

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

WRIT PETITION NO.7947 OF 2013 WITH
CIVIL APPLICATION NO.14322 OF 2013

1. Narayan s/o Sahebrao Gaikwad
Age 50 years, Occ. Agriculture,
R/o Jogladevi, Tq. Ghansavangi,
District Jalna.
2. Santosh s/o Ambadas Gaikwad,
Age 35 years, Occ. Advocate &
Agriculture, R/o Khadkeshwar,
Aurangpura, Taluka and
District Aurangabad.
3. Anusaya Ambadas Gaikwad,
Age 55 years, Occ. Agriculture
R/o Khadkeshwar, Aurangpura,
Taluka and District Aurangabad ... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary,
Irrigation Department,
Mantralaya, Mumbai – 32
(Copy to be served on Government
Pleader, High Court of Judicature
of Bombay, Bench at Aurangabad)
2. The District Collector,
Jalna
3. The Deputy Collector & Land
Acquisition, Jalna.
4. The Managing Director,
Marathwada Godavari Irrigation
Development Corporation,
Jalna Road, Aurangabad.

5. The Executive Engineer,
Nandur Madhmeshwar Canal,
Godhavari Khore Mahamandal,
Aurangabad ... RESPONDENTS

.....
Shri A.B. Kale, Advocate for petitioners
Shri S.B. Pulkundwar, A.G.P. for respondents No.1 to 3
Shri B.R. Survase, Advocate for respondents No.4 and 5
.....

CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.

DATED: 2nd February, 2016.

Date of reserving judgment : 11th January, 2016
Date of pronouncing judgment: 2nd February, 2016

JUDGMENT (PER : A.I.S. CHEEMA, J.):

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. This is petition filed by the petitioners to quash and set aside award dated 3.12.2012, passed by respondent No.3 to the extent of petitioners on the basis that it was irrigated land, but the award was passed as if the land is unirrigated. Further prayer made by way of amendment is that though the award was shown as declared, the amount was not deposited nor paid to the petitioners and the petitioners have not handed over possession

also. Under "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (New Act - in brief) the compensation needs to be determined in accordance with the provisions of this Act under Section 24.

3. The petitioners referred to their respective Gat Numbers and extent of their lands under acquisition, situated at Jogladevi, Taluka Ghansavanti, District Jalna. The respondent No.4 is acquiring agency. The acquisition was started for purposes of construction of high level Barrages. Section 4 notification under the Land Acquisition Act, 1894 (Old Act - in brief) was issued on 19.1.2011. Declaration under Section 6 of the Old Act was made on 1.3.2011. The petition refers to further proceedings under the said acquisition and it is stated that, the award came to be passed on 3.12.2012. The petition states that, the petitioners immediately made claim and filed representation with the respondent No.3 that their lands should have been treated as irrigated lands instead of being treated as unirrigated lands.

4. Thus, this petition was filed claiming that the lands should be treated as irrigated and compensation should be fixed accordingly. It has been claimed that, the award was not notified.

5. The respondents No.2 and 3 have filed affidavit-in-reply claiming that the grounds raised in the petition should have been raised in a reference and efficacious alternative remedy was available. The respondents have then mentioned as to why the land was treated as unirrigated.

6. Respondents No.4 and 5 also filed affidavit claiming that the award was passed on 3.12.2012 and the possession was taken by private negotiation on 15.10.2009. The respondent No.5 has filed yet another additional affidavit, disputing the claim of petitioners to be in possession. In the award, the aspect of possession has been left open, recording that "if" possession has been taken by private negotiation, rental compensation would be liable to be paid. Thus, disputed questions of facts regarding notification of award and possession have been raised. We are not entering in these disputes as matter can be disposed considering New Act.

7. It has been argued by learned counsel for the petitioners that although award was passed on 3.12.2012, the amount of compensation was not paid before coming into force of the New Act and thus, as per Section 24 of the New Act, the petitioners are entitled to compensation in accordance with the

provisions of the New Act.

