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

WRIT PETITION NO.1627 OF 2025

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Dattatraya Baburao Atre & Ors. ... Petitioners
V/s.
Deputy Collector, Rehabilitation & Ors. ... Respondents

Mr. Nitin P. Deshpande for the petitioners.

Mr. S. D. Rayrikar, AGP for the State-respondent Nos.1
to 6.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 10, 2025

P.C.:

1. The petitioners herein challenge the impugned order passed by the Additional Commissioner in exercise of the powers conferred under Section 48 of the Land Acquisition Act, 1894 (hereinafter “the Act”). They aver that the order is defective in law and its execution has resulted in an injustice warranting judicial intervention.

2. The petitioners submit that their land was acquired by virtue of a notification issued on 20 September 1984 under Section 4 of the Act. It is further contended that the final award, pursuant to Section 11 of the Act, was duly published on 31 March 1989. Notwithstanding these proceedings, the petitioners aver that they have not received the requisite compensation even though a notice

under Section 12(2) of the Act was issued on 12 May 1989. This sequence of events forms the factual matrix upon which the petitioners base their claim for relief.

3. The authority, acting under the provisions of the Act, rejected the petitioners' application on the basis that during an inquiry conducted under Section 5A in the year 1975, an objection raised by the petitioners had been previously dismissed. Subsequent to this, the final award was published on 31 March 1989, thereby rendering the remedy sought by the petitioners as beyond the ambit of the authority's powers. The contention advanced by the authority is that once the final award is published, any further remedy, including that sought by the petitioners, is procedurally and substantively barred.

4. In support of their contentions, Mr. Deshpande, the learned counsel for the petitioners, invoked the judgment of the Supreme Court in the case of *Dattatraya Damaji Karande vs. Spl. Land Acquisition Officer & Ors.* (Civil Appeal No. 2114 of 2012). Relying on the analogous factual and legal circumstances between that case and the present matter, Mr. Deshpande contended that the Supreme Court, in its considered judgment, directed the release of land under Section 48 of the Act. Consequently, he submits that the petitioners are entitled to the same relief as that granted in the referenced decision.

5. In order to give due consideration to the submissions of the petitioners, it is incumbent upon this Court to extract and examine the operative provisions of Section 48 of the Land Acquisition Act,

1894. The said section is reproduced herewith for clarity and to facilitate a comprehensive understanding of its statutory ambit:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. –

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder; and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

6. The provisions of Section 48 confer upon the Government the discretion to withdraw from the acquisition of any land of which possession has not been taken. Notwithstanding this broad mandate, it is well established that the exercise of this power is subject to a limiting condition, as elucidated in the decision of the Supreme Court in *Tamil Nadu Housing Board v. L. Chandrasekaran and Others*, reported in 2010 (2) SCC 786. In that case, the Court held that the power under Section 48 may be invoked only where the Government is satisfied that the land in question is not required for the purpose for which it was acquired or for any other public purpose, with the land subsequently remaining vested in the Government. In the present matter, it appears that the petitioners have elected to pursue relief under Section 48 notwithstanding the availability of a more comprehensive remedy—namely, to

challenge the award on all grounds available under the Act. In this context, the petitioners' chosen mode of recourse is manifestly inadequate and does not obviate the necessity to address the merits of the underlying award.

7. With respect to the petitioners' reliance on the judgment in *Dattatraya Damaji Karande*, it is pertinent to note that paragraph 17 of the said judgment underscores that the relief granted in that instance was predicated upon the totality of the facts and circumstances particular to that case. The relief therein, while just in its own context, does not crystallize into a general legal proposition that can be abstractly applied to confer similar benefits upon the petitioners in the present matter. Moreover, the Government has not acquiesced to the existence of a public purpose justifying such relief; indeed, the State Government has expressly maintained that the land is required for the purpose for which it was originally acquired. Additionally, the impugned order makes it unequivocally clear that the land in question has been allotted in favour of Mana Khandu Kanaskar—the very person whose rights and interests have been affected by the provisions of the Act. Consequently, the decision of the authority to refrain from exercising its power under Section 48 is both well-founded and consistent with the established statutory framework and judicial precedents.

8. In light of the foregoing considerations, the writ petition is hereby dismissed. No costs are awarded.

(AMIT BORKAR, J.)