

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

(65) WRIT PETITION NO.5050 OF 2018

Shyamrao s/o Karbhari Sakalkar

.. Petitioner

Versus

The State of Maharashtra,
through Chief Secretary,
Irrigation & Power Department,
Mantralaya, Mumbai and ors.

..Respondents

Mr V.M. Humbe, Advocate for petitioner

Mr P.S. Patil, Addl.G.P. for respondents no.1 to 3 and 5

Mrs R.D. Reddy, Advocate for respondent no.4

**CORAM : S.V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 30.09.2019

ORAL ORDER:

1. The petitioner has filed the present writ petition seeking directions against respondents to release the amount of compensation.

2. Mr Humbe, learned Counsel for the petitioner submits that the land of the petitioner bearing Gut Nos. 27/A, 27/C, 19/5-C and 19/5-B, were acquired. Pursuant to the application of the petitioner, the petitioner has been granted rehabilitation compensation in respect of 4 hectare 13-R land in lieu of land Gut No.27/A admeasuring 4 hectare, 13-R. The petitioner is not paid any rehabilitation compensation in respect of land Gut Nos.27/C, 19/5-C and 19/5-B and the petitioner is seeking compensation in respect of these lands as per the award passed under Section 28-A of the Land Acquisition Act.

3. The learned Counsel for petitioner further submits that the resolution dated 15.12.1983 relied by the respondents would not erode upon the rights of the petitioner.

4. The leaned Counsel for the petitioner relies on the following judgments :

- 1) Lok Prahari Vs. State of Uttar Pradesh & Ors., (2016) 8 SCC 389;**
- 2) Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries, (2008) 13 SCC 1;**
- 3) Vasant Ambadas Hanchate, Solapur Vs. State of Maharashtra and ors., 1985 Mh.L.J. 699;**
- 4) Order passed by Single Judge of High Court, Bench at Nagpur in case of Haribhau Balwanta Shingne Vs. The State of Maharashtra and ors. Writ Petition no.1425 of 2019 with Writ Petition no.1517 of 2019**
- 5) Order dated 12.8.2010 passed by Division Bench of High Court, Bench at Nagpur in case of Baliram Vs. State of Maharashtra in Writ Petition No.2260 of 2009**

5. Mrs Reddy, learned Counsel for respondent no.4 submits that the petitioner has received re-rehabilitation compensation, as such is not entitled for enhanced amount of compensation. The petitioner

has signed Form C wherein his lands acquired are referred and amount of compensation is paid. The said amount paid to him is in addition to award passed under Section 11 by the Special Land Acquisition Officer. The learned Counsel relies on Government Resolution dated 15.12.1983 to contend that the petitioner is entitled for the re-rehabilitation compensation of the area of land acquired or 4.04 hectare, whichever is less.

6. According to Mr Humbe, learned Counsel for the petitioner, the petitioner has categorically accepted Prapatra-1 wherein he agreed to receive rehabilitation compensation only in respect of land Gut No.27-A admeasuring 4 hectare, 13-R. No other land was mentioned in the said affidavit and the undertaking filed by the petitioner.

7. The affidavit and the undertaking filed by the petitioner suggest that the petitioner agreed to receive rehabilitation compensation in lieu of acquisition of Gut No.27-A admeasuring 4 hectare, 13-R.

8. In the sheet that is prepared by the authorities dated 2.7.2006, i.e. annexure to the award dated 2.7.2006, it is mentioned that re-rehabilitation compensation Rs.3,23,200/- is paid and no compensation is payable in respect of the other lands.

9. The petitioner had approached the Special Land Acquisition Officer under Section 28-A of the Land Acquisition Act, 1894. The matter was decided by the Special Land Acquisition Officer under order dated 6.11.2017 and final award under Section 28-A of the Land

Acquisition Officer came to be passed, wherein the petitioner is paid the enhanced amount of compensation in respect of land Gut Nos.27/C, 19/5-C and 19/5-B. The award under Section 28-A of the Land Acquisition Act is not passed in respect of land bearing Gut No.27/3-A for which the petitioner has been paid the rehabilitation compensation.

10. The award under Section 28-A of the Land Acquisition Act has been passed by the Special Land Acquisition Officer. The said award is also noted by respondent no.4 - Acquiring Body.

11. We had asked the learned Counsel for respondent no.4 as to whether the award under Section 28-A of the Land Acquisition Act passed by the Special Land Acquisition Officer was at any point of time assailed by the respondent - Acquiring Body or any of the respondents. The learned Counsel admits that the award under Section 28-A has not been challenged by the respondents by filing appeal or any other proceeding except an application was given to the same authority.

12. The respondents had a remedy to challenge the said award in accordance with law. The respondents did not assail the said award passed under Section 28-A of the Land Acquisition Officer. No reason is forthcoming as to why the said award passed under Section 28-A of the Land Acquisition Act was not challenged by the acquiring body. The award under Section 28-A of the Land Acquisition Act has attained finality. Unless the award passed by the Special Land Acquisition

Officer under the statutory provision i.e. under Section 28-A of the Land Acquisition Act is assailed by the respondents, the respondents are bound by the said award.

13. It would also be seen that the petitioner has submitted affidavit stating that he would not be claiming compensation in respect of 4 hectare, 13-R land. The petitioner at no material point of time had given an undertaking or affidavit that he would not file proceeding for the amount enhanced for the other land acquired.

14. In light of that, as the award under Section 28-A of the Land Acquisition Act has become final, the contention of the respondents about the Government Resolution now cannot be accepted. In light of above, the respondents shall pay the amount of compensation to the petitioner as determined under Section 28-A of the Land Acquisition Act, expeditiously.

15. Writ Petition is accordingly disposed of. No costs.

(ANIL S. KILOR, J.)

(S.V. GANGAPURWALA, J.)

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