



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4800 OF 2022
WITH
INTERIM APPLICATION NO.1206 OF 2023
WITH
INTERIM APPLICATION NO.1205 OF 2023
IN
WRIT PETITION NO.4800 OF 2022

1. Laxman Shankar Chavan
Age- 80 Yrs. Occu.- Agri.
R/o.- Kasegaon, Tal.- Pandharpur,
District- Solapur
2. Bandu Laxman Chavan
Age- 40 Yrs. Occu.- Agri.
R/o.- Kasegaon, Tal.- Pandharpur,
District- Solapur
3. Rama Shankar Chavan
Age- 78 Yrs. Occu.- Agri.
R/o.- Kasegaon, Tal.- Pandharpur,
District- Solapur
4. Manisha Bandu Chavan
Age- 35 Yrs. Occu.- Agri.
R/o.- Kasegaon, Tal.- Pandharpur,
District- Solapur
5. Rukmini Rama Chavan
Age- 72 Yrs. Occu.- Agri.
R/o.- Kasegaon, Tal.- Pandharpur,
District- Solapur

...Petitioners/Applicants

Versus

1. The State of Maharashtra
(Copy to be served upon A.G.P
High Court [A.S], Mumbai)
2. Deputy Commissioner,
(Land Acquisition)
Pune Division, Pune
Land and Acquisition Department,

- Main Building, Second Floor,
Pune Municipal Corporation,
Shivajinagar, Pune – 411 005
3. District Collector,
Office – Collector Office Compound,
First Floor, Main Building, Siddeshwar
Peth, Solapur – 413 001
 4. Addl. Collector cum Deputy Director
(Rehabilitation), Solapur
 5. Deputy Collector Cum Special
Land Acquisition Officer No.3,
Solapur Office- Collector Office
Compound, Solapur – 413 001
 6. District Rehabilitation Officer,
Rehabilitation Department,
Collector Office Compound, Solapur
 7. Rehabilitation Officer, Pandharpur
Office – Raigad Bhaven, behind
Tahasil Office, Pandharapur
Dist. - Solapur
 8. Sub Divisional Officer,
Sub Divisional Office, Pandharpur
Dist.- Solapur
 9. Tahasildar, Pandharpur
Tahasildar Office, Pandharpur
District- Solapur
 10. Circle Officer, Kasegaon
Circle Office, Kasegaon
Tal.- Pandharpur
District- Solapur
 11. Talathi, Kasegaon
Talathi Office, Kasegaon,
Tal.- Pandharpur, District-Solapur
 12. Tukaram Ramchandra Shelatkar
Age-Adult Occu.- Agri. R/o. At Post
Umradi Tal.- Karmala, District Solapur

13. Laxman Ramchandra Desai
Age-Adult Occu.- Agri
R/o.- at post Humbarli, Tal.- Patan
District.- Satara
14. Ganpat Ramchandra Desai
Age-Adult Occu.- Agri
R/o.- at post Humbarli, Tal.- Patan
District.- Satara
15. Vasant Ramchandra Desai
Age-Adult Occu.- Agri.
R/o.- at post Humbarli, Tal.- Patan
District.- Satara
16. Baburao Nivrutti Pavale
Age-Adult Occu.- Agri
R/o.- H. No. 4306/2
Dale Galli, Pandharpur
District Solapur – 413 304
17. Dinakar Sadashiv Deshmukh
Age-Adult Occu.- Agri.
R/o.- At post Medha, Venna Chowk,
Medha Kusumbi Road, Tal.- Jawli
District.- Satara

...Respondents

Mr. Sanjeev Gorwadkar, Senior Advocate i/b. Mr. Sachinkumar Rajepandhare for the Petitioners/Applicants.

Mr. Kedar B. Dighe, Addl. G. P a/w Ms. M. S. Bane, AGP for the Respondent-State.

Mr. Vaibhav Gaikwad for Respondent No.16.

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

DATED : 5 May 2025

ORAL JUDGMENT:- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. Considering the previous orders made in this matter, we issue Rule. The Rule is made returnable immediately with the consent of and at the request of the learned counsel for the parties.

3. The Petitioners are the owners of the property surveyed under Gat No.62 at village Kasegaon, Taluka Pandharpur, District Solapur, measuring about 4 Acres (16,000 sq.mtrs.). By the award dated 14 August 1986 (Exhibit-G), the State purported to acquire the Petitioners' property surveyed under Gat No.62 (subject property) and those surveyed under Gat No.102/103, in which the Petitioners have no interest.

