

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.404 OF 2014

Sanjay Bothra ..Petitioner.
V/s.
Special Land Acquisition Officer, Pune and Ors. ..Respondents.

WRIT PETITION NO.1614 OF 2014

Bhagwantrao Sahebrao Saste and Ors. ..Petitioners.
V/s.
The State of Maharashtra and Ors. ..Respondents.

WRIT PETITION NO.1649 OF 2014

Hiraman Nivrutti Saste and Ors. ..Petitioners.
V/s.
The State of Maharashtra and Ors. ..Respondents.

WRIT PETITION NO.3615 OF 2014

Mak Pan Associates ..Petitioner.
V/s.
Pimpri Chinchwad New Township
Development Authority and Ors. ..Respondents.

Mr.Shriram S. Kulkarni with Mr.Chaitanya B.Nikte for the petitioner
In WP/404/2014.

Mr.G.S.Godbole i/b. Mr.Drupad Sopan Patil and Mr. Parag Tilak for
petitioner in WP/1614/2014 and WP1649/2014.

Mr.V.B.Naik, Senior Advocate i/b. Mr. Sukand Ravindra Kulkarni for
petitioner in WP/3615/2014.

Mr.V.S.Gokhale, AGP for respondent Nos.1 & 2 in WP/404/2014, WP/
1614/2014, WP/1659/2014 and for respondent Nos.2 to 5 in WP
3615/2014.

Mr. Vijay Dinkarrao Patil for respondent No.3 in WP/404/2014, WP/
1614/2014, WP/1659/2014 and for respondent No.1 in WP/3615/
2014.

Mr.Parag Vyas with Mr. Upendra Lokegaonkar and Mr.N.R.Prajapati
for respondent No.4 in WP/404/2014.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 7TH SEPTEMBER, 2015

P.C. :-

1. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the Pimpri-Chinchwad New Township Development Authority, the learned counsel appearing for the Union of India and the learned AGP appearing for the State of Maharashtra and the Deputy Collector(Land Acquisition)No. 11, Pune.

2. Considering the narrow controversy, the petitions are forthwith taken up for final disposal.

3. Since the challenge in all these petitions are more or less similar, for the sake of convenience, we are referring to the facts in Writ Petition No.404 of 2014. The challenge in Writ Petition No.404 of 2014 is to an award dated 31st December 2013 made under Section 11 of the Land Acquisition Act, 1894 [for short 'the old Act'].

4. The acquisition was initiated on the basis of the notification issued under sub-section (4) of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act') read with section 6 of the old Act.

5. At this stage, it would be necessary to refer to the order dated 12th August, 2015 passed by this Court, which reads thus:-

"1. The learned counsel appearing for the Respondent No.3 - Pimpri Chinchwad New Township Development Authority shall take instructions and make a statement whether the said respondent has no objection for redetermining the compensation payable to the petitioners in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (for short 'the said Act of 2013') provided the petitioners in the aforesaid Petitions give up the challenge to the validity and legality of the acquisition proceedings.

2. The learned counsel appearing for the petitioners seeks time to take instructions whether the petitioners will be satisfied with the re-determination of the compensation in terms of the provisions of the said Act of 2013 and whether on such determination, they will give up the challenge made in this petition.

3. To enable the learned counsel for the parties to take instructions and make a statement, we adjourn these petitions to 31st August, 2015. To be listed 'High on Board'.

4. At this stage, the learned counsel appearing for the third respondent states that the third respondent has no objection for re-determination of the compensation payable to the petitioners in terms of the

provisions of the said Act of 2013 provided the right of the third respondent to challenge only the quantum in accordance with law is kept protected. ”

6. The learned counsel appearing for the petitioners on instructions states that the petitioners are willing to give up their challenge to the legality and validity of the acquisition proceedings subject to condition of the Respondents making compliance with the proviso to Section 24 of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the new Act'). Their contention is that in view of the mandate of section 26 of the new Act, there will have to be a fresh inquiry as regards the value of the acquired land in accordance with section 23 of the new Act. The learned counsel appearing for the petitioners pointed out that without prejudice to the rights of the petitioners in all the Petitions to challenge the acquisition proceedings, they have filed applications under section 18 of the old Act seeking a reference to the Court. The submission is that after compensation payable in accordance with the provisions of the new Act is determined in terms of proviso to section 24 of the new Act, the petitioners may be permitted to amend the claims made in the reference applications.

