

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9941 OF 2016

1. Sachin s/o Ananda Patil,
Age : 30 years, Occu.: Agri.,
2. Bhagwan s/o Sahebrao Badgujar,
Age : 50 years, Occu.: Agri.,
3. Atmaram s/o Kukudu Patil,
Age : 55 years, Occu.: Agri.,
4. Bhagwan s/o Jagannath Patil,
Age : 58 years, Occu.: Agri.,
5. Rajdhar s/o Ramdas Badgujar,
Age : 70 years, Occu.: Agri.,
6. Sambhaji s/o Devidas Patil,
Age : 29 years, Occu.: Agri.,
7. Bhagwat s/o Tulshiram Patil,
Age : 40 years, Occu.: Agri.,
8. Ramdas s/o Sambhu Patil,
Age : 72 years, Occu.: Agri.,
9. Maharu s/o Chaitraram Patil,
Age : 50 years, Occu.: Agri.,
10. Fulchand s/o Mahadu Patil,
Age : 52 years, Occu.: Agri.,

All r/o. Samaner, Tq. Pachora,
District Jalgaon

..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through District Collector,
Jalgaon, District Jalgaon
2. The Special Land Acquisition Officer,
Jalgaon (3) Upper Tapi Project,
Hatnoor, District Jalgaon

3. The Executive Engineer,
Building and Construction
(P.W.D.) Department, Jalgaon
District Jalgaon
4. The Desk Officer (Road-3),
Building and Construction
Department, Mantralaya,
Mumbai - 32

..RESPONDENTS

Mr. P.B. Rakhunde, Advocate for the Petitioners
Smt.A.V.Gondhalekar, A.G.P. for the respondents/State

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

**Reserved On : 27th FEBRUARY, 2017
Pronounced On: 1st MARCH, 2017**

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

Rule, returnable forthwith. With the consent of the learned counsel for the petitioners and the learned A.G.P. representing the respondents, heard finally.

2. The admitted facts, in brief, are that the lands of the petitioners came to be acquired by respondent no.3 - Executive Engineer, Building and Construction (P.W.) Department, Jalgaon, for construction of a bridge at village Samner, Taluka

Pachora, District Jalgaon, on Jalgaon to Pachora Road. Possession of the lands of the petitioners was taken by private negotiations on 12.06.1997. However, the notice under Section 4 (1) of the Land Acquisition Act, 1894 ("the Act of 1894", for short) was issued on 11.01.2013. The declaration under Section 6 of the Act of 1894 was made on 26.02.2013. The public notice under Section 9(1) and (2) was given on 24.05.2013. The Award under Section 11 of the Act of 1894 came to be passed on 05.12.2013, however, the amount of compensation was not paid to the petitioners. Therefore, the petitioners filed Writ Petition No.8495 of 2015, seeking directions against respondent nos.2 and 3 to pay compensation to them. This Court passed an order on 16.12.2015 and directed the said respondents to deposit the amount payable to the petitioners under the Award dated 05.12.2013, together with interest and other benefits in this Court, within a period of eight weeks from the date of the said Award. Accordingly, the said respondents deposited amount of compensation payable to the petitioners in this Court, which was ultimately received by them on 04.03.2016.

3. According to the learned Counsel for the

petitioners, since the amount of compensation was not paid to the petitioners on or before the date of commencement (i.e. 01.01.2014) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act of 2013", for short), in view of the proviso given under sub-section (2) of Section 24 of the Act of 2013, the petitioners are entitled to get compensation as per the provisions of the Act of 2013. In support of this contention, he placed reliance on the decision in the case of ***Pune Municipal Corporation and Another vs. Harakchand Misrimal Solanki and others***, 2014 (4) ***Mh.L.J.***, (S.C.) 566 = (2014) 3 ***SCC*** 183.

4. On the other hand, the learned A.G.P., relying on the contentions raised in the reply filed on behalf of respondent no.2— Special Land Acquisition Officer, submits that since the Award in respect of lands of the petitioners has not been passed under Section 11 of the Act of 1894, five years or more prior to the commencement of the Act of 2013 and since possession of the lands of the petitioners has been taken in the year 1997 and the amount of compensation also has been paid

to them, the proviso under sub-section (2) of Section 24 of the Act of 2013 would not apply to the facts of the present petition and petitioners would not be entitled to get compensation in accordance with the provisions of the Act of 2013. The learned A.G.P. relying on the judgment in the case of **Babasaheb Eknath Wakchaure and others vs. The State of Maharashtra and others, 2017(1) Mh.L.J. 925**, prays that the Writ Petition may be dismissed.

