

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.601 OF 2018**

Dilip Sitaram Vaigankar & Ors.

.... Petitioners

V/s

State of Goa, Through
Chief Secretary & Ors.

.... Respondents

Mr. Nigel Da Costa Frias & Ms. B. Kunkoliekar, Advocates for the
Petitioners.

Mr. Deep Shirodkar, Additional Government Advocate for
Respondent No.1.

Mr. Santosh H. Bharne, Advocate for Respondent No.4.

**Coram :- S. C. GUPTE &
NUTAN D. SARDESSAI, JJ.**

Date:- 28th June, 2019

ORAL ORDER : (Per S. C. GUPTE, J.)

Heard learned Counsel for the petitioners and learned
Additional Government Advocate for the respondent State.

2. The petition challenges (i) notifications issued under
Sections 4 and 6 of the Land Acquisition Act, 1894 (old Act), (ii)
award passed in the acquisition proceedings in pursuance of
such notifications, and (iii) notice issued under Section 12(2) of
the old Act pursuant to the award.

3. The grievance of the petitioners is that the acquisition notification under Section 4 of the old Act was issued on 01/08/2013; as on the date of the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("new Act"), there was no notification under Section 6 of the old Act. It is submitted that the notification under Section 6 was issued on 21/11/2014. (The new Act came into force on 01/01/2014.) It is submitted that the award was made on 24/11/2016, but it was not published or declared and its notice was not served on the petitioners till 18/05/2018. It is submitted that for the first time, by a notice dated 18/05/2018, purportedly issued under Section 12(2) of the old Act, the petitioners were notified of the award of 24/11/2016. On these facts, it is submitted that the proceedings under the old Act could not have continued after the coming into force of the new Act. It is also submitted that, at any rate, the provisions of the new Act ought to be applied to the acquisition proceedings continued after 01/01/2014. It is submitted that a notification equivalent to the one under Section 6 of the old Act should have been issued under Section 19 of the new Act and all provisions of the new Act, including the provisions relating to declaration, publication and notification of

an award, ought to have been applied in the present case.

4. These contentions clearly have no merit. Under Section 24 of the new Act, where no award under Section 11 of the old Act has been made, provisions of the new Act relating to determination of compensation apply to acquisition proceedings initiated under the old Act, and which are continued after coming into force of the new Act. This does not imply that all provisions of the new Act relating to acquisition apply to such proceedings; it is only the provisions relating to "determination of compensation" which apply. If there was any controversy in this behalf, the same has been put to rest by a Division Bench judgment of our Court in the case of **Jitesh Bhaiyalal Sahu V/s. The State of Maharashtra & Ors.**¹. In that case, the Division Bench held that merely because an award under the old Act was either not made, or was made within five years, before coming into force of the new Act, that is, before 01/01/2014, before proceedings do not lapse; and there is no requirement for fresh initiation of acquisition proceedings under the new Act. Such lapsing and fresh initiation are contemplated only in contingencies found in sub-section (2) of Section 24 and in no other case. The Division Bench made it clear that the scheme of

Section 24 does not envisage a preliminary notification under Section 11 of the new Act in cases falling under Section 24(1)(a) or the proviso to Section 24(2), but it only fastens an obligation to pay as per Sections 26 to 30 of the new Act and that too with reference to the date of Section 4 notification under the old Act.

5. As in the case of the petitioners before the Division Bench in Jitesh's case (*supra*), even the case of the petitioners here is not covered under Section 24(2) and, accordingly, they cannot claim that acquisition proceedings can only be held under the provisions of new Act.

6. Learned Additional Government Advocate, on behalf of the State, submits that as per the mandate of clause (a) of sub-section (1) of Section 24 of the new Act, the provisions of the new Act have been applied for determining the compensation in the present case. If the petitioners have any grievance in that behalf, their remedy is before the Reference Court and not by way of a writ petition before this Court.

7. Alternatively, it is submitted by learned Counsel for the petitioners that once an award is made, possession cannot

be taken under Section 38 of the new Act without payment of compensation. It is submitted that compensation must be paid within a period of three months from the date of the award. It is also submitted that there was no publication or notification of the award even within the time provided under the old Act so far as the petitioners are concerned. As we have discussed above, it is only the provisions for "determination of compensations" under the new Act, namely, Sections 26 to 30, which apply and not any other. Even provisions pertaining to disbursement or payment of compensation would not apply. Section 38 of the new Act deals with payment of compensation and not its determination. It, thus, has no application to the facts of the present case. In the present case, it is the provision of Section 12(2) of the old Act, which alone shall apply to the notification of the award. So also, the provisions of the old Act concerning payment of compensation, including the manner of