4. The Petitioners pointed out that in the Notifications issued under Sections 4 or 6 of the Land Acquisition Act, 1894, there was never any reference to the Petitioners' property surveyed under Gat No. 62 (subject property). Consequently, the reference to the subject property in the award was an error, or in any event, any acquisition of the subject property without following the due process prescribed under Sections 4 or 6 was *ex facie*, *ultra vires*, illegal, null, and void.

5. The Petitioners have pleaded that despite the reference to the subject property in the above award, they were never dispossessed and continued to possess the property. Mr. Gorwadkar, learned senior counsel for the Petitioners, contended that the State had allotted the subject property to the project-affected persons.

6. Mr. Gaikwad, learned counsel for Respondent No.16, submitted that this Respondent purchased a portion of the subject property from the project-affected person after obtaining necessary permission from the prescribed authorities. Mr. Gaikwad submitted that some portion of Gat No.62 was purchased by Respondent No.16 directly from Petitioner No.2.

7. The Petitioners instituted this petition on 13 September 2021 seeking *inter alia* a declaration that the subject property under Gat No.62 was never a part of the acquisition proceedings and for a

perpetual injunction to restrain the Respondents from interfering with the Petitioners' possession of the subject property. Relief was also sought regarding the allotments made to project-affected persons and the transferees.

8. This Court, on 21 April 2022, directed the parties to maintain the *status quo* in relation to the subject property, which was referred to as the writ land in the said order. There is no dispute that the *status quo* has continued to this day.

9. After replies were filed, the Co-ordinate Bench comprising G. S. Kulkarni and Somasekhar Sundaresan, JJ. made a detailed order on 18 July 2024, summarising the issues involved in this petition. This order is reproduced for the convenience of reference: -

"1. On 21 April, 2022, a Co-ordinate Bench of this Court had passed the following order :

. The learned counsel submits that the award was passed. Erroneously in the award Gut No.62 was mentioned as acquired. The said confusion was created because of the Consolidation Scheme.

2. Subsequently, corrigendum is issued and it has been clarified that the Gut No.62 shall be read as Gut No.104/P. Still the land from Gut No.62 is allotted to the Project Affected Persons.

3. Issue notice to the Respondents, returnable 30 June, 2022.

4. The learned AGP waives notice for Respondent Nos.1 to 11.

5. Humdast allowed.

6. Till the next date status-quo as of today with regard to the Writ land be maintained.

2. Reply affidavit has been filed by the State Government of Shri Sopan Tompe, Deputy Collector (Rehabilitation), Solapur in which it has been categorically stated that the land bearing Gat No. 62 was never acquired as also there was no award passed in respect of the said land of the Petitioner, of which possession was taken over and allotted to Project Affected Persons. The relevant paragraphs of the said affidavit are required to be noted, which read as under :

3. I say that vide award dated 01/03/1971, lands bearing survey No. 61, 62 and others, an area admeasuring 51H. 64 R. situated at village Kasegaon Taluka Pandharpur Dist. Solapur was acquired for Ujani

Rehabilitation purpose. I say that vide award dated 01/03/1971 the survey No. 40 & 41 was not acquired. I say that vide Mutation Entry No. 9009 the entry of the said award was entered to the revenue record in the year 1974. I say that the effect of mutation entry No. 9009 was effected on Survey No. 61/1, 61/2, 62/1 & 62/2.

4. I say that in the meantime, in the year 1976-77 consolidation scheme was implemented in the village Kasegaon, taluka Pandharpur, District Solapur wherein Survey Numbers were given to gat numbers. Accordingly, Survey No. 62 is numbered as Gat No. 103 & 104, Survey No. 61 is numbered as 101 & 102 as well as Survey No. 41 is numbered as Gat No. 62 and Survey No. 40 is numbered as Gat No. 61. I say that meantime, vide Mutation Entry No.1363 the rough entry by using pencil was taken in respect of acquisition of land on Gat No. 62 on 01/01/1981.

5. I say that the record of this office shows that vide Mutation Entry No. 6304, the Mutation Entry No. 1363 has been cancelled on the basis of application filed by Shri Survase, land owner of Gat No.61 (Old Survey No. 40) and letter given by then Special Land Acquisition Officer, Pandharpur in respect of Gat No. 61 (Old Survey No. 40).

