

WRIT PETITION NO.548 OF 2017

Petitioners

Respondents

Mr. Y.S. Choudhari advocate for the petitioners
Mr. S.B. Yawalkar, AGP for Respondent No.1 to 4

CORAM : V.M. KANADE &
SANGITRAO S. PATIL, JJ

(Date : 20th January, 2017.)

PER COURT :-

1 Heard learned counsel for the petitioners.

2 Petitioners are seeking appropriate, order or directions for quashing Notice dated 30.12.2016 issued by respondent No.3, directing them to hand over the possession of the land for the purpose of acquisition for creation of new road.

3 Acquisition proceeding was initiated in 1994. The petitioners had challenged the Acquisition Proceeding by filing Writ Petition in this Court. The said Writ Petition was dismissed. Thereafter, petitioner filed another petition, challenging the acquisition on the ground that the provisions of Section 24(2) of The Right to Fair

Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 have not been followed. Learned AGP made a statement that compensation would be paid as per the new Act. Thereafter, Award was passed. Counsel appearing on behalf of the petitioner submitted that, petitioners have not received the amount which has been calculated by the Special Land Acquisition Officer. Secondly, it is submitted that they have not been rehabilitated and resettled as per the provisions of Sections 37 and 38 of the said Act. It is stated that, therefore, the impugned Notice may be quashed and set aside. It is submitted that, the land which is to be acquired is residential house. He has invited our attention to sections 24, 31 and 38 of the New Act.

4 It is not possible to accept the said submission. We have perused the Award passed by the Special Land Acquisition Officer. The Special Land Acquisition Officer has, in para No.8 of the Award clearly stated that, compensation has been calculated as per the provisions of Sections 26 to 30 and also as per the guidelines laid down under the second schedule to the Act. Section 31 of the said Act lays down that, the Collector shall pass orders in respect of rehabilitation, resettlement Award for each affected family, in terms of the entitlements provided under the second schedule.

5 Section 38 lays down powers of the Collector to take possession of the land. Section 38 reads as under:-

" Section 38. Power to take possession of land to be acquired – (1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the second schedule commencing from the date of the award made under section 30.

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the land acquired.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

6 Perusal of the section indicates that, rehabilitation and resettlement entitlements are to be paid to the entitled persons within a period of three months for the compensation and a period

of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule.

7 The submission of learned counsel for the petitioners that resettlement and rehabilitation entitlements are to be paid before taking possession, therefore, cannot be accepted. Moreover, perusal of the Award indicates that, the Special Land Acquisition Officer appears to have considered the said rehabilitation and resettlement entitlements. The Notice dated 30.12.2016 also mentions that, the amount of compensation payable to the petitioners is available and can be withdrawn by petitioners, without prejudice to their rights and contentions. Learned counsel for the petitioners submitted that, however, petitioners have not received the monetary compensation.

8 In our view, this can be taken care of by directing the respondents to pay monetary compensation within two weeks from today, without prejudice to the rights and contentions of the petitioners and without prejudice to their right to file a reference to the Reference Court. We direct the Special Land Acquisition Officer or the competent authority to consider the claim of the petitioners for rehabilitation and resettlement entitlements in accordance with law, if it is not already decided by the Special

Land Acquisition Officer.

9 At this stage, learned counsel appearing for the petitioners submits that, some time may be given to petitioners to hand over the possession, since the land which has been acquired is residential house. He submitted that the petitioners shall give an undertaking to that effect within one weeks. Said undertaking is to be given in the usual form, on usual terms. Undertaking should state that it is binding on all the occupants of the said house and that they will hand over peaceful possession of the property to the Government after expiry of eight weeks. If undertaking is not filed within one week by both the petitioners, then the Collector may take possession of the house.

10 With these directions, petition is disposed of.

(SANGITRAO S. PATIL, J)

(V.M. KANADE, J)