

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.10077 OF 2014
WITH
CIVIL APPLICATION NO.64 OF 2015
IN
WRIT PETITION NO.10077 OF 2014**

Rohidas Tuka Wajale	.. Petitioner
V/s	
The Sub-Divisional Officer, Sina-Madha Project	.. Respondents

WITH

CONTEMPT PETITION NO.351 of 2015

Rohidas Tuka Wajale	.. Petitioner
V/s	
Amrut Natekar, The Sub-Divisional Officer, & ors	.. Respondents

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Mr.A.M. Kulkarni with Mr.Akshay Shinde, Advocates for the petitioner.

Mrs.M.P. Thakur, AGP for respondent nos.1, 3 to 5.

Mr.Vijay Patil, Advocate for respondent no.2.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATED: 28th FEBRUARY, 2017

P.C.:-

1 The petitioner is before this Court challenging a notification issued u/s.4(1) of Land Acquisition Act, 1894 on two grounds. The first ground is the very notification u/s.4(1) of the Land Acquisition Act, 1894 which came to be gazetted on 2nd January 2014, cannot be valid in the eye of law since the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013') was already in existence with effect from 1st January 2014.

2 The second ground is that there will not be any difficulty for the department so far as the alignment of the canal if the neighboring lands of the petitioner are acquired.

3 So far as the second contention is concerned, we are of the opinion that the same cannot be taken into consideration since it is left to the expertise of the experts on the subject to decide the alignment of the canal. This Court cannot sit over the judgment of the experts because of other possibility as well. Then coming to the first contention, learned counsel for the petitioner relies upon the judgment in the case of **Urban Improvement Trust, Udaipur Vs. Bheru Lal and others, 2002(7) SCC 712**, (paras nos.10 and 18) which read as under:

“10 The publication of the notification made or prepared by the Government would be of no effect till it is published in the Official Gazette. That part of Section 4 is mandatory and is a condition

precedent for initiation of land acquisition proceedings.

18 In our view, the aforesaid submission is rightly rejected by the High Court. It has to be stated that for the purpose of acquiring the lands, publication of the notification under Section 4(1) in the Official Gazette is mandatory. If the decision taken by the Government to acquire the land is not notified in the Official Gazette, the said decision will be of no effect. As stated above, Section 4 of the Act mandates that – whenever it appears to the appropriate Government 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 acquisition process starts after publication of the notification in the Official Gazette under Section 4(1). [*Collector (District Magistrate), Allahabad Vs. Raja Ram Jaiswal and State of Haryana Vs. Rahubir Dayal*]. Therefore, publication of the notification under Section 4(1) being a condition precedent for acquisition of land, the said date is required to be taken into consideration for counting the period of limitation of one year and the previous publication of noticed in the newspapers were rightly ignored by the High Court.

4 In the present case, admittedly, the notification u/s.4(1) of the Land Acquisition Act, 1894 came to be issued on 2nd January 2014. According to the petitioner, the same is not valid. Therefore, there cannot be valid acquisition proceedings initiated in the eye of law. According to respondents' counsel, initiation of proceedings would commence from the preparation of notification which happened prior to 1st January 2014 and

formality of gazetting the said notification on 2nd January 2014 would not come in the way of acquisition proceedings. We are afraid the said argument of respondents may not be appropriate in the light of law declared by the Apex Court. In the above decision in terms of paragraph nos.10 and 18 when initiation of acquisition proceedings commenced on the day when it is gazetted. The notification being dated 2nd January 2014, the said date would be the commencement of initiation of proceedings which ought not to have been in the light of the Act of 2013 coming into force.

5 Learned counsel for the respondents also refers to sub-section (1) of Section 24 of the Act of 2013 which is also of no assistance to respondents since the very commencement or initiation of proceedings in the present case is from 2nd January 2014 after coming into force of new Act, and none of the proceedings were initiated prior to 1st January 2014. Mere preparation of notification cannot be considered as initiation of proceedings of acquisition.

6 In the light of above discussion and reasoning, Writ Petition is allowed. We declare that the so-called acquisition proceedings initiated are not valid in the eye of law.

7 It is made clear that if the land in question is absolutely needed for the completion of the canal, the respondent authorities are at liberty to proceed in accordance with the Act of 2013 starting the entire proceedings afresh. Apparently, the order of status-quo comes to an end.

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8 In the light of the disposal of the proceedings in the main matter, Contempt Proceedings are dropped.

9 In view of the disposal of the Writ Petition, Civil Application does not survive and is disposed of accordingly.

(G.S.KULKARNI, J)

(CHIEF JUSTICE)