7. The learned AGP invited our attention to the letter dated 10th August, 2015 addressed to the him by the Deputy

Collector (Land Acquisition) No.11, Pune. Clause 1 of the said letter records that the proviso to section 24 of the new Act is applicable to the acquisition subject matter these four Petitions and, therefore, the persons having interest in the acquired lands will be entitled to compensation in respect of the acquired lands in accordance with the provisions of the new Act. The said letter records that revaluation has been accordingly done and the same has been submitted to the District Collector for seeking approval of the concerned competent authority. A copy of the said letter is taken on record and marked 'A' for identification.

8. The learned counsel appearing for the acquiring body (the Pimpri-Chinchand New Township Development Authority), on instructions of its Chief Executive Officer, who is personally present in the Court states that even the said Authority accepts that in the facts of these four case, the proviso to section 24 of the new Act will be applicable and, therefore, the concerned persons will be entitled to compensation in accordance with the provisions of the new Act.

9. Considering the submissions made across the bar, it will be necessary to consider section 24 of the new Act which reads thus:-

“24. Land acquisition process under Act No.1 of 1894

shall be deemed to have lapsed in certain cases-

(1) 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 this Act relating to the determination of compensation shall apply; or

(b) where an award under section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act;

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all the beneficiaries specified in the notification for acquisition under section 4 of the Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of

this Act."

(emphasis added)

10. In the present case, going by what is stated in the letter dated 10th August, 2015 issued by the Deputy Collector (Land Acquisition) No.11, Pune and the statement made by the acquiring body on instructions, there is no dispute that the proviso to section 24 will apply to these cases and the persons concerned will be entitled to compensation in accordance with the provisions of the new Act.

11. The petitioners have given up their challenge to the legality and validity of the impugned award on the ground that the award was in fact not made on 31st December, 2013 and that the same is ante-dated. Therefore, in view of the above statements, this is a case where the proviso to section 24 of the new Act will apply. However, as the proviso to section 24 of the Act is applicable, now re-determination of compensation will have to be made in accordance with the provisions of the new Act.

12. We have perused the provisions of the new Act and in particular sections 21 to 23. Section 23 contemplates an inquiry to be made by the Collector as to the measurement of the acquired land and the value of the acquired land on the date of publication of the notification as well as the respective interests of the persons claiming compensation and rehabilitation. Section 23

contemplates an award to be made as regards the true area of the land, the compensation as determined under Section 27 and apportionment of the said compensation.

13. As far as the old Act is concerned, the compensation is determined in accordance with section 23 thereof under which one of the six ingredients of the compensation is the market value of the land.

14. Sub-section (1) of section 26 reads thus:-

“26. Determination of marked value of land by Collector - (1) *The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-*

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been

issued under section 11."

Sub-section (1) of section 26 of the new Act deals with the criteria of assessing and determining the market value of the acquired land. The criteria laid down appears to be completely different from what is provided in section 23 of the old Act. Even the concept of compensation under the new Act appears to be different from the compensation payable under the old Act.

15. Therefore, in our considered opinion, before determining the entitlement to compensation in accordance with the provisions of the new Act as per the proviso to section 24, the Collector will have to make an inquiry as contemplated by section 23 into the value of the land.

16. We must note here that only after the market value is assessed by applying the criteria under sub-section (1) of section 26 that under Section 27, the Collector can calculate the total amount of compensation to be paid to the land owner.

17. To enable the Collector to determine the market value in terms of sub-section (1) of section 26 of the new Act and to determine the compensation payable, we propose to direct the Deputy Collector (Land Acquisition) No.11, Pune to permit objections to be filed by the petitioners containing the claim for

compensation in accordance with Sub-section 2 of Section 21 of the new Act.