6. I say that thereafter in pursuance of letter dated 04/01/1992 of Rehabilitation Officer, Solapur, the Mutation Entry No. 5621 has been effected. I say that the effect of Mutation Entry No. 5621 has been effected on Gat No. 62 which belongs to the Petitioner. I say that it is expected that the effect of Mutation Entry No. 5621 has to be effected on Gat No. 103 & 104 (Old Survey No. 62) & not on Gat No.62 (Old Survey No. 41).

7. I say that the record of this office shows that thereafter the land out of Gat No. 62 has been allotted to project affected persons on the basis of Mutation Entry No. 5621. I say that vide order dated 22/08/2019, then Tahsildar Pandharpur ordered to enter the name of Collector @ Deputy Director Rehabilitation (Land) on Gat No. 62 on the basis of Mutation Entry No. 9009. I say that the effect of order dated 22/08/2019 has been entered in Revenue Record vide Mutation Entry No. 24212.

8. I say that the Mutation Entry No. 24212 has been challenged before Sub Divisional Officer, Pandharpur in RTS Appeal No.53/2020. I say that vide order of Additional Collector Solapur the said RTS Appeal No. 53/2020 has been transferred from Sub Divisional Officer, Pandharpur to Sub-Divisional Officer, Mangalvedha. I say that RTS Appeal No. 53/2020 was partly allowed and directed Tahsildar, Pandharpur to conduct fresh enquiry. I say that in review case No. 18/2023, the Tahsildar Pandharpur vide order dated 16/10/2023 rejected the order passed by then Tahsildar dated 22/8/2019 and directed to enter the name of original owner on Gat No. 62. I say that the order of Tahsildar Pandharpur dated 16/10/2023 has been implemented and the name of Petitioners are entered on 7/12 extract

of the impugned Gat No. 62 vide mutation entry No. 30196. Hereto annexed and marked No. 62 vide mutation entry No. 30196. Hereto annexed and marked as Exhibit-A is the copy of mutation entry No. 30196.

3. In the aforesaid circumstances, as it has been fairly pointed out on behalf of the State Government that Gat No. 62 and the appropriate area of which possession was taken over from the Petitioner by the State Government, and when no award is passed, the Petitioner would be required to be compensated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act, 2013"). This for the reason that the Petitioner had been rendered landless qua the area in Gat No. 62 and in respect of which already third party rights are created by making of the allotment of the said land to the project affected person, who in turn has sold the land to Respondent No.16. This position has continued to operate for almost a period of 22 years. Thus, considering the principles of law as laid down by the Constitution Bench of the Supreme Court in Indore Development Authority Vs. Manoharlal and Ors.1, the only course of action to be followed by the State Government would be to compensate the Petitioner under the provisions of the Act, 2013.

4. Ms. Bhende, Learned AGP has fairly agreed to take instructions on this peculiar situation which has been created in the present proceedings and as noted in the order dated 21 April, 2022.

5. Stand over to 1 August, 2024, High on Board.

6. Needless to observe that we keep open all contentions of the parties on the issues as noted by us, above. If the Petitioner is of the opinion that the Petitioner would be entitled to restitution, the Petitioner is free to advance such submissions on the adjourned date of hearing and we shall hear the parties on such issue and pass appropriate orders. Reply affidavit, if any, be also placed on record and also be served on the other parties.

7. Ad-interim relief granted earlier shall continue to operate till the adjourned date of hearing".

10. The matter was stood over to 1 August 2024, High on Board to enable the learned AGP to comply with directions and obtain instructions. On 1 August 2024, learned AGP sought for some time to comply with earlier directions and file an affidavit-in-reply. The matter was then adjourned to 22 August 2024.

11. The order made on 6 September 2024 by the Co-ordinate Bench records that the matter was extensively heard on 5 September 2024, expending substantial judicial time. The matter was adjourned from 5 September 2024 to 6 September 2024 only to enable the learned counsel for the Petitioners to obtain instructions. On 6 September 2024, the Petitioners engaged another advocate in the matter without briefing him about what had transpired on the earlier date. The Co-ordinate Bench did not appreciate this. The matter was de-part-heard, as was noted in the order dated 6 September 2024.

