



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13072 OF 2018

Bhagwat Tukaram Shelke & Others,
Died through L.Rs.
Dhondubai w/o Bhagwat Shelke & Others ... Petitioners

VERSUS

The State of Maharashtra & Others ... Respondents

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Mr. S.V. Natu, Advocate for Petitioners
Mr. M.M. Nerlikar, A.G.P. for respondent – State
Mr. S.G. Sangle, Advocate for respondent No.4
Mr. A.B. Dhongade, Advocate for respondent No.5
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**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.**

DATE: 26th JULY, 2024.

P.C. :

1. Heard learned counsel for the Petitioners and learned counsel representing the respondent No.4.
2. At the outset, learned counsel for the Petitioners, without there being any ambiguity in his mind has confined his prayer for issuing a direction to the authorities concerned

for calculation of payment of the amount of compensation for acquisition of land belonging to the Petitioners, in terms of the provisions contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013).

3. Certain lands belonging to the petitioners came to be acquired. A notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 2/7/2009 in respect of certain lands owned by the Petitioners. The Petitioner No.1 was owner in possession of land comprised in Gat Nos.15 and 17, situated at village Choundi, Taluka Udgir, District Latur. The Petitioner No.2 was the owner in possession of land comprised in Gat No.18, situated in the same village and Petitioner No.3 was the owner in possession of land Gat No.11, situated at the same village.

4. The notification under Section 6(1) of the Act of 1894 was issued on 6/5/2010, however, it is contended by the petitioners that as per requirement and mandate of Section 11-A of the Act of 1894, the award in respect of the

said acquisition could not be made within the time prescribed therein and ultimately, the award was made on 22/3/2016. The submission of the learned counsel for the Petitioners is that, after enforcement of the Act of 2013 w.e.f. 1/1/2014, the acquisitions made under the old Act can be saved under Section 24 of the Act of 2013 where no award under Section 11 of the old Act was made, only by applying the provisions of the Act of 2013 so far as determination of compensation is concerned. It is his submission that though award in respect of the lands in question was made on 22/3/2016, however, while determining the compensation as per the market value of land under Section 26, the reference date taken by the Special Land Acquisition Officer is the date of publication of notification under Section 4(1) of the Act of 1894 i.e. 2/7/2009 and not 1/1/2014 which is the date of enforcement of the Act of 2013.

5. Our attention has been drawn by learned counsel for the Petitioners to a D.O. letter dated 26/10/2015, issued by the Government of India, whereby certain clarifications were made by the Government of India on query made by the State of Maharashtra. One such query made was, "For

calculation of market value, under Section 24(1)(a), reference date should be 1/1/2014 i.e. (commencement of the Act of 2013) or the date of issuing preliminary notification under Land Acquisition Act, 1894?". Answering the said query, the Government of India, in the Department of Land Resources, Ministry of Rural Development, vide Notification/ Demi Official letter dated 26/10/2015, clearly stated that, "The reference date for calculation of market value, under Section 24(1)(a) should be 1/1/2014." It is, thus, the submission of learned counsel for the Petitioners that, while calculating the compensation, in the instant case, the date of reference has been taken to be 2/7/2009 i.e. the date when Section 24(1)(a) of the Act of 1894 was issued and not 1/1/2014, which is the date of commencement of the Act of 2013 and such calculation of quantum of compensation is manifestly illegal being completely arbitrary.

6. On the other hand, the learned A.G.P. representing the Respondent State as also learned counsel representing the respondent No.4 have stated that all these aspects can be looked into in a reference to be made by the petitioners under Section 64 of the Act of 2013 before the Land

Acquisition, Rehabilitation and Resettlement Authority created under Section 54.

7. It has thus been argued that the instant Petition may not be entertained on account of availability of alternate remedy under the Act of 2013.

8. We have considered the rival submissions made by learned counsel for the parties and have also perused the record available before us on this Writ Petition.

9. It is not denied by the respondents that while making the award on 22/3/2016, the Special Land Acquisition Officer has taken into account the reference date for calculation of the compensation as the date of Notification under Section 4(1) of the Act of 1894 and not 1/1/2014, which is the date of commencement of the Act of 2013. The illegality in calculating the quantum of compensation is thus palpably apparent. As a matter of fact, there is no ambiguity that where land acquisition proceedings were initiated under the Act of 1894, however, the award could not be made before commencement of the Act of 2013, the compensation is to be awarded in terms of the provisions of the Act of

2013, 1/1/2014 as has been clarified by the Government of India in its notification/ Demi Official letter dated 26/10/2015. In such a situation, in our opinion, relegating the Petitioners to take recourse to remedy under Section 64 of the Act of 2013 will not be appropriate. Accordingly, remedy under Article 226 of the Constitution of India being discretionary in nature, we proceed to decide the matter on merits.

