grounds to grant the petitioner any relief in this petition. This petition is liable to be dismissed and is hereby rejected even after considering the averments in the amended petition, which shall be deemed to have been allowed by us.

47. This petition is dismissed. However, since there was a stay on the dispossession, we extend the stay by eight weeks should the petitioner wish to challenge this judgment and order in accordance with law. Petitioner, however, should maintain status quo in relation to the said property.

48. This petition is accordingly dismissed without any cost for order. Pending applications will not survive and are disposed of. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M. S. Sonak, J)