

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5870 OF 2016

Smt. Nilima Mahesh Bhole,
Age : 33 years, Occu. Agri.,
R/o Asoda, Taluka and
District Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Revenue Ministry,
Mantralaya, Mumbai
2. The District Collector
(Land Acquisition),
Jalgaon, Dist. Jalgaon
3. The Special Land Acquisition
Officer (1)
Upper Tapi Project Hatnur,
Jalgaon/Sub-Divisional Officer,
Jalgaon, District Jalgaon
4. The Executive Engineer,
Waghur Project Division,
Jalgaon

RESPONDENTS

Mr. A.B. Kale, Advocate for the Petitioner
Smt. A.V. Gondhalekar, A.G.P. for respondent Nos. 1 to 3
Smt. Chaitali Kutti-Choudhary, Advocate for
respondent No. 4

CORAM : T.V. NALAWADE AND
SANGITRAO S.PATIL, JJ.

JUDGMENT RESERVED ON : 14th FEBRUARY, 2017
JUDGMENT PRONOUNCED ON : 6th MARCH, 2017

JUDGMENT (PER : SANGITRAO S. PATIL, J.) :

Rule, returnable forthwith. With the consent of the learned counsel for the petitioner, learned A.G.P. and the learned counsel for respondent No. 4, heard finally.

2. The petitioner has sought quashment of the acquisition proceedings bearing No. 3 of 2008 to the extent of 20 Ares of her land out of block no. 2284, situate at village Asoda, Taluka and District Jalgaon as well as the notice dated 23.05.2016, issued by respondent No. 3 – Special Land Acquisition Officer for taking possession of the said land with the help of police.

3. The learned counsel for the petitioner submits that the notice under Section 4 of the Land Acquisition Act, 1894 ("the Act of 1894", for short), for acquisition of land of the petitioner was published in the gazette of the Government of Maharashtra on 18.07.2013. Prior to that, (i.e. on 05.07.2011), the petitioner had purchased the said land from one Pandurang Bhole for a valuable consideration of Rs.3,80,000/-. The notice under Section 4 was not served on the petitioner. Respondent no.3–Special Land Acquisition Officer issued notice under sub-sections (3) and (4) of Section 9 to Ramkrushna Bhole, but not

served to the petitioner though her name was mutated in the record of rights of her land in the year 2011 itself. Respondent no.3 further issued notice under sub-section (2) of Section 12 on 23.05.2015, whereby it was communicated to the petitioner that the amount of Rs.3,41,280/- was fixed as a compensation for acquisition of her land and that she might accept the said amount under protest. The petitioner noticed that 200 pomegranate trees standing on her land were not considered by respondent no.3 while fixing the amount of compensation. She made representations to respondent no.3 and also to respondent no.4 - Executive Engineer, Waghur Irrigation Project, Division Jalgaon to make necessary enquiry and grant compensation in respect of her 200 pomegranate trees. However, no cognizance was taken of those representations. When the petitioner approached the office of respondent no.3 on 02.06.2016 for making enquiry, at that time respondent no.3 served upon her a final notice dated 23.05.2016, thereby threatening her that she should accept the amount of compensation or it would go back to the State Government and possession of her land would be taken with the assistance of the police force.

4. The learned counsel for the petitioner submits

that respondent No. 3 has passed the award under section 11 of the Act of 1894 on 10.05.2015. According to him, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the Act of 2013") came into force on 01.04.2014. Therefore, the award could not have been passed on 10.05.2015 under the provisions of the Act of 1894. He submits that since no acquisition proceedings were initiated under the Act of 1894 prior to commencement of the Act of 2013, neither possession of the land of the petitioner has been taken nor compensation has been paid to her prior to commencement of the Act of 2013, the acquisition proceedings initiated under the Act of 1894 would stand vitiated. He, therefore, submits that the acquisition proceedings in respect of the land of the petitioner may be quashed and set aside. In support of this contention, he relied on the cases of ***Pune Municipal Corporation & another Versus Harakchand Misirimal Solanki & others, 2014(3) SCC 183, B. Anjanappa and Others Versus Vyalikaval House Building Co-operative Society Limited and Others, 2012(10) SCC 184 and Kusumbai Narayanrao Jadhav and others Versus State of Maharashtra and others, W.P.No.8854 of 2015*** decided by this Court on 23.06.2016.