12. From the quoted paragraphs, it is clear that Gat No.62 of the subject property was never acquired by the State Government, although there is a reference to this gat number in the impugned award. It is essentially acknowledged that this reference was erroneous since the acquisition did not, in fact, pertain to the subject property under Gat No.62.

13. Paragraph 3 of the order dated 18 July 2024 notes that it was fairly pointed out on behalf of the State Government that Gat No.62 and appropriate area of which possession was taken over from the Petitioner by the State Government would have to be paid for /compensated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“the 2013 Act”). The Co-ordinate Bench noted that this was the course to be followed given by the decision of the Constitution Bench of the Supreme Court in *Indore Development Authority vs. Manoharlal & Ors.*¹

14. Ms. Bhende, learned AGP who appeared on behalf of the State Government has fairly agreed to take instructions on the peculiar situation which had been created in the present proceedings and as

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noted in the order dated 21 April 2022. All contentions of all parties were however left open on the said date.

15. Today, Mr. Dighe and Ms. Bane, on behalf of the State Government, did not dispute that the inclusion of the subject property under Gat No.62 in the award was an error because the State Government never acquired the subject property. However, on compensation under the 2013 Act, Mr. Dighe and Ms. Bane submitted that the award was made in 1986. Accordingly, they submitted that the compensation should not be determined under the 2013 Act, but under the 1894 Act. They relied on the decision of the Co-ordinate Bench comprising G. S. Kulkarni and Somasekhar Sundaresan, JJ., delivered on 2 May 2025, disposing of Writ Petition No.4987 of 2022 and connected matters. In particular, they placed reliance on the observations in paragraphs 38 and 39 of this decision:-

“38. Now coming to the relief as prayed by the petitioner, in our opinion, reliefs would be required to be moulded, inasmuch as, considering the provisions of Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “2013 Act”), it would be required to be held that the provisions of the 1894 Act would apply to the case in hand. Section 114 of the 2013 Act reads thus:

“114. Repeal and saving.–

(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals”

39. Insofar as the facts of the present case, it is clear that initially the land of the petitioner was identified for acquisition under the 1894 Act. The possession of the land was also handed over on 19 September 1990 before the notifications were issued under Section 4 and 6 dated 20 December 1990 and 8 March 1991 respectively. In respect of certain lands notified for acquisition, the Special Land Acquisition Officer declared an award, however, an award was not declared qua the petitioner’s land. It is in these circumstances, applying the provisions of Section 6 of the General Clauses Act, 1897

read with Section 114 of the 2013 Act, the provisions of the 1894 Act would continue to apply. Hence, the relief which would be required to be granted to the petitioner would attract the applicability of the 1894 Act and the rights of the petitioner recognized thereunder. Accordingly, the petition would be required to be allowed in terms of the following order:

ORDER

(i) The respondents are directed to treat the land of the petitioner as a deemed acquisition. It is declared that the petitioner is entitled for disbursement of the compensation for acquisition of her land i.e. Gat No.156, admeasuring 1 H. 12 R. situated at village Vhanur, Tal. Kagal, District-Kolhapur.

(ii) The Respondents/Collector (Land Acquisition) is directed to compute the compensation as payable to the petitioner on the date the possession of the land was taken over i.e. 19 September 1990 and disburse to the petitioner, the amount of compensation within a period of four months from today, with all consequential benefits of solatium, interest and/or all the sums payable under the Land Acquisition Act, 1894. Interest to be calculated till the date of actual payment of all the amounts.

16. We have considered the above contentions in the context of observations in the judgment and order dated 2 May disposing of Writ Petition No.4987 of 2022. The facts in the said writ petitions were quite different from those in the present petition. There, the Petitioners had voluntarily handed over the possession of their properties and had belatedly claimed compensation. In the present case, there is no such evidence of the Petitioners voluntarily handing over the possession of the subject properties. In fact, it is the Petitioners' case that they continue in possession of the subject properties. Besides, in those cases, there was no error in the award of including the properties which were not even the subject matter of acquisition. In the present case, the affidavits on behalf of the State Government admit that there was no acquisition of the subject property under Gat No.62. Still this gat number was erroneously reflected in the impugned award made in 1986. Relying on such an award, this subject land was allotted to some

project-affected persons. Thus, the decision in Writ Petition No.4987 of 2022 would not apply to the peculiar facts of the present case.

17. Incidentally, the same Coordinate Bench comprising G. S. Kulkarni and Somasekhar Sundaresan, JJ., made the order dated 18 July 2024 in this petition, in which it was recorded that the Petitioners would be entitled to compensation under the 2013 Act. Therefore, the contentions that the Petitioners should be directed to be paid compensation under the 1894 Act and not the 2013 Act cannot be accepted. This is a case akin to the State taking over the petitioner's property without the due process of law and even proceeding to allot the same to some project-affected persons. Therefore, the most equitable solution would be to permit the State to acquire this property by following due process and compensating the petitioners in terms of the 2013 Act. This would, in a sense, regularize the State's erroneous action and compensate the petitioners for the loss of their property.

18. Mr. Gaikwad, learned counsel for Respondent No.16, submitted that Respondent No.16 was a *bona fide* purchaser for valuable consideration. He submitted that the Respondent No.16 purchased the subject property or portion thereof after the authorities permitted such sell by the project affected persons to whom the subject property was allotted. He submitted that even possession was handed over to Respondent No.16. Based on all these, he submitted that while the Respondent No.16 would have no objections to the State Government paying compensation to the Petitioners, no orders for restitution or restoration should be passed which will affect the interest of Respondent No.16.

19. From the facts on record and admissions in the affidavits filed on behalf of the State Government, it is apparent that there was no

acquisition of the subject property under Gat No.62. The reference to this Gat in the impugned award is nothing, but an error. The Petitioners assert that they continue in possession. They submit that even the revenue records have been rectified and are now in the Petitioners' name. They dispute that Respondent No.16 or any other person is in possession of the subject property. They submit that the *status-quo* order granted by this Court protects their possession. They submit that even the *status-quo* issued by the Civil Court in the proceeding initiated against the Respondent No.16 support that they are in possession.

20. The Respondent No.16 claims to be in possession of the portion purchased by Respondent No.16. However, there is no material produced before this Court in this regard. In any event, once it is conceded that there was no acquisition of the subject property surveyed under Gat No.62, we are not sure about the title of Respondent No.16 *qua* the allegedly purchased subject lands.

21. The Respondent-State, cannot, based upon the erroneous entry in the impugned award claim any rights in respect of the subject property. Such a claim would violate Article 300-A of the Constitution of India which provides that no person shall be deprived of his property save by the authority of law. The right to property may longer be a fundamental right but it is now accepted as a constitutional and human right. Fair procedure which would involve payment of compensation is an essential predicate of the right confirmed by Article 300-A. In this case, the State, has also not bothered to pay any compensation to the Petitioners. Even though, the Petitioners subject property was referred to in the impugned award and further, the State proceeded to allot the Petitioners' subject property to the project affected persons.

22. Accordingly, the Petitioners have made out a case for the issue of a writ to the State Government to pay them compensation in respect of the subject land under Gat No.62, measuring approximately 4 Acres, under the provisions of the 2013 Act.

23. The Respondent-State and its officials are directed to initiate and conclude acquisition proceedings to acquire the petitioners' property, compute the compensation amount under the 2013 Act and pay the same to the Petitioners within one year of uploading this order. The compensation amount must be determined by making an award or a supplementary award. If the Petitioners are aggrieved by the determination made, they may resort to the remedies provided under the 2013 Act to seek enhancement, etc.

24. Mr. Gorwadkar pointed out that the State had paid compensation @ 910 per square meter in respect of the property surveyed under Gat No.101/102, which was the legitimate subject matter of the impugned award. Based on this, he submitted that the tentative compensation would be at least Rs.1.60 crores as of the date. This appears reasonable.

25. Accordingly, pending the final determination of the compensation, Respondent Nos. 1 to 11 are directed to pay the Petitioners Rs.1 crore on account within two months as interim compensation. This amount can then be adjusted from the final compensation that will be determined. For this, however, the petitioners must submit a joint statement regarding their shares to the Special Land Acquisition Officer or Deputy Collector at the earliest. If there are *inter se* disputes, this amount must be deposited in this Court. On resolution of the disputes, the petitioners can apply for withdrawal of this amount.

26. The Rule is made absolute in the above terms without any cost order.

27. Mr. Gorwadkar does not press for the Interim Applications, so they are disposed of as not pressed.

28. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)