

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1228 OF 2015

Sakharbai w/o Haribhau Shelke
deceased through LRs
Sau Sanjivani w/o Dashrath Mhabre & others Petitioner

Versus

The State of Maharashtra and others Respondents

Mr.S.D.Kulkarni advocate for the petitioners
Mr.S.S.Tope, GP for Respondent State

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 9th February, 2015.

PER COURT :-

1 The petitioner is praying for directions to the respondents to invoke all the provisions under the Right to Fair Compensation Act, 2013 for a declaration of Award in respect of the land under acquisition. The petitioner is also seeking directions to the respondents to issue a fresh notification under section 4(2) and thereafter proceed to decide the market price and to pay compensation together with interest as provided under the Act of

2013.

2 The petitioner had presented a petition being Writ Petition No.3902/2002 objecting to the notification issued under section 4 and the declaration under section 6 of the Act of 1984. The Notification under section 4 of the Act was published on 29.9.2000 and the petitioner raised her objection to the acquisition under section 5-A of the Act, 1984 and the objection came to be rejected and thereafter declaration under section 6 was published on 29.1.2001. This Court while dealing with the earlier writ petition, dismissed the same and directed the parties to maintain status quo until further orders. As a result of intervention of the Court, the award could not be passed until this date. The writ petition came to be disposed of by this Court by order dated 25.4.2014. The Division Bench, in para No.12 of the said Judgment has observed that the matter is governed by provisions of sec.24-1-a of the Act. The Court observed thus:-

“ 12 In the present case, the matter is governed by provisions of Sec.24(1)(a). Sub Section 2 deals with a situation wherein award has been passed under the Act of 1894 five years prior to the commencement of present Act, but the physical possession of the land has not been taken or the compensation has not been paid, then in that

event, it states that, the proceedings shall be deemed to have lapsed. The scenario in the present matter is different. Here the award U/sec.11 of the Act of 1894 has not been passed. In such a case, the provisions of the Act of 2013 would apply to the extent of determination of compensation. The proceedings which were initiated and continued under the old Act, till the stage of notice U/s. Sec.9 would not lapse. Sec.24(1)(a) of the Act of 2013 does not give room for any ambiguity and the said provision will have to be construed strictly. The contention of the learned senior counsel for the respondent No.4 that for payment of compensation also the old Act would apply as because of the operation of the order of stay the further proceedings could not be continued cannot be accepted. The Land Acquisition Act, 1894 stands repealed by virtue of Sec.114 of the Act of 2014. As is held in case of **Gajraj Singh Vs. State Transport** referred supra by the Apex Court that, the effect of repeal of the Act is to be obliterate the Act completely from the record of Parliament as if it had never been passed by it, it never existed except for the purpose of those actions commenced, prosecuted or concluded. When a repeal is followed by fresh legislation, the Court has to look to the provisions of such Act only for the purpose of determining whether new act indicates different intention. In view of Sec.24(1)(a) of the Act of

2013, the proceedings till the stage of notice U/s. Sec.9 under Act of 1894 would be saved, but, the said provision mandates that compensation will have to be determined as per the provisions of the Act of 2013. Sec.24(1) of the Act of 2013 as stated above begins with non obstante clause having overriding effect over all other provisions. It does not give option to consider any contingencies including the present one. "

3 This court has observed that section 24(1) of the Act of 2013 would begin with non-abstante clause and has over riding effect over all other provisions. It does not give option to consider any contingency including the present one. The Court has proceed to pass following order:-

" The Writ Petition challenging the notification U/Sec.4 and declaration U/Sec.6 of the Land Acquisition Act 1894 is dismissed, however, it is clarified that the compensation shall be determined as per the provisions of the Act of 2013 relating to the determination of compensation. "

4 This Court has observed that proceedings till the stage of notice U/Sec.9 under Act of 1894 would be saved. The said provision mandates that compensation will have to be determined as per the provisions of the Act of 2013. The contention of the

petitioner that a fresh notification u/s 4(2) shall have to be issued is not liable to be accepted in view of observations of this Court in the earlier round of litigation. Since this Court has directed that all the stages of the acquisition up to section 9 of the Act are saved, the acquisition authorities are liable to follow the procedure under the new enactment only in respect of determination of market value of the land, which procedure finds place under sections 26 to 30 of the Act.

5 Learned GP appearing for State, on instructions informed that Award would be passed in the matter within a period of four months from today.

6 Learned counsel appearing for the petitioner places reliance on the Judgment of the Apex Court in case of Union of India and others V/s Shiv Raj and others reported in 2014 (6) SCC 60, Bimla Devi & others V/s State of Haryana & others reported in (2014) SCC 583 and Rediance Fincap (P) Ltd V/s Union of India decided by the Apex Court on 12.1.2015. We are of the view that the Judgments cited at the bar have no bearing on the issue of passing of award as directed by the High Court in the Judgment delivered during earlier round of litigation being Writ Petition No. 390/2000. So far as the instant petition is concerned, same does

not deserve any consideration.

7 Writ Petition stands rejected.

(P.R. BORA, J)

(R.M.BORDE, J)

vbd