18. Notwithstanding the applicability of the proviso to section 24 to the case, the acquisition will be continued under the provisions of the old Act. Therefore, after the determination of the compensation in terms proviso to section 24 is made, the petitioners can always amend their applications for reference under section 18 of the old Act for incorporating additional claims. Even if references have already been made to the Court, in view of the law laid down by the Apex Court in the case of *Ambya Kayla Mhatre (since deceased) by LRs vs the State of Maharashtra*¹, the petitioners can always apply for amendment of the claim for compensation in the references.

19. Needless to add that as far as the challenge to the quantum of compensation fixed under the awards to be made is concerned, the remedy of the acquiring body shall remain open.

20. From the letter dated 10th August, 2015 we find that the Deputy Collector (Land Acquisition) No.11, Pune has done the exercise of determining the compensation payable in accordance with the provisions of the new Act. As the same has been made without giving an opportunity to the petitioners to file their claims,

¹ (2011)9 SCC 325

the exercise will have to be once again undertaken by the Deputy Collector.

21. We find that under the impugned award, compensation is made payable to several persons apart from the present petitioners. Therefore, the Deputy Collector will have to give opportunity to all of them to file their claims as regards the compensation.

22. Needless to state that while granting opportunity to all the persons who have filed their claims in accordance with the provisions to the new Act, the Deputy Collector shall ensure that an opportunity of being heard is also granted to the acquiring body.

23. Hence, we dispose of the petitions by passing the following order:-

- (i) We accept the statements made by the learned counsel appearing for the petitioners on instructions of the petitioners recorded in paragraph 6 above as well as the statement made by the acquiring body i.e. the Pimpri Chinchwad New Township Development Authority on instructions of the Chief Executive Officer recorded in paragraph 8 above. We also accept the statements made in the letter dated 10th August, 2015 by the Deputy Collector (Land Acquisition) No.11, Pune

to the learned Government Pleader to the extent that the proviso to section 24 of the new Act is applicable to these cases;

- (ii) We direct the petitioners to appear before the Deputy Collector (Land Acquisition) No.11, Pune on 30th October, 2015 at 11.00 a.m. On that date, the petitioners shall submit their objections/statements in respect of their claim for compensation in accordance with the provisions of the new Act;
- (iii) We direct the Deputy Collector (Land Acquisition) No.11, Pune to issue individual notices to all the persons who are held entitled to receive compensation under the impugned award, calling upon them to submit their claims as regards compensation, on the same date or on any other date as may be fixed by him;
- (iv) After considering the claims as to compensation made by all the persons and after holding an inquiry in accordance with section 23 of the new Act, the Deputy Collector (Land Acquisition) No.11, Pune shall determine the amount of compensation payable to the petitioners and others in accordance with the proviso to Section 24 of the new Act;
- (v) This exercise shall be completed by the Deputy Collector by

30th June, 2016;

- (vi) Needless to state that after compensation is offered in accordance to the proviso to section 24 of the new Act by the awards, it will be open for the petitioners to formally apply for the amendment of the pending reference applications under section 18 of the old Act and to the references which are already forwarded to the Court for the purpose of incorporating the additional claims. Such applications shall be granted;
- (vii) If references have been already forwarded to the Civil Court, on production of an authenticated copy of this order, the concerned Court shall stay the proceedings of the references till the compensation as directed above, is determined by the Deputy Collector;
- (viii) We make it clear that no adjudication is made as regards the extent of compensation payable to the petitioners and others in accordance with the provisions of the new Act;
- (ix) We also make it clear that if the acquiring body is aggrieved by the compensation as may be determined by the Deputy Collector, remedies of the acquiring body are kept open to challenge the quantum of compensation;

- (x) The petitions are disposed of in the above terms.

All concerned to act upon an authenticated copy of this order.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

Certified that this Judgment / Order uploaded is a true
and correct copy of original signed Judgment / Order.