

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 2nd OF NOVEMBER, 2022

WRIT PETITION NO.2435 OF 2022

BETWEEN:-

ROOPLAL S/O CHINDHUJI GOLE,
AGED ABOUT 83 YEARS,
OCCUPATION: AGRICULTURIST,
R/O WARD NO. 13, GRAM
RAMAKONA, TAHSIL SAUN SAR,
DISTRICT CHHINDWARA, MADHYA
PRADESH-480 106

.....PETITIONER

(BY SHRI AMIT KHATRI, ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH COLLECTOR, DISTRICT CHHINDWARA, MADHYA PRADESH, PIN-480 001.
2. COLLECTOR-CUM-LAND ACQUISITION OFFICER, DISTRICT CHHINDWARA, MADHYA PRADESH, PIN-480 001.
3. EXECUTIVE ENGINEER, PUBLIC WORKS DEPARTMENT (B/R) DIVISION, CHHINDWARA, DISTRICT CHHINDWARA, MADHYA PRADESH, PIN-480 001.
4. SUB-DIVISIONAL OFFICER, PUBLIC WORKS DEPARTMENT (B/R), SUB-DIVISION SAUN SAR, TEHSIL-SAUN SAR, DISTRICT CHHINDWARA, MADHYA PRADESH, PIN-480 106.
5. SUB-DIVISIONAL MAGISTRATE, SUB-DIVISIONAL OFFICER (REVENUE) AND LAND ACQUISITION OFFICER, SAUN SAR, TEHSIL- SAUN SAR,

**DISTRICT CHHINDWARA, MADHYA
PRADESH, PIN-480 106.**

6. **TAHSILDAR, TEHSIL-SAUN SAR,
DISTRICT CHHINDWARA, MADHYA
PRADESH, PIN-480 106.**

.....RESPONDENTS

**(BY SHRI SWAPNIL GANGULY, DEPUTY ADVOCATE
GENERAL)**

.....
RESERVED ON : 19.09.2022

DELIVERED ON : 02.11.2022
.....

ORDER

Pleadings are complete. With the consent of learned counsel for the parties, the matter is finally heard.

2. This petition is filed under Article 226 of the Constitution of India asking following relief:-

- (i) To issue a writ in the nature of certiorari quashing the notification issued u/s 4(1) of the Land Acquisition Act 1894 (L.A.Act) dated 14.06.1978 whereby the land of the petitioner was said to be acquired and further notification u/s 6 was issued on 22.07.1978 (Annexure P-3);
- (ii) Call for the records and proceedings of Appeal Case No.0044/Appeal/2021-22 from the file of learned respondent No.2, Case No.057/Appeal/2021-2022 from the file of learned respondent No.5 and Case No.518/B-121/2020-21 from the file of learned Court of respondent No.6 for their perusal;
- (iii) To issue a writ in the nature of certiorari quashing the impugned order dated 25/11/2021 (Annexure-P/15) passed by the Court of Additional Collector, District-Chhindwara in Revenue Case No.0044/Appeal/2021-22 and order dated 16/08/2021 (Annexure P-13) passed by the Court of respondent No.5 in Case No.057/Appeal/2021-2022 and order dated 12/07/2021 (Annexure P-11) passed by the Court of respondent No.6 in Case No.518/B-121/2020-21, the same being perverse,

illegal, bad in law and passed without application of mind;

- (iv) Direct the respondent Nos.3 & 4 to handover vacant and peaceful possession of petitioner's cultivating agricultural fields admeasuring 0.202 HR covering an area 126.50 x 16 meters in Khasra No.298/1, admeasuring 0.752 HR and Khasra No.298/3, admeasuring 0.526 HR, Mouza-Ramakona, PH No.10/3, Tahsil Saunsar, District-Chhindwara, Madhya Pradesh, which land is encroached/used by respondents for construction/widening of Ramakona-Sawarni Road wrongfully without initiating acquisition process;

or in the alternative

- (v) Direct the respondent No.5 to initiate acquisition proceedings in respect of 0.202 HR land covering an area 126.50 x 16 meters in Khasra No.298/1, admeasuring 0.752 HR and Khasra No.298/3, admeasuring 0.526 HR, Mouza-Ramakona, PH No.10/3, Tahsil Saunsar, District-Chhindwara, Madhya Pradesh which land is encroached/used by respondents for construction/widening of Ramakona-Sawarni Road wrongfully without initiating acquisition process and further be pleased to pass an award for fair compensation under the Act of 2013 therefore in accordance with law along with compensation for loss of standing crop and damages for depriving the petitioner from cultivating his said agricultural fields since the year 1977-78;
- (vi) Allow the instant petition and saddle the cost on the respondents;
- (vii) Grant any other relief and pass any suitable order, which this Hon'ble Court deems fit and proper in the fact and circumstances of the matter and in the interest of justice.