8. The learned A.G.P. submitted that, in the present matter, the award is not more than five years old before the passing of the New Act which came into force on 1.1.2014. According to the A.G.P., sub-section (1)(b) of Section 24 applies to the present matter and the proceedings are liable to be continued under the Old Act. It has been argued that, the proviso of Section 24 is proviso of sub-section (2) and not the whole section and thus, compensation is not required to be fixed as per the New Act.

9. Section 24 of the New Act reads as follows :

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases :-

(1) Notwithstanding anything contained in this 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 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.

(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 been 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 beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

10. This Court has dealt with the submissions made by the learned A.G.P. earlier also in the matter of Dilip Narayan Chaudhari & others Vs. The State of Maharashtra & others (Writ Petition No.2390 of 2015 and other connected petitions), to which one of us (R.M. Borde, J.) was party. It was observed in para 22 of the said judgment as under :

22. In the instant matter, acceptance of proposition of the learned A.G.P., that the proviso to subsection (2) of Section 24 would be attracted in the cases wherein award has been made under Section 11 of the Land Acquisition Act five years or more prior to the commencement of the Act of 2013, would lead to absurd situation. Subsection (2) of Section 24 explains conditions prerequisite for deemed lapsing of the proceedings of acquisition. In the event of declaration of an award under Section 11 of Act of 1894, five years or more prior to the commencement of the Act of 2013, subject to the conditions that physical possession of the land has not been taken or compensation has not been paid. Whereas, proviso to subsection (2) deals with holding the claimants entitled to compensation in accordance with the provisions of Act of 2013 in the

event of failure of the State or the acquiring body in making payment of compensation to the majority of land holders. The consequences specified in the proviso as well as subsection (2) are different, whereas, contingencies specified for lapsing under subsection (2) are also different. In a way, proviso to subsection (2) deals with a totally different situation which is not contemplated under subsection (2). Under subsection (2) of Section 24, even if a single claimant satisfies the requirement i.e. declaring of an award under Section 11 of the Act of 1894, five years or more prior to the commencement of Act of 2013 together with fulfillment of requirement of failure of the acquiring body or the State to take possession of the land or payment of compensation, consequence of lapsing of acquisition shall follow. Whereas, proviso to subsection (2) deals with cases not of a single individual but cases where majority of the land holders have not been paid compensation or the amount has not been deposited in the account of the beneficiaries and consequences thereof would be entitlement of those claimants to receive compensation in accordance with provisions of the Act of 2013.

It was further observed in para 24 as follows :

24. It is, thus, clear, as has been stated above, the proviso to subsection (2) operates in different situations and contingencies and in fact does not subtract or except anything from subsection (2) of Section 24. It is true that normal function of the proviso is to provide for an exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment.

11. Thus, what is styled as proviso is actually a stand alone provision. Keeping in view the above observations and having again re-looked at section 24, we find that the said proviso of Section 24 of New Act can be read not merely with

sub-section (2) but also with sub-section (1)(b) in the different contingencies which are required to be considered.

12. In the present matter, there is no dispute regarding the fact that the award has been passed on 3.12.2012. In view of our directions, additional affidavit has been filed by the respondents No.2 and 3 dated 7.1.2016, which shows that, compensation has been paid to the farmers in the present acquisition on 10.9.2014 and 18.9.2014. This would be after coming into force of the New Act on 1.1.2014. Keeping these aspects in view and considering Section 24, it is clear that, the award passed has not been made five years or more prior to the commencement of the New Act. Thus, sub-section (2) of Section 24 does not apply. What applies is sub-section (1)(b) that an award under Section 11 was already made before 1.1.2014. Considering the proviso below Section 24, although award had been made, compensation in respect of majority of land holdings had not been made or deposited in the Account of the beneficiaries when the New Act came into force on 1.1.2014. In view of this, the respondent Land Acquisition Officer is obliged to determine amount of compensation payable to the petitioners in accordance with the provisions of the New Act.

13. For the above reasons, we direct the respondent Land

Acquisition Officer to re-determine 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 as expeditiously as possible, preferably within a period of six months from today.

14. Rule is made absolute accordingly. There shall be no order as to costs.

15. In view of disposal of the Writ Petition, Civil Application No.14322/2013 stands disposed of.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)