

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

WRIT PETITION NO.10852 OF 2014

Sheetalkumar Sadashiv Zambare, Age 54 years,
Occ.Business/Agriculture, R/o.Shiv Jyoti,
2092/2, C-Ward, Shaniwar Peth,
Kolhapur-416 002.

Petitioners

versus

1. The State of Maharashtra, through
The Secretary, Revenue Department,
Mantralaya, Mumbai.

2. The Additional Commissioner, Pune Division.

3. The Sub Divisional Officer, Karvir Division.

4. The District Collector, Kolhapur.

Respondents

Mr.N.V.Bandiwadekar i/by Sagar A. Mane for petitioners.

Mr.V.S.Gokhale, AGP, for Respondents-State.

**CORAM : RANJIT MORE AND
PRAKASH D. NAIK, JJ.**

DATE : 15th February 2018

JUDGMENT - (Per : Ranjit More, J.) :-

1. Heard Mr.Bandiwadekar, learned counsel for petitioner and Mr.Gokhale, learned 'B' panel counsel for respondents. The petition was initially filed challenging declaration under Section 6 of Land Acquisition Act, 1894 ('Old Land Acquisition Act'). Since during pendency of the petition the award is passed under Section 11 of the

Old Land Acquisition Act, by amending the petition, the petitioner has challenged the award dated 15th July 2016.

2. Following are the admitted facts :

(a) Section 4 notification dated 1st January 2013 was published in Government Gazette dated 10th-16th January 2013. In this notification, following lands of the petitioner were included viz. :

Sr. No	Particulars of land/R.S.No.	Area of proposed acquisition H.R.
1	267/3 (P)	0.64
2	267/A-A(P)	0 04.20
3	267/4-B(P)	0 07.25
4	267/9(P)	0.01

(b) Section 4(1) notice was issued to the petitioner in respect of said land on 6th May 2013;

(c) The petitioner filed objections under Section 5 on 22nd May 2013;

(d) Thereafter declaration under Section 6 of the Old Land Acquisition Act was issued on 8th May 2014 and during pendency of the petition, Government passed award under Section 11 of old Act on 15th July 2016.

3. There is no dispute between the parties that The Right to Fair Compensation and Transparency in Land Acquisition, Rahabilitation and Resettlement Act, 2013 ('New Land Acquisition Act') came into effect on 1st January 2014. The short question raised in this petition

is whether after coming into force of the New Land Acquisition Act, the Government could have proceeded to acquire petitioner's lands under the Old Land Acquisition Act ?

4. Mr.Bandiwadekar, learned counsel appearing for the petitioner, took us through various provisions of Old Land Acquisition Act and New Land Acquisition Act and submitted that Section 24 of the New Land Acquisition Act, has no application in the present case. He submitted that since the award was passed under the Old Land Acquisition Act, the same is required to be quashed and set aside. He relied upon in this regard the decision of a Division Bench of this Court in case of **Nilima Mahesh Bhole Vs. State of Maharashtra and others**¹.

5. Mr.Gokhale, learned `B' panel counsel for Respondents-State opposed the petition. He also invited our attention to provisions of Section 24 of New Land Acquisition Act. He submitted that this Court will have to construe that once the notification under Section 4 is issued, the proceedings under Land Acquisition Act are deemed to have been initiated. He submitted that by making declaration under Section 6, the conclusive intention of the Government is made known to the public at large that the lands notified is required for the public purpose. He submitted that in the present case, since the land acquisition proceedings are initiated prior to the coming in force of the New Land Acquisition Act, and, therefore, further proceedings were rightly continued under the Old Land Acquisition Act. He submitted that the petition is devoid of any merit and the same deserves to be dismissed.

¹ 2017(3)-Bom.C.R.-116

6. We have considered the rival submissions of the parties. We have also gone through the petition and the annexures thereto and the decision cited at bar. In order to decide the controversy raised in the present petition, a reference must be made to provisions of Section 24 of New Land Acquisition Act, which reads as follows :

“S.24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.

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(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 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 (1 of 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.”

Bare reading of sub-section (1) of Section 24 of the New Land Acquisition Act makes it clear that for making applicable sub-clauses (a) and (b) of sub-section (1) of Section 24, the pre-condition is that land acquisition proceedings should be initiated under the Old Land Acquisition Act. Therefore, it would be necessary to ascertain as to when the acquisition proceedings can be said to have been initiated. The question which we are required to answer is whether the proceedings for acquisition of land can be said to have been initiated by publication of notification under Section 4 of Old Land Acquisition Act or declaration under Section 6 of the Old Land Acquisition Act ?

7. Similar issue fell for consideration of another Division Bench of this Court in Nilima Bhole (supra). The Division Bench after considering the provisions of relevant enactments and the decision of Hon'ble Supreme Court in case of Babu Barkya Thakur Vs. State of Bombay (AIR-1960-SC-1203) and Patel Gandadal Somnath Vs. State of Gujarat (AIR-1963-GuJ.-51) concluded that publication of notification under Section 4 or notice under Section 4(1) of the Old Land Acquisition Act would not tantamount to initiation of the acquisition proceedings. It was further held that the land acquisition proceedings can be said to have been commenced after declaration under Section 6 of the Old Land Acquisition Act is issued. This ratio of the judgment of co-ordinate Bench is perfectly applicable to the present case. Mr.Gokhale, learned 'B' panel counsel for State, could not cite any other decision in support of his contention that the

acquisition proceedings can be said to have been initiated after issuance of notification under Section 4 of Old Land Acquisition Act.

8. As stated above, admittedly Section 6 declaration was published on 8th May 2014 i.e. subsequent to the coming into force of the New Land Acquisition Act. Though the award makes reference to New Land Acquisition Act, the same is passed under Section 11 of the Old Land Acquisition Act. In above circumstances, we have no alternative but to quash and set aside the impugned award qua the petitioner. The petition is accordingly allowed in terms of prayer clauses (b) and (f1) of the petition. No order as to costs.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)

MST