10. We have entertained this Writ Petition also keeping in view a Division Bench judgment of this Court in a batch of Writ Petitions, leading Petition being ***Writ Petition No.6598/2023 (Namdeo Apparao Chate & Others Vs. The State of Maharashtra & Others etc. etc.)***, wherein exactly the same issue was involved and the objection of the Writ Petition not being maintainable on account of availability of remedy under the Act of 2013 was repelled by the Court.

11. Coming to the merits of the matter, what we find is that it is not in dispute that the award in the instant case could not be declared before the Act of 2013 came into being i.e. before 1/1/2014, though the Notification under Section 4(1) and 6(1) of the Act of 1894 were issued on 4/7/2007

and 6/5/2010 respectively. Section 24(1)(a) of the Act of 2013 clearly mandates that, where no award under Section 11 of the Act of 1894 has been made, the provisions of the Act of 2013 relating to determination of compensation shall apply. Accordingly, there is no doubt in our mind that since in the instant case, the award could not be made prior to commencement of the Act of 2013, hence, for the purpose of amount of compensation to be calculated, the provisions of the new Act will be applicable. Section 26 of the Act of 2013 provides the procedure for determination of market value of the land acquired. The market value is one of the criteria to be considered by the Collector while assessing and determining the compensation.

12. The question is, thus, as to what should be the reference date for the purpose of determining the market value of the land in terms of Section 26 of the Act of 2013.

13. On account of some ambiguity, the State Government sought a clarification in this regard, which was duly replied with by the Central Government by Demi Official letter dated 26/10/2015. The relevant query and the clarification given finds mentioned at Sr.No.3 of the letter

dated 26/10/2015, which is extracted hereinbelow :

Issue raised by the Government of Maharashtra	Opinion of the DoLR
For calculation of market value, under Section 24(1)(a), reference date should be 01/01/2014 (commencement of RFCTLARR Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894 ?	The reference date for calculation of market value, under Section 24(1)(a) should be 01/01/2014 (commencement of RFCTLARR Act, 2013), as the Section reads "in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply. Under Section 26 reference date is date of preliminary notification, but Section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 01/01/2014) with a view to ensure that the land owners/ farmers/ affected families get enhanced compensation under the provisions of the RFCTLARR Act, 2013 (as also recommended by Standing Committee in its 31 st report)

14. It is also not in dispute in this case that while passing the award dated 26/3/2016, the reference date for the purpose of calculation of compensation in terms of Section 26 of the Act of 2013 has been taken to be the date on which the Notification under Section 4(1) was issued, namely 2/7/2009 and not 1/1/2014 which is the date of commencement of the Act of 2013. Such a course adopted by the authority which made the award dated 22/3/2016, in

our opinion, cannot be sustained in law. Our view in this regard is supported by Division Bench judgment of this Court in **Namdeo Apparao Chate & Others (supra)**. Similar view has been taken by a Division Bench of Hon'ble Allahabad High Court in its judgment dated 7/4/2022, passed in **Writ Petition No.30088/2022 (Smt. Sabita Sharma And 2 Others Vs. State of U.P. And 2 Others)**.

15. In view of the aforesaid, the Writ Petition is partly allowed. The award dated 22/3/2016, so far as it relates to the Petitioners, is hereby quashed. The Competent Authority/ Special Land Acquisition Officer is directed to reconsider the matter and declare the award afresh, and while doing so, he shall calculate the amount of compensation to be paid to the Petitioners by treating the reference date for calculation of market value as 1/1/2014. The compensation in terms of the fresh award to be made as per observations made in this order shall be paid to the Petitioners forthwith.

16. The Competent Authority/ Special Land Acquisition Officer is directed to pass the award afresh having regard to the observations made above within a period of three months from the date the certified copy of this order is made

available to him.

17. We further direct that the compensation which may be awarded, shall also be paid to the petitioners within next three months from the date of the fresh award.

18. The Writ Petition is thus disposed of in above terms. There will be no order as to costs.

(KISHORE C. SANT, J.)

(CHIEF JUSTICE)

fmp/-