

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10803 OF 2014

1. Subhash Vyankatao Biradar,
Age: 60 years, occ: agri.,
r/o Dhanegaon, Tal: Devni,
Dist: Latur.
2. Vinay Subhash Biradar,
Age : 21 years, occ: Education,
r/o Dhanegaon, Tal: Devni,
Dist: Latur.
3. Santosh Pandurang Patil,
Age 35 years, occ: agri.,
r/o Shioor, Tal: Nilanga,
dist.Latur.
4. Vikas Pandurang Patil,
Age: 37 years, occ: agri.,
r/o Shioor, Tal: Nilanga,
Dist. Latur.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai.
2. The Collector,
Latur, Dist. Latur.
3. The Executive Engineer,
Minor Irrigation Division,
Latur, Dist. Latur.
4. The Sub Divisional Officer
And Land Acquisition Officer,
Land Acquisition Division,
Nilanga, Tal: Nilanga,
Dist. Latur.

...RESPONDENTS

Mr. V.D.Gunale, Advocate for the petitioners.
Mr. S.S.Tope, Government Pleader for respondent State.

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**CORAM: R.M.BORDE
AND
P.R.BORA, JJ.**

DATE : JANUARY 5th, 2015

ORAL JUDGMENT: (Per R.M.Borde, J.)

1. Rule. Rule made returnable and heard forthwith by consent of learned Counsel for the parties.

2. Petitioners are praying for issuance of directions to the respondents to initiate proceedings for acquisition of land belonging to the petitioners under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Act of 2013"), pass award, and to pay compensation within stipulated period.

3. The land belonging to the petitioners was acquired for construction of barrage, which is obviously a public purpose. According to the petitioners, notification under Section 4 of the Land Acquisition Act, 1894, was issued on 29.3.2008, however, the award has not been passed. The petitioners claim that the

proceedings initiated under the old enactment has come to an end and shall be deemed to have lapsed in view of Section 11-A of the Land Acquisition Act, 1894, (hereinafter referred to as "Act of 1894"), and on the enforcement date i.e. 1st January, 2014 of the Act of 2013, the acquisition proceedings under old enactment, were not pending. The petitioners, as such, claim that in view of provisions of Section 24 of the Act of 2013, the respondent shall have to initiate acquisition proceedings afresh.

4. It is not a matter of doubt that the proceedings for acquisition of the land were initiated in 2008. Learned Government Pleader appearing for the State informs that the Section 4 notification has, in fact, issued on 31.12.2009, and not in the year 2008, as contended by the petitioner. Even assuming that the contention of the learned Government Pleader is correct, it is not a matter of doubt that award has not been passed until the date of enforcement of the Act of 2013 and, as such, the proceedings initiated under the old enactment shall be deemed to have lapsed. Section 11 of the Act of 1894 (old Act) provides that the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land

shall lapse. The declaration contemplated under the Act of 1894 is a declaration under Section 6 of the Act. In the instant matter, the declaration under Section 6 of the Act came to be published on 5.1.2010 and that the award has not been passed within a period of two years from the date of such declaration. In any case, under the Act of 1894, the award shall have to be passed within a period of three years from the date of publication of Section 4 notification. Section 6(1), second proviso, provides that no declaration under Section 6 shall be published after commencement of Land Acquisition (Amendment) Act 1984 after expiry of one year from the date of publication of the notification. The authorities are expected to publish a declaration under Section 6 within a period of one year from the date of issuance of notification under Section 4 of the Act. Section 11-A provides limitation of two years for declaration of award from the date of a declaration under Section 6 of the Act. In the instant matter, the proceedings in respect of the acquisition are stated to have been initiated in the year 2009 and until 2014 the award has not been published and, as such, the proceedings shall be deemed to have lapsed.

5. Section 24(1) of the Act of 2013 provides that notwithstanding anything contained in the Act, in any case of

land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),- (a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of the Act (i.e. Act of 2013) relating to determination of compensation shall apply.

6. Relying on the provisions of Section 24(1) of the Act of 2013, learned Government Pleader contends that the proceedings in respect of determination of compensation or market value only shall be in accordance with the Act of 2013 and all the proceedings in respect of acquisition under new enactment shall not be observed. The argument advanced by the learned Government Pleader is not acceptable for the reason, on the date of enforcement of the Act to 2014 the proceedings initiated under the old enactment in respect of acquisition of the petitioners land had already lapsed. It is to be noted that the proceedings were initiated in the year 2008 or 2009, under Act of 1894 in respect of acquisition of the petitioner's land and the award has not been declared until enforcement of Act of 2013. Section 11-A of the Act of 1894 provides a limitation of two years for publication of award from the date of declaration and in the event of breach, it shall be deemed that entire proceedings have lapsed. The proceedings

in respect of acquisition of land initiated in the year 2008 or 2009 were not completed within a period of three years from the date of such initiation and as such, the proceedings initiated shall be deemed to have lapsed. Since the proceedings in respect of acquisition of the petitioners land were not pending on the date of enforcement of Act of 2013, the State Government shall have to initiate the proceedings for acquisition of the land as well as shall have to determine amount of compensation in accordance with the provisions of the Act of 2013. Learned Government Pleader points out that the project for which lands were acquired is completed and, as such, the other provisions of the Act of 2013, shall not be observed. We do not propose to consider the submission at this stage and leave it to the discretion of the authorities to take appropriate decision in observance of provisions of Act of 2013.

7. Learned Counsel for the petitioner, on instructions, informs that the petitioner is in noway objecting acquisition of the land for public purpose and is only interested in receiving the amount of compensation which shall be determined in accordance with Act of 2013. Learned Counsel further submits that it would be appropriate for the Collector to determine the

amount of compensation in accordance with the provisions of Act of 2013 after observing procedural formalities.

8. The writ petition is, thus, allowed. The respondents are directed to determine amount of compensation by observing the procedure laid down under the Act of 2013, and declare award as expeditiously as possible and preferably, within a period of one year from today, and the respondent State is directed to pay the amount of compensation so determined within a period of eight weeks from the date of declaration of award.

Rule is accordingly made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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