5. We have considered the rival contentions of the parties with reference to the documents produced on record. In our opinion, the issue involved in this petition is no more *res integra*, in view of the Full Bench judgment of the Nagpur Bench of this Court in **Dayaram Bhondu Koche and others vs. The State of Maharashtra and others, 2017(1) Mh.L.J. 487**, wherein the following question was framed for consideration;

“Whether proviso to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is also applicable to the Awards which are covered under Clause (b) of sub-section (1) of Section 24 of the 2013?”.

After considering the rival contentions of the parties, this Court answered the above referred question in the following words:-

"For the reasons to follow, we answer the question by holding that the proviso to section 24 of the 2013 Act is also applicable to the awards which are covered under clause (b) of sub-section (1) of section 24 of the 2013 Act. Resultantly, we hold that all such beneficiaries, whose names are specified in notification under section 4 of the Land Acquisition Act, 1894 and in case of which the awards have been passed within a period of five years prior to the date of commencement of the 2013 Act and wherein the compensation as construed by the Hon'ble Supreme Court in the case of *Pune Municipal Corporation and Another vs. Harakchand Misrimal Solanki and others*, 2014(4) Mh.L.J. (S.C.) 566 = (2014) 3 SCC 183, is not paid to the majority of the beneficiaries would also be entitled to the compensation as per the 2013 Act."

6. Here, reference may conveniently be made to the judgment in the case of ***Dilip Narayan Chaudhari & Ors. Vs. State of Maharashtra, Water Resources Department & Ors.***, 2016 (1) LJSOFT 71 = 2016 (3) ALL MR 890, wherein the facts were that the Award under Section 11 of the

Act of 1894 was passed on 17.07.2013, the possession of the lands subject matter of the Award was not taken over by the acquiring body. The majority of the petitioners therein had not been paid the amount of compensation. Therefore, the petitioners therein had claimed that in view of the provisions of Section 24 (2) of the Act of 2013, the acquisition proceedings should be deemed to have lapsed. This Court considered the rival contentions in detail with reference to the provisions of Section 24 of the Act of 2013 and held that the acquisition proceedings would not be deemed to have lapsed and the petitioners would be entitled to get compensation in accordance with the provisions of the Act of 2013. This Court observed in para 31 as under:

"31.

In view of the recent pronouncement of the Hon'ble Supreme Court, as quoted above, the argument advanced by learned Assistant Government Pleader that the scope of proviso shall have to be read in the context of subsection (2) of Section 24; and that it applies only in a case where award has been declared five years or more prior to the enforcement of Act of 2013, is not a sound proposition. As has been held by the Hon'ble

the Supreme Court, the proviso has no effect so as to exclude from main enactment by implication, which clearly falls within its express terms and as such, contention of the State that the proviso shall have to be read as excepting something out of the provisions of sub-section (2) of Section 24, does not deserve acceptance. Considering the language of the proviso, it has to be construed as a stand alone proviso independent of sub-section (2) of Section 24 of the Act of 2013."

7. In the present case, though possession of the lands of the petitioners was taken in the year 1997, the amount of compensation was not paid to them as contemplated by the Hon'ble Apex Court in the case of **Pune Municipal Corporation and Another** (supra), on or prior to commencement of the Act of 2013, the subsequent payment to the petitioners on 04.03.2016, would have no adverse affect on the right of the petitioners to claim compensation in accordance with the provisions of the Act of 2013.

8. The judgment in the case of **Babasaheb Eknath Wakchaure and others** (supra), cited by the learned

A.G.P. has no bearing at all on the facts of the present case. Since the Award in that case was passed on 10.03.1997, in that case ultimately this Court held and declared that the land acquisition proceedings in respect of the lands of the petitioners therein stood lapsed. This judgment is of no help to the respondents to deny the claim of the petitioners.

9. In the result, we pass the following order.

O R D E R

(i) The respondents are directed to determine and pay the amount of compensation with interest, as admissible under the law, to the petitioners in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of six months from today.

(ii) The amount of compensation that has already been paid to the petitioners shall be adjusted towards the amount payable to them in accordance with the provisions of the Act of 2013.

(iii) Rule is made absolute in the above terms and the Writ Petition is disposed of accordingly.

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

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

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