

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8854 OF 2015

KUSUMBAI NARAYANRAO JADHAV AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. A.B. Kale
AGP for Respondents: Mr. S.M. Ganachari.
Advocate for respondent No.5 : Mrs. Chaitali Kutti

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 23rd JUNE , 2016.

PER COURT:

1] Rule. Rule made returnable forthwith. With the consent of parties, taken up for final hearing.

2] The land of the petitioners is acquired for public purpose. Notification under Section 4 of the Land Acquisition Act was published on 12.5.2011. Enquiry under Section 5A was conducted by the respondent No.4 on 11.4.2012 and 13.4.2012. Thereafter, declaration under Section 6 is published in the Government Gazette on 6.12.2012.

3] Pursuant thereto, notice were issued under Section 9(1) and 9(2) of the Land Acquisition Act, 1894 on 20.12.2012. Some of the petitioners raised objection. It is the case of the petitioners that they were informed that the draft award is prepared on 24.7.2013 and the same is forwarded to respondent Nos. 2 and 3 for sanction. The draft award was not declared though the same was prepared on 24.7.2013. It appears that, after the enforcement of the Right to Fair Compensation, and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*hereinafter referred to as , "the Act of 2013"*) the petitioners had approached the Collector pointing out that in view of the Act of 2013, award will have to be passed under the Act of 2013 and compensation will have to be paid in accordance with the Act of 2013. Pursuant thereto, the final award is passed

as per the Act of 2013. The award passed under the Act of 2013 and the draft award under the Act of 1894, differs with regard to the number of trees. The petitioners have assailed the award passed under the Act of 2013 in the present writ petition.

4] Mr. Kale, learned counsel for the petitioners states that the petitioners are assailing the said award before this Court limiting it to the extent of number of trees for which the compensation is paid under the award passed under the Act of 2013. According to learned counsel, when the draft award was prepared on 24.7.2013, number of trees were stated on the basis of the valuation made by the Agricultural Officer, after conducting an enquiry under Section 5A, so also, the joint measurement. In the joint measurement, the number of trees mentioned were much more than the trees which were mentioned in the draft award. Still, when the final award is prepared under the Act of 2013, the number of trees which were mentioned in the draft award do not find place in the final award. According to learned counsel, there is no basis for reducing the number of trees which were appearing in the draft award. According to learned counsel, no explanation has been given while reducing the said trees. Even the letter issued by the respondent authority makes it clear that they have not entered the field for physical verification of the trees and now blame is put on the petitioners stating that the petitioners did not allow the authority to enter the field. Even the award specifically states that the officer has not entered the fields and it is observed in the award that now subsequently number of trees which were standing at the time of valuation has been reduced and the same would be less. The same cannot be the basis for passing the award. The relevant date would be the date of notification under section 4 of the Act of 1894 for computing the compensation amount. According to learned counsel, even the authority is not appointed under the Act of 2013. The petitioners do not have any remedy available.

5] Learned AGP states that the petitioners did not allow the Agricultural Officer to enter into the fields to physically verify the number of trees. It was with the sole intention that either trees were not there or were less than what was depicted in the draft award. It also needs to be considered that in the computerized 7 x 12 extracts, the number of trees were not mentioned nor the existence of trees was shown. However, in the 7x12 extracts issued manually, number of trees were recorded by hand. This itself demonstrates the discrepancy and the same has been rightly considered by the concerned officer and the SLAO while passing the award. According to AGP, no illegality is committed. As on the date the award was passed the number of trees were not existing. Same has been rightly not considered.

6] Mrs. Kutti, learned counsel from the Acquiring Body has also advanced arguments on the same lines as advanced by the AGP and submitted that the Acquiring Body has not yet taken possession and the petitioners are enjoying the possession of land and yield from the trees.

7] We have considered the submissions canvassed by the learned counsel for the respective parties. Before we advert to the contentions of the respective counsel, it would be necessary to record the sorry state of affairs with regard to non appointment of authority under the Act of 2013. After the award is passed, the person whose land is acquired or any person interested has a right to move the Collector by written application for referring the matter for the determination by the authority. The same may be with regard to quantum of compensation, measurement of land, so also, with regard to apportionment of the payment. The authority is appointed by the Appropriate Government by notification as laid down under Section 57 read with Section 2(f) of the Act of 2013. It is more than two and half years the Act of 2013 has come into force. The awards have been passed under the Act of 2013. We had asked the learned AGP regarding appointment of the authority under the Act of 2013 for determination of reference applications filed by the litigants or the persons interested. Learned AGP on

instructions, states that, as yet, authority to determine reference applications under the Act of 2013 has not been appointed. The very purpose of appointing the authority is laid down in Section 51 itself. It states that the Appropriate Government shall for the purpose of providing speedy disposal of the disputes, relating to land acquisition, compensation, rehabilitation and resettlement, establish by notification one or more authorities, to exercise jurisdiction, powers and authority conferred on it, by or under this Act. The authority is to be established with the avowed object of providing speedy disposal of the disputes. However, even after lapse of two and half years, since enforcement of the Act of 2013 no steps are taken for appointment of such authority. Awards every now and then are being passed under the Act of 2013 and the persons aggrieved by the amount of compensation or any such matter are without any remedy at present. It is for the Appropriate Government i.e. State Government, to take effective steps to appoint the authority under the Act of 2013. We hope and trust that the Appropriate Government shall act expeditiously in this direction.

8] Coming to the factual matrix of this case, the draft award being prepared on 24.7.2013, is not disputed and the number of trees as detailed in the said draft award is also not disputed. The said draft award was passed under the Act of 1894. Subsequently, because of the introduction of the Act of 2013, the final award was passed under the Act of 2013. In fact, there ought not to be any disparity in the number of trees as appearing in the draft award which was passed under the Act of 1894 and the final award under the Act of 2013. In the joint measurement report, the trees are said to be standing. In the Enquiry under Section 5A of the Act of 1894, the number of trees appear to be different than the one under the joint measurement report. However, same were referred to the agricultural officer for valuation in which the said number of trees are reduced and the agricultural officer has given his valuation. Pursuant thereto, the draft award was passed. The final award under the Act of 2013 states that valuation as on the date section 4 notification has to be considered. Same appears in clause

16 of the said award.

9] The award itself states that the officer at the time of preparation of final award had tried to visit the lands but was not allowed to enter the fields. As such, there was no physical verification at the hands of the Agricultural officer subsequent to the joint measurement and the enquiry under section 5A. Certainly, the enquiry under Section 5A is subsequent to the notification under section 4 of the Land Acquisition Act and thereafter, the matter was referred to the Agricultural Officer for valuation. On the same basis, the draft award was prepared. There was no reason to reduce the said trees while preparing the award under the Act of 2013. The difference would be in the quantum of compensation and not the number of trees appearing, when the number of trees stated in the draft award was based upon the enquiry under Section 5A and also the valuation of the Agricultural Officer.

10] In the result, the impugned award to the extent of number of trees detailed with regard to each petitioner, is quashed and set aside. The respondents shall consider the number of trees as appearing in the draft award dated 24.7.2013 and shall determine the compensation in respect of the said number of trees as appearing in the draft award. Same shall be done expeditiously and preferably within a period of 4 months. While determining compensation, the schedule as is existing shall be considered. The earlier schedule laying down multiplier of Act of 2013 has been quashed and set aside by this court and subsequently said schedule is amended. The respondents shall consider the amended schedule while computing the compensation. Rule is made absolute in above terms. Writ petition is accordingly disposed of. No costs.

grt/- [K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.