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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2775 OF 2012

Meena Mohanlal Chauhan and Anr.	...Petitioners
v/s.	
Nashik Municipal Corporation and Ors.	...Respondents.

Mr.R.D.Soni, i/b Ram and Company, for the Petitioners.

Mr.M.L.Patil, for the Respondent Nos.1 and 2.

Mr.V.S.Gokhale, AGP for the Respondent Nos.3, 4 and 5.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 5th AUGUST, 2015.

P.C.

1. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first and second respondents and the learned AGP appearing for the third, fourth and fifth respondents.

2. The learned counsel appearing for the petitioners on instructions states that the petitioner is confining the reliefs claimed in this petition to prayer clause b-2 as amended.

3. He invited our attention to 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'). He also invited our attention to the Award dated 31st December, 2014. His submission is that in view of the mandate of clause (a) of sub-section 1 of Section 24 of the said Act of 2013, as the Award was made after coming into force of the said Act of 2013, the determination of the compensation ought to have been made in accordance with the provisions of the said Act of 2013. His submission is that in the Award dated 31st December, 2014, the determination of the compensation appears to have been made on the basis of the provisions of Land Acquisition Act, 1894 (for short 'the said Act of 1894'). He relied upon the Judgment and Order dated 20th February, 2014 passed by the Division Bench of this Court at Aurangabad Bench in Writ Petition No.4917 of 2011. He also relied upon a decision of the Apex Court in the case of ***Pune Municipal Corporation and Another v/s Harakchand Misirimal Solanki and Others in Civil Appeal No.877 of 2014 which is decided on 24th January, 2014.*** He relied upon what is observed by the Apex Court in paragraph 10 of the said decision. He submitted that in view of the mandate of law laid down by the Apex Court the provisions of 2013 Act ought to have been applied while determining

the payment of compensation.

4. The submission of the learned counsel appearing for the first and second respondents is that infact a perusal of the Award will show that the determination of compensation was made in terms of the said Act of 2013. He pointed out that in any case, a Reference has been made by the petitioners for claiming enhancement.

5. The learned AGP apart from supporting the Award stated that there are two sets of payment vouchers on record. He confirmed that on one of the two vouchers, there is an endorsement made that compensation amount has been received with objection. He stated that on the other set of payment vouchers, the said remark does not appear. He submitted that the issue of inadequacy of compensation will have to be gone into in the pending Reference.

6. We have considered the submissions. It is not in dispute that till 1st January, 2014 when the said Act of 2013 came into force, the Award was not made. Therefore in view of clause (a) of sub-section 1 of Section 24 of the said Act of 2013, the proceedings of said Act of 1894 could have been continued subject to the condition of applying the provisions of the

said Act of 2013 to the determination of the compensation.

7. It is not in dispute that an application for Reference has been made by the present petitioners (Exhibit – ‘I’ to the petition). It is true that the Reference may have been made without prejudice to the rights and contentions of the petitioners, however, in the Reference Application we find that a contention regarding applicability of the said Act of 2013 has been raised. The said contention retained repeatedly. The learned counsel appearing for the petitioners states that the Reference has been forwarded to the Civil Court. We are not entering into the wider controversy whether the Reference will be governed by the said Act of 2013, or whether it will be covered by the provisions of repealed Land Acquisition Act, 1894. It will be necessary to make a reference to sub-section 1 of Section 24 of the said Act of 2013 which reads thus :-

“24. (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 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 said 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.

8. Sub-section 1 of Section 24 starts with *non obstante* clause. clause (a) of sub-section 1 is applicable to the proceedings initiated under the said Act of 1894 wherein no Award was made on the date on which the said Act of 2013 came into force. On conjoint reading of the *non obstante* clause in sub-section 1 and what is provided in clause (a) of sub-section 1, it is apparent that the proceedings under the Land Acquisition Act, 1894 to which clause (a) is applicable will continue under the said Act of 1894 with the only modification that the determination of compensation shall be made in accordance with provisions of said Act of 2013. Therefore, for all the purposes, the Award which is made in a case to which sub-section 1 of Section 24 is applicable will be an Award under Section 11 of the said Act of 1894 and therefore, the Reference under Section 18 made on the basis of such Award is competent provided the Reference Application is filed within limitation.

9. Considering the scope of Section 18, the issue is whether the petitioners can establish that the compensation offered to them under the Award is not adequate and whether the same is not in terms of the

provisions of clause (a) of Section 24 of the said Act of 2013, will have to be decided in the Reference. The said Act of 1894 is held to be a complete code by itself. Therefore, the petitioners can always lead evidence before the Reference Court for satisfying the Reference Court that the compensation awarded is inadequate and is not in terms of the provisions of said Act of 2013.

10. Prayer b-2 which is the only prayer pressed into service is for a direction to grant compensation in terms of the said Act of 2013. This issue can be adjudicated in the pending Reference. Hence, it is not necessary to entertain this Writ Petition.

11. Subject to what is observed above, the writ petition is rejected. We, however, make it clear that if the Reference Application made by the petitioners (Exhibit – ‘I’ to the petition) is made within the stipulated time, the same shall be decided in accordance with law by the Court to which a Reference has been submitted.

12. Hearing of the Reference is expedited. It will be open for the petitioners to apply to the Reference Court for fixing a time bound schedule.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)