3. From the averments made in the petition and relief claimed therein, it is clear that the basic grievance of the petitioner is that despite acquiring his land by the respondents he has not been paid any compensation. It is also claimed that the land of the petitioner though used by the respondents but no

proceeding of acquisition initiated and compensation has also not been paid to him. Therefore, the petitioner is claiming that by issuing appropriate direction either his land be returned to him or adequate compensation be paid to him.

4. The respondents have filed their reply and denied the claim of the petitioner. In additional reply it is stated that the petition deserves to be dismissed on the ground of delay and laches and also that the land for which claim is being raised belongs to State as the same was recorded in the name of State in the revenue record and if any ownership on the said land is being claimed by the petitioner, he should have filed a civil suit, sought proper declaration and then claim compensation for the said land.

5. Although, considering the pleading of the parties several disputed facts are involved and to reach a final outcome of the petition, it is apposite to mention the relevant facts of the case, which in brief are:-

(5.1) As per the petitioner in the year 1971-72 his father late Shri Chindhuji Gole was the absolute owner of land of Khasra No.298, admeasuring 2.655 hectares, Mouza Ramakona, Patwari Halka No.60, Tahsil Saunsar, District Chhindwara. After his death, in the year 1978-79, the petitioner became absolute owner of Khasra No.298/1 and 298/3. According to the petitioner, in the life time of his father, the respondent/authority issued a notification under Section 4(1) of the Land Acquisition Act, 1894

(hereinafter referred to as the 'Act, 1894') on 14.06.1978 whereby the proposal for acquiring the land of the petitioner along with other villagers has also been made and thereafter notification under Section 6 of the Act, 1894 was issued on 22.07.1978 but thereafter no award has been passed under the provisions of the Act, 1894. Copies of notifications dated 14.06.1978 and 22.07.1978 are available on record as Annexure-P/3 & P-3A.

- (5.2) The land was being acquired for the purpose of constructing the road i.e. Ramakona-Sawarni road. As per notification issued under Section 6, the land of Khasra No.298 of village Ramakona, Patwari Halka No.60 to the extent of 0.202 hectares was to be acquired. The land of the petitioner which was an irrigated land bearing Khasra Nos.298/1 and 298/3, area measuring 0.202 hectares was acquired but no notification issued by the respondent till date from the date of proposing the acquisition of 0.202 hectares of land of said Khasras either under Section 4 or Section 6 of the Act, 1894.
- (5.3) As per the petitioner, in the year 2018-19 when he obtained the map of the land on which Ramakona-Sawarni road was constructed then only considering the boundaries of the land it came to the knowledge of the petitioner that his land area measuring 0.202

hectares has also been acquired and road constructed over there. Although, in the petition it has been mentioned that the father of the petitioner was paid meager interim amount of Rs.1468.88/- and as per the petitioner, an award under the provisions of the Act, 1894 has not been passed so far by the respondent/authority and as such, fair compensation was not paid to the petitioner determining the same as per Section 23 of the Act 1894.

- (5.4) Several applications under the provisions of Right to Information Act have been moved by the petitioner but copy of award has not been supplied to him so far. The petitioner has submitted in the petition that the road has been constructed over his land. The land belonging to Khasra Nos.298/1 and 298/3, area measuring 0.202 hectares has been acquired whereas the acquisition proceeding initiated over the land was part of Khasra No.298/2. The petitioner has also claimed that the land belonging to Khasra No.298/1 and 298/3 shall be returned to him. As per the petitioner, the respondent/authority had given assurance to examine the fact and do the needful in the matter but they did nothing.
- (5.5) On an application submitted by the petitioner, the measurement of boundaries of Ramakona-Sawarni road got done vis-a-vis the boundaries of Khasra

