



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14842 OF 2023

Sardar s/o Jalamsingh Batale ... **Petitioner**
Age 67 Years, Occu: Agri.
R/o Rawala, Tq. Soegaon
District Aurangabad.

VERSUS

1. The State of Maharashtra,
Through the Secretary, Revenue and
Forest Department, Mantralaya, Mumbai-32
2. The Divisional Commissioner, ... **Respondents**
Aurangabad
3. The District Collector, Aurangabad
4. The Special Land Acquisition Officer,
Jayakwadi Project No.2/
Sub Divisional Officer, Sillod, Aurangabad
5. The Executive Engineer, Minor Irrigation
Division No.-2, Aurangabad

Mr. K. M. Suryawanshi, Advocate for the petitioner
Mr. A. B. Girase, Government Pleader for the Respondents-State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRADE, JJ.

RESERVED ON : 04.01.2024

PRONOUNCED ON : 15.01.2024

JUDGMENT (Per: Y. G. Khobragade, J.):

1. **Rule.** Rule made returnable forth with. With the consent of both sides, the matter is heard finally.

2. We have considered the extensive submissions of the learned Advocates appearing for both the sides.

3. By the present petition under Article 226 and 227 of the Constitution of India, the Petitioner prays for enhancement of compensation in respect of acquisition of his agricultural land bearing Gat No. 77 admeasuring 2 H 98 R, situated at Rawala, Tq. Soygaon.

4. The learned Advocate for the Petitioner canvassed that on 14.12.1998, the State Government issued a notification under Section 4 of the Land Acquisition Act, 1894 (for short L.A Act) and acquired his land for public project/percolation tank. Respondent No.4 Special Land acquisition Officer, Jayakwadi Project-2 initiated the land acquisition proceeding and passed the final award on 25.04.2005. However, a meager compensation of Rs.1,26,110/- granted in respect of the valuable land and have not considered 40 teak trees, 25 mango trees, 35 Berry Trees and 2 Indian Gooseberry trees (Awala) and a 'well' attached to the land and no compensation has been awarded for the same. Therefore, the Petitioner is entitled for enhancement of compensation in respect of standing timber and fruit bearing trees.

5. Per contra, Mr. Girase, the learned Government Pleader canvassed that primary notification under Section 4 of the L.A. Act, was issued to the father of the Petitioner (original land owner) and other

land owners on 02.02.1999. Notification under Section 4 dated 14.12.1999 and notification under Section 6 of the Land Acquisition Act dated 24.08.2000 were published in local news papers Dainik Nava Maratha, Dainik Citizens and Dainik Swarganga, Aurangabad. After considering the objections raised by the land owners, on 25.04.2005, Respondent No.4 Special Land Acquisition Officer passed the final award and determined the compensation to the tune of Rs.1,26,110/- in respect of the Petitioner's land. The Petitioner's father had already received compensation of Rs.1,45,566/- without any protest. The Petitioner did not made reference under Section 18 of the L.A. Act for enhancement of compensation within a period of six weeks from the date of passing of the award. The present Petitioner, who is successor in title of the original land owner, has filed the present Petition seeking enhancement after 18 years from the date of passing of the final award, without invoking alternate remedy under Section 18 of the L.A. Act. As such this Court has no jurisdiction to enhance the compensation in respect of the acquired land, hence, prayed for dismissal of the Petition.

6. It is not in dispute that primary notification under Section 4 (1) of the L.A. Act dated 02.02.1999, intending to acquire the land for percolation tank was issued to the father of the Petitioner. Father of the Petitioner Jamalsing Dhupa was served with the notice by Respondent

No.4. The Petitioner's father participated through his representative in the land acquisition proceedings. Subsequently, on 25.04.2005, Respondent No.4 passed the award and determined compensation to the Tune of Rs.1,26,110/-. Respondent No.4 SLAO observed that no well was situated in the Petitioner's land (Gat No. 77) and no fruit bearing trees or timber were standing on the Petitioner's land.

7. It appears that the father of the Petitioner died on 04.11.2000. Respondent No.4 SLAO assessed the compensation Award in Form-E. As per the statement in Form-E, the Petitioner's father received the compensation in advance to the tune of Rs.1,45,566/- i.e. 80% of the total compensation, without any protest, on 07.07.2000. The petitioner subsequently returned the excess compensation of Rs.19,456/- on 04.08.2006.

8. As per Section 18 of the L.A. Act, any person who has not accepted the award, requires to make an application to the Collector seeking reference to the Civil Court for enhancement of compensation within a period of 6 weeks from the date of award, if the interested person represented before the Collector at the time when the award was made and in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall

first expire. In the case in hand, it prima facie appears that Respondent No.4 passed the final award and determined the compensation on 25.04.2005. The petitioner's father had already received the compensation on 07.07.2000 without any protest. Subsequently, on 04.11.2000, the Petitioner's father Jamalsing Dhupa died. No reference was sought under section 18 for re-determination or enhancement of compensation. The advance amount compensation was already accepted and the amount in excess as per the Award was returned to the Government by accepting the Award. After lapse of more than 18 years, the Petitioner approached before this Court seeking enhancement, without availing alternate remedy as available in law.

9. In **Assistant Commissioner (CT) LTU. Kakinada & Ors Vs. Glaxo Smith Kline Consumer Health Care, (2020) 19 SCC 681**, it is observed that what the Supreme Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Courts can take a different approach in the matter of reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by the Supreme Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution of India. It is held that neither jurisdiction under

Article 142 nor writ jurisdiction under Article 226 can be exercised when invoked to undermine or defeat the applicable statutory regime.

10. In view of the above discussion and considering the ratio laid down in the above cited case law, we do not find any substance in the Petition to exercise the writ jurisdiction. **The Writ Petition**, being devoid of merit coupled with delay and laches, **is dismissed**. Rule is discharged. No order as to costs.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan