

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1943 OF 2016

Sau. Sanjivani w/o Dashrath Mahabare
and others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr.Amol K. Gawali, advocate for petitioners
Mr.S.K.Kadam, A.G.P. for Respondents No.1 to 3.

**CORAM : R.M.BORDE &
A.I.S.CHEEMA, JJ.
DATE : 03rd March, 2016**

PER COURT:

1 Petitioners are praying for a declaration that the land acquisition proceedings initiated by Respondents No.1 to 3 by virtue of issuance of Section 4 Notification dated 26.07.2000 and declaration under Section 6 on 25.01.2002 in respect of land bearing S.No.148/1, admeasuring 5 hectares 2 ares, situate at Mauje Shirdi, Taluka Rahata, District Ahmednagar, shall be deemed to have lapsed in view of provisions of Section 25 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (hereinafter referred to as 'Act of 2013').

2 The proceedings were initiated in respect of acquisition with issuance of Section 4 Notification on 27.09.2000. Petitioners objected to the acquisition proceedings by presenting objection under Section 5A of the Land Acquisition Act, 1894, which was not

considered favourably and Notification under Section 6 of the Act came to be issued on 21.09.2001.

3 Petitioners approached this Court objecting to the acquisition proceedings by presenting Writ Petition No.390 of 2002. The writ petition came to be disposed of by an order dated 25.04.2014. Challenges raised in the writ petition were turned down and while disposing of the writ petition, the Division Bench has observed that in view of Section 24 of the Act of 2013, there is no room for any ambiguity or having any different interpretation of the statute. It is observed in the judgment that, in view of provisions of Section 24(1) of the Act of 2013, the proceedings, till the stage of notice under Section 9 of the Act of 1894, will be saved. However, it is mandated that compensation will have to be determined as per the provisions of the Act of 2013. Section 24(1) of the Act of 2013 begins with *non obstante* clause having overriding effect over all other provisions. It does not give option to consider any contingencies. The Division Bench of this Court, as such, turned down the challenge to Notifications under Sections 4 and 6 of the Act of 1894. It was further clarified that compensation shall have to be determined as per the provisions of the Act of 2013.

4 On consideration of judgment of Division Bench of this Court in Writ Petition No.390 of 2002, a reasonable inference is required to be drawn that the proceedings initiated under the old enactment are saved except that the determination of compensation shall be in accordance with the new enactment.

5 Petitioners again approached this Court by presenting Writ Petition bearing No.1228 of 2015 seeking a direction to issue fresh Notification under Section 4(2) of the Act of 2013 and thereafter to determine the market price. The writ petition came up for consideration before the Division Bench of this Court on 09.02.2015. The Division Bench, referring to the judgment delivered in Writ Petition No.390 of 2002, refused to cause interference in the matter. It was observed in the judgment that, request for issuance of a fresh notification under Section 4, issued, is not liable to be accepted in view of the observations made by the Division Bench in the earlier writ petition presented by petitioners. It is further observed that 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 Counsel appearing for petitioners states that decisions rendered by this Court, in both the aforesaid writ petitions, is a matter of challenge in two separate Special Leave Petitions (Civil) presented to the Hon'ble Supreme Court bearing Nos.18459 of 2015 and 18491 of 2015 and that the Hon'ble Supreme Court has been pleased to direct issuance of notices to the Respondents and the parties are further directed to maintain *status quo*.

6 Petitioners, in the instant petitions, contend that the award has been declared on 13.08.2015. Before declaration of

award, petitioners, at least on three occasions, made representations i.e. on 21.05.2014, 04.06.2014 and 30.06.2014. After declaration of the award, it is now being contended by the petitioners that the award so declared is bad in view of Section 25 of the Act of 2013. Section 25 of the Act of 2013, reads thus:

25 Period within which an award shall be made:- The Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same:

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

7 Petitioners also state that this Court had, while entertaining the writ petition bearing No.390 of 2002 on 29.04.2002, directed stay of the proceedings and the order of stay was operative till 25.04.2014. As has been recorded above in the judgment delivered by us in Writ Petition No.1228 of 2015, the proceeding in respect acquisition until stage of Section 9 of the enactment of 2013, is saved, whereas, provisions of Sections 26 to 30 are required to be observed for determination of compensation. The challenge raised to the award, in the instant petition, need not be considered for two reasons, firstly in view of the judgment

delivered by this Court during earlier round of litigation, the acceptance of request would be in contradiction to the directions earlier issued ; and secondly for the reason that challenge to the decisions, rendered by this Court in earlier writ petitions, is a subject matter of challenge before the Supreme Court in pending Special Leave Petitions.

8 Without observing anything as regards merits of the contentions, we are of the opinion that the new ground taken up in the instant petition, raising challenge to the award, is also liable to be raised and may be raised before the Hon'ble Supreme Court in the pending SLPs. *Prima facie*, we are of the opinion that the challenge based on violation of Section 25 of the Act of 2013, is not liable to be entertained for the reason that proceedings under the old enactment are saved and in view of Section 24(2) of the Act of 2013, the acquisition authorities are required to determine amount of compensation in accordance with the provisions of Act of 2013.

9 The challenge raised in the instant petition is not available to the petitioners in view of the facts stated above and in view of determination of various challenges raised by petitioners during earlier round of litigation covered by Writ Petition No.390/2002 and 1228/ 2015. Writ Petition is devoid of substance.

10 Writ Petition stands dismissed.

A.I.S.CHEEMA
JUDGE

R.M.BORDE
JUDGE