5. Respondent no.3 filed reply and opposed the petition. The learned A.G.P. representing the respondents submits that the acquisition proceedings for the Canal of Waghur Irrigation Project were started in the year 2008. The joint measurement of the lands proposed to be acquired was taken by the Taluka Inspector, Land Records of Jalgaon. He prepared the measurement map. In that map no pomegranate trees were shown in the land of the petitioner. She submits that the notice under Section 4 of the Act of 1894 was published in the Gazette of Maharashtra State on 18.07.2013. The enquiry under Section 5A was conducted by respondent no.3, but nobody raised any objection in respect of pomegranate trees. The declaration under Section 6 of the Act of 1894 was published by respondent no.3 on 18.07.2014. Ultimately the Award came to be made under Section 11 of the Act of 1894 on 10.05.2015. The learned A.G.P. submits that though the Award is shown to have been passed under Section 11 of the Act of 1894, in fact, the amount of compensation has been determined by respondent no.3 under the provisions of the Act of 2013. She submits that in view of the provisions of Section 24 of the Act of 2013, since no award was passed prior to 01.01.2014, the petitioner was, at the most, entitled to get compensation as per the provisions of the

Act of 2013, which benefit has been given to her. If the petitioner has any grievance in respect of the contents of the Award as well as the quantum of compensation, she may approach the reference Court. The learned A.G.P. submits that the acquisition proceedings in respect of the petitioner have been legally conducted. She, therefore, prays that the Writ Petition may be dismissed.

6. In order to consider the controversy between the parties, it would be necessary to refer to certain dates disclosed from the Award dated 10.05.2015 which are as under :-

Date	Descriptions
18.07.2013	Publication of notice under Section 4 in the Gazette of Maharashtra State
07.01.2014	Publication of notice under Section 4 in "Daily Tarun Bharat"
11.01.2014	Publication of notice under Section 4 in "Daily Raghunandan"
10.12.2013	Inspection of land and hearing of objections under Section 5A
26.03.2014	Declaration made under Section 6
22.05.2014	Notice under Section 9 (1), (2), (3) and (4)
10.05.2015	Award passed under Section 11 of the Act of 1894

7. Here, it would be necessary to reproduce the provisions of section 24 of the Act of 2013, which read as under :-

"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,--

(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, 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 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."

8. From the bare reading of sub-section (1) of Section 24 of the Act of 2013, it is clear that for making applicable the provisions of sub-clauses (a) and (b) as well as sub-section (2), it is a precondition that the land acquisition proceeding should be initiated under the Act of 1894. Therefore, it would be necessary to ascertain as to when the acquisition proceedings can be said to have been initiated. For deciding the term "initiation of acquisition proceedings", it would be essential to refer to sub-section (1) of Section 4 of the Act of 1894, captioned with the head note "Publication of preliminary notification and powers of officers thereupon" which reads as under :-

"4.(1) Whenever it appears to the appropriate Government, the Commissioner, or Land Acquisition Officer that land in any locality is needed or is likely to be needed for any public purpose, or for a Company a notification to that effect, shall be published in the Official Gazette and in two daily news papers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification."

The purpose of the notice under Section 4 of the Act of 1894 has been clarified by the Hon'ble Apex Court in para 12 of the judgment in the case of **Babu Barkya Thakur Vs. State of Bombay (now Maharashtra) and others, AIR 1960, S.C.1203**, in the following words :-

"The purpose of the notification under S.4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under S.6 that a firm declaration has to be made by Government that land with proper description and area so as to be

identifiable is needed for a public purpose or for a Company. What was a mere proposal under S.4 becomes the subject matter of a definite proceeding for acquisition under the Act."

