

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1722 OF 2017

- 1 Jairam Gangaram Burke, Aged 80 **Petitioners**
 years, Occupation Agriculture,
- 2 Usha Sakharam Burke, Aged 60 years,
 Occupation Agriculture,
- 3 Madhukar Savleram Waghmare, Aged 69
 years, Occupation Agriculture,
- 4 Dadasaheb Nathu Gite, Aged 50 years,
 Occupation Agriculture,
- 5 Karbhari Nathu Gite, Aged 50 years,
 Occupation Agriculture,
- 6 Balasaheb Pandharinath Dongare, Aged
 53 years, Occupation Agriculture,
- 7 Murlidhar Gangaram Burke, Aged 80
 years, Occupation Agriculture,
- 8 Gorakshanath Jairam Burke, Aged 37
 years, Occupation Agriculture,
- 9 Sandip Valiba Burke, Aged 35 years,
 Occupation Agriculture,
- 10 Sachin Valiba Burke, Aged 35 years,
 Occupation Agriculture,

- 11 Raghunath Pandharinath Dongare, Aged 67 years, Occupation Agriculture,
- 12 Subhash Ravsaheb Dongare, Aged 25 years, Occupation Agriculture,
- 13 Surekha Ramesh Navale, Aged 26 years, Occupation Agriculture,
- 14 Seema Sainath Navale, Aged 24 years, Occupation Agriculture,
- 15 Bebi Ravsaheb Dongare, Aged 55 years, Occupation Agriculture,
- 16 Ramnath Pandharinath Dongare, Aged 62 years, Occupation Agriculture,
- 17 Prabhu Pandharinath Dongare, Aged 60 years, Occupation Agriculture,
- 18 Annasaheb Savleram Waghmare, Aged 52 years, Occupation Agriculture,
- 19 Ayubkhan Eliyas Khan Pathan, Aged 52 years, Occupation Agriculture,
- 20 Firozkhan Eliyas Khan Pathan, Aged 50 years, Occupation Agriculture,
- 21 Valiba Gangaram Burke, Aged 75 years, Occupation Agriculture,
- 22 Murlidhar Gangaram Burke, Aged 80 years, Occupation Agriculture,
- 23 Khandu Bhagwat Waghmare, Aged 48 years, Occupation Agriculture,

- 24 Ramdas Bhagwat Waghmare, Aged 40 years, Occupation Agriculture,
- 25 Laxmibai Bhagwat Waghmare, Aged 65 years, Occupation Agriculture,
- 26 Vitthal Savleram Waghmare, Aged 75 years, Occupation Agriculture,
- 27 Laxman Hari Waghmare, Aged 75 years, Occupation Agriculture,
- 28 Ramchandra Bhimaji Gite, Aged 60 years, Occupation Agriculture,
- 29 Shakuntala Ramchandra Waghmare, Aged 40 years, Occupation Agriculture,
- 30 Raghunath Sitaram Thatar, Aged 48 years, Occupation Agriculture,
- 31 Dinesh Rajaram Thatar, Aged 40 years, Occupation Agriculture,
- 32 Sanjay Tarachand Gaikar, Aged 42 years, Occupation Agriculture,
- 33 Santosh Vishnu Gaikar, Aged 41 years, Occupation Agriculture,
- 34 Kacharu Govind Thatar, Aged 40 years, Occupation Agriculture,
- 35 Sanjivani Pani Purvatha Sanstha, Mogras through its Chairman Bhausaheb Baburao Thatar, Aged 49 years, Occupation Agriculture,

- 36 Ravsaheb Bhimaji Gite, Aged 50 years, Occupation Agriculture,
- 37 Damodhar Bhimaji Gite, Aged 82 years, Occupation Agriculture,
- 38 Yogesh Ravsaheb Gite, Aged 24 years, Occupation Agriculture,
- 39 Janabai Ravsaheb Gite, Aged 58 years, Occupation Agriculture,
- 40 Narayan Shankarrav Naikwadi, Aged 53 years, Occupation Agriculture,
- 41 Habibkhan Ahmedkhan Pathan, Aged 60 years, Occupation Agriculture,
- 42 Gaurjaha Amamulla Khan Pathan, Aged 55 years, Occupation Agriculture,
- 43 Shahid Amamulla Khan Pathan, Aged 35 years, Occupation Agriculture,
- 44 Nilofar Riyaz Shaikh, Aged 28 years, Occupation Agriculture,
- 45 Ayesha Shahrukh Shaikh, Aged 26 years, Occupation Agriculture,
- 46 Bhausahab Maruti Kshirsagar, Aged 58 years, Occupation Agriculture,
- 47 Mohansingh Sardarsingh Pardesi, Aged 70 years, Occupation Agriculture,

- 48 Ashoksingh Chattarsingh Pardesi,
Aged 58 years, Occupation
Agriculture,
- 49 Ramansingh Chalarsingh Pardeshi,
Aged 58 years, Occupation
Agriculture,
- 50 Baburao @ Babu Maruti Waghmare, Aged
75 years, Occupation Agriculture,
- 51 Bharatsingh Shankarsingh Pardesi,
Aged 70 years, Occupation
Agriculture,
- 52 Kashinath Namdev Burake, Aged 71
years, Occupation Agriculture,
- 53 Sitaram Bhimaji Gite, Aged 56 years,
Occupation Agriculture,
- 54 Bhanudas Ravsaheb Jadhav, Aged 55
years, Occupation Agriculture,
- 55 Shivaji Ravsaheb Jadhav, Aged 40
years, Occupation Agriculture,
- 56 Tanaji Ravsaheb Jadhav, Aged 45
years, Occupation Agriculture,
- 57 Ganpat Bhagwanta Jadhav, Aged 56
years, Occupation Agriculture,
- 58 Chandrabhaga Ravsaheb Jadhav, Aged
70 years, Occupation Agriculture,

Petitioner Nos.1 to 26, 40 to 46, 52
are resident of Pangari
Petitioner Nos.27 to 39, 47 to 51
and 53 are resident of Mogras, and
Petitioner Nos.54 to 58 are resident
of Bholewadi, Taluka Akole, District
Ahmednagar

V E R S U S

- 1 The State of Maharashtra, Through **Respondents**
its Secretary, Revenue & Forest
Department, Mantralaya, Mumbai – 32
- 2 The Land Acquisition Officer and the
Suib Divisional Officer, Sangamner
Division, Sangamner, Taluka
Sangamner, District Ahmednagar

Mr. S.K. Shinde, Advocate for the petitioners
Smt. Vaishali H. Patil, A.G.P. for the respondents/State

CORAM : S.V.GANGAPURWALA AND
K.L. WADANE, JJ.
DATE : 2nd MARCH, 2017

ORAL JUDGMENT (PER : S.V. GANGAPURWALA, J.) :

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

2. In the present Writ Petition, the Award in
favour of the petitioners is passed on 8th February,

2016 and 8th March, 2016 i.e. after coming into force the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (**hereinafter referred as 'Act of 2013'**). The petitioners filed a reference petition before the competent authority under Section 64 of the said Act, 2013. The same is returned back on the ground that the Award is passed under the old Act.

3. The Act of 2013 came into force on 1st January, 2014. Upon enforcement of the Act of 2013, the Land Acquisition Act, 1894 stood repealed. Section 114 (1) of the Act of 2013 specifically repeals the Land Acquisition Act, 1894. Sub-Section (2) of Section 114 of the Act of 2013 suggests that the repeal under Sub-Section (1) shall not be held to prejudice or affect general application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeals. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceeding unaffected which commenced under the

unrepealed provisions unless contrary intention is expressed.

4. Section 24 of the Act of 2013 takes various contingencies within its ambit. Sub-Section (1) of Section 24 of the Act of 2013 would be beneficial for arriving at a conclusion about passing of the Award. Section 24 (1) of the Act, 2013, reads as under :-

“(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.”

5. Section 24(1)(a)&(b) of the Act of 2013 deals with two eventualities, first; no award under section

11 of the Land Acquisition Act, 1894 has been made, then all provisions of the Act of 2013 relating to determination of compensation shall apply, and second; Award under section 11 has been made, then such proceeding shall continue under the provisions of the Land Acquisition Act, 1894 as if the said Act has not been repealed.

6. Reading Section 24(1)(a)&(b) of Act of 2013, it is abundantly clear that it is only in those cases where Award under Section 11 of the Land Acquisition Act, 1894 is passed then the proceedings would continue under the Act of 1894 as if the said Act has not been repealed. It thereby suggests that in case the Award has not been passed under Section 11 of the Act of 1894, then all provisions of the Act of 2013 relating to determination of compensation and passing of Award shall apply. The applicability of provisions of the Act of 1894 would continue to apply only if the Award under Section 11 of the Act of 1894 is passed and not otherwise. If prior to the repeal of Act of 1894, the Award is not passed, then the proceedings

completed till the stage of repeal of the Act of 1894 are saved. However, further proceeding i.e. determination of compensation and passing of Award will have to be under the Act of 2013. The said interpretation would be in consonance and in tune with reading Sections 24 and 114 of the Act of 2013 harmoniously. The legislative intent under Clauses (a) and (b) of Sub-Section (1) of Section 24 of the Act of 2013 is abundantly clear. Any other interpretation would be doing violence to the provisions as engrafted under Sections 24 and 114 of the Act of 2013.

6. The Apex Court in the case of ***Aligarh Development Authority Versus Megh Singh and others***, reported in ***(2016) 12 Supreme Court Cases 504*** has observed that as the Award has not been passed under 1894 Act, the land acquisition proceedings would continue but with rider that the Award will have to be passed and compensation determined under the provisions of the 2013 Act.

7. In the said case, before the Apex Court Notification under Section 4 (1) of the Land Acquisition Act, 1894 was issued on 09.08.2004. Emergency clause was also invoked under the provisions of Section 17 followed by Section 6 declaration dated 03.08.2005. The Court observed that the Award was not passed. The Land Acquisition proceedings would continue, but with the rider, the Award will have to be passed and compensation determined under the provisions of the Act of 2013.

8. In the instant case, the title of the Award itself says that the Award is under Section 24 of the Act of 2013. As observed *supra*, on passing of the Act of 2013, the Land Acquisition Act, 1894 stands repealed. If the proceeding for acquisition is commenced under the Act, 1894, the acquisition may not necessarily lapse, however, if Award is passed after the introduction of the Act of 2013, the Award will have to be passed under the new Act.

9. Once we conclude that after enforcement of Act, 2013, the Award has to be passed under Act, 2013 though proceedings may have commenced earlier, then the proceedings for enhancement of compensation will have to be taken up under Section 64 of the Act of 2013. It appears that the compensation is computed under the Act of 2013 while passing the Award. As the Award is passed after the introduction and enforcement of the Act of 2013, the Award necessarily has to be passed under Act of 2013. The reference for enhancement of compensation shall have to be filed and entertained in accordance with the provisions of Act of 2013.

10. The impugned order is accordingly quashed and set aside. In case there is no other impediment, the respondent-authority shall accept the reference filed by the petitioners under Section 64 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, and refer it to the Arbitrator as required under Act, 2013.

11. Rule made absolute in above terms. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)

SRM/2/3/17