Nos.298/3 and 298/1 and report in this regard are filed by the petitioner as Annexures-P/7 & P/8. The petitioner claimed that as per the report, the land of Khasra Nos.298/1 and 298/3 instead of Khasra No.298/2 has been acquired and as such, he made objection before the Sub Divisional Officer on 26.02.2020 saying that the demarcation of the land adjoining to the land over which road is constructed, Khasra Nos.298/3 and 398/1 are situated and therefore, demarcation of the said land be made. The petitioner made several representations and applications pointing out the irregularities and illegality committed by the respondents in acquiring the land belonging to Khasra Nos.298/1 and 298/3 without initiating any legal proceeding of acquisition and without passing any award. The Sub Divisional Officer instructed the Tahsildar vide letter dated 18.11.2020 that after giving opportunity of hearing to the petitioner, the grievance raised by him shall be considered. As per the instructions, the application be taken into consideration under the provisions of Madhya Pradesh Land Revenue Code, 1959 (for short the 'Code 1959') and respective provision of the Code 1959 be mentioned in the application.

- (5.6) Vide order dated 12.07.2021, the application was rejected by the Tahsildar saying that the claim raised

by the petitioner does not fall within the provisions of Code, 1959 and as such, no relief can be granted to him. The application was also found not maintainable and tenable and as such, it was rejected.

(5.7) Thereafter, an appeal was preferred under Section 44 of the Code 1959 but that appeal was also rejected vide order dated 25.11.2021 by the authority saying that the subject matter is not of Code 1959 but it is of Land Acquisition Act and accordingly appeal under the provisions of Code 1959 is not maintainable. Hence, this writ petition has been filed.

6. The respondents have filed their reply and raised preliminary objection with regard to maintainability of the petition and claimed its dismissal on the ground of delay and laches. It is stated in the reply that adequate compensation of the land acquired has been paid to the petitioner. The amount of Rs.1468.88/- paid to the petitioner vide cheque No.0332112/00333 dated 23.07.1980 as mentioned in the reply. It is also stated in the reply that the amount has been happily accepted and neither any objection was raised nor any approach was made by the petitioner till last 40 years but all of a sudden he raised an objection and asking compensation of acquired land. As per the respondents, if the quantum of compensation was not adequate, the proper remedy is available under the statute under Section 18 and the petitioner could make a reference showing dissatisfaction with the quantum of compensation. In the reply, it

is also mentioned that for widening the Ramakona-Sawarni road a land measuring 0.202 of Khasra No.298/2 was acquired by the answering respondents and with the consent of landowners, the amount of compensation paid to them. As per the stand taken by the respondents, in pursuance to the instructions issued by the Collector, consent was obtained from the landowners whose land was required to be acquired and as per their consent since they did not had any objection, the compensations was paid to them and therefore, no award has been passed. The letter issued by the Collector seeking consent of the landowners is also available on record and the amount determined to be paid to the landowners is also shown in the list and the said amount was accepted not only by the petitioner but also by other landowners whose land had been acquired. The respondents have also filed additional reply in pursuance to the rejoinder filed by the petitioner. In the additional reply, the respondents have clarified that notifications under Sections 4 and 6 of the Act, 1894 were issued and with the consent of the landowners the land had been handed over to the State and as such, compensation was determined and paid to them and that has been accepted by them. The documents filed by the respondents indicating that the consent was given by the landowners and amount of compensation was also accepted by them in lieu acquisition. In the document i.e. R-3, the land of the petitioner was also shown and compensation was also paid to him and as per said document at Sr. No.10 the land of Khasra Nos.298, area measuring 0.202 hectares is shown to have been

acquired and compensation to the tune of Rs.1468.88/- is shown to have been paid to the father of the petitioner. As per document Annexure-AR-4, total Rs.2,61,130.60/- of the land acquired of village Ramakona was paid to the landowners. The respondents, therefore, submitted that no land of Khasra No.298/1 and 298/3 has been acquired but it was a land which was of Khasra 298 and as per Section 6 notification it is clear that the proposed land which was to be acquired was part of Khasra No.298 and there was no proposal for acquiring the land of Khasra No.298/2. Therefore, the respondents have submitted that the petitioner's claim is misconceived and relief claimed in the petition cannot be granted to him. As per the respondents, even otherwise looking to the delay caused in raising the claim, the petition is absolutely barred by time and it suffers from delay and laches, therefore, the same is liable to be dismissed.

7. Considering the facts and circumstances of the case and the submissions made by the counsel for the parties, especially the fact with regard to delay and laches, the counsel for the petitioner has placed reliance upon the decisions of the Supreme Court reported in **(2021) 6 SCC 707 (OPTO Circuit India Ltd. v. Axis Bank & Ors.)** and **2022 (4) Supreme 427 (Sukh Datt Ratra & Anr. v. State of Himachal Pradesh & Ors.)** saying that in a matter of acquisition of land if a person whose land acquired is deprived from compensation, delay is no bar to file a petition and raise the claim.

8. However, I am of the opinion that the factual

circumstances as involved in this case are not similar to that of cases on which the counsel for the petitioner has placed reliance because here in this case the petitioner is basically raising the claim on the ground that the land instead of Khasra No.298/2 of Khasra No.298/1 and 298/3 is encroached by the respondents that too without any proper proceeding of acquisition. But as per the stand taken by the respondents and the documents available on record, the proposal made for acquiring the land no notification issued under Section 6 of the Act, 1894 and the description given therein was of Khasra No.298 of village Ramakona but there was no land like Khasra Nos.298/1 and 298/3, total area admeasuring 0.202 hectares and as per the document Annexure-AR/3, it is clear that the amount of compensation determined was of the land of Khasra No.298 of village Ramakona and that was paid to the father of the petitioner. There is document on record indicating that the respondents/authorities sought consent of the landowners whose land was to be acquired and with their consent no further proceeding for acquisition of land has been prosecuted and compensation was also accepted by the landowners like father of the petitioner and, therefore, there was no occasion and reason for passing an award. In the reply submitted by the respondents they have categorically stated in paragraph-12 that the land of Khasra Nos.298 areas 0.202 hectares has been acquired but in the rejoinder this fact has not been disputed. The judgments on which the petitioner has relied upon are not applicable for the

reason that the land for which compensation is being claimed, has not been acquired. The Supreme Court in case of **Sukh Datt Ratra** (supra) rejected the stand of the State for dismissing the petition on the ground of delay and laches saying that in a matter of award the delay is not fatal and can be ignored. The Supreme Court has observed as under:-

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give remedy, either because the party has by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect either party and case a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.” (emphasis supplied)

9. However, in the present case from the document i.e. the notification of Section 6 of the Act, 1894, the land which was to be acquired was of Khasra No.298, area measuring 0.202

hectares and as per Annexure-AR-3 not only the petitioner but other landowners have been paid compensation. It is pertinent to mention here that no other landowner has raised any objection with regard to compensation paid to them by the respondent/authority without passing the award under the provisions of the Act, 1894. The respondents have opposed the claim of the petitioner taking stand that the land has not been acquired under the provisions of the Act, 1894 although initially notifications under Sections and 4 and 6 of the Act, 1894 were issued but thereafter when a persuasion made by the Collector, the landowners have given their consent and received the compensation determined without any objection and, therefore, till now except the petitioner no villager has raised objection of the proceeding initiated 40 years of back.

10. Although, the petitioner has placed reliance in a case of **OPTO Circuit India Ltd.** (supra) saying that the Supreme Court in the said case has observed that if a statute provides for a thing to be done in a particular manner, then it has to be done in the manner alone and not in other manner. According to the petitioner, the land can be used by the respondents only after acquisition that too under the provisions of the Act, 1894 but not in any other manner.

11. However, in the present case, the landowners as per their consent had given the land for widening the road and also accepted the compensation paid to them by the State. Therefore, there was no reason for the State to proceed with the acquisition

proceeding under the provisions of the Act, 1894. Therefore, the analogy or the doctrine on which the petitioner is placing reliance is not applicable in the present case. It is not a case in which any other manner is adopted by the authority to use the land of the farmers but they themselves have handed over their land to the State and accept the compensation determined and paid to them then after a period of 40 years this dispute cannot be reopened and re-agitated. Under such circumstances, I do not find any substance in the petition and claim raised by the petitioner. Petition according to this Court is misconceived. Accordingly, it is **dismissed**.

No order as to cost.

(SANJAY DWIVEDI)
JUDGE

ac/-