9. In para 8 of the said judgment, it has been observed as under:-

"Once the declaration under Section 6 has been made, it shall be conclusive evidence that the the land is needed for a public purpose or for a Company. Then follow the usual proceedings after notice is given to the parties concerned to claim compensation in respect of any interest in the land in question; and the Award after after making necessary investigation as to claims to conflicting title, the compensation to be allowed in respect of the land, and, if necessary, apportionment of the amount of compensation amongst the persons believed to be interested in the land under acquisition."

10. In the case of ***Patel Gandlal Somnath and others V. State of Gujarat and others, AIR 1963, Gujarat 51***, the Division Bench of the Court, in para 12 of the judgment, stated that the notification under Section 4 is merely an introductory measure. It is tentative in its nature and there is no finality or immutability about it. It is of an exploratory character and it does not prio motu result in acquisition. After reproducing the above referred

observations of the Hon'ble Supreme Court, the High Court explained thus:-

"The notification under Section 4 has, therefore, no consequence beyond initiating a proposal for acquisition of land in any particular locality. The proposal for acquisition of land in any particular locality ripens into a definite proceeding for acquisition of a particular land where the Government is satisfied that the particular land is needed for a public purpose or for a Company, subject of course to the provisions of part VII in case of acquisition of land for a Company. Before the Government can be so satisfied there is a provision made in Section 5A for the making of objections by persons interested in the land and for the Collector. Before "what was a mere proposal under Section 4 becomes the subject matter of a definite proceeding for acquisition" under Section 6, persons interested in the land are given an opportunity of putting forward their objections to the acquisition and the objections so made are required to be heard in the manner prescribed by Section 5A."

11. In view of the legal position stated above, the publication of notice under Section 4 of the Act of 1894, would not tantamount to initiating the acquisition proceedings. The land acquisition proceedings can be said

to have commenced after the declaration under Section 6 of the said Act is made. In the present case, the declaration under Section 6 admittedly has been made on 18.07.2014. If that be so, it cannot be said that the land acquisition proceedings were initiated under the Act of 1894 on the date of commencement of the Act of 2013 i.e. on 01.4.2014. Consequently, the provisions of Section 24 would not be applicable to the facts of the present case. After commencement of the Act of 2013 on 01.01.2014, the land acquisition proceedings in respect of the land of the petitioner were not liable to be initiated and continued under the Act of 1894, which, in fact, was repealed vide sub-section (1) of section 114 of the Act of 2013. Consequently, the proceedings initiated by respondent no.3 in respect of the land of the petitioner on 18.07.2014, as per the provisions of the repealed Act of 1894 cannot be said to be legal and sustainable in the eye of law. The Award passed by respondent no.3 on 10.05.2015 under Section 11 of the Act of 1894 cannot be said to be a legally enforceable award, so far as the land of the petitioner is concerned, though the amount of compensation is stated to have been determined under the provisions of the Act of 2013.

12. In the judgments cited by the learned counsel for the petitioner, the acquisition proceedings were initiated and Award also were passed under the provisions of the Act of 1894, prior to the commencement of the Act of 2013. Consequently, the said judgments would not be applicable to the facts of the present case.

13. In the above circumstances, we quash and set aside the acquisition proceedings bearing No.3 of 2008 including the Award dated 10.05.2015, in respect of the land of the petitioner. The respondents would be at liberty to initiate the acquisition proceedings in respect of the land of the petitioner under the provisions of the Act of 2013, if desired.

14. The Rule is made absolute in the above terms. The Writ Petition is accordingly allowed and disposed of. No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**T.V. NALWADE**]
JUDGE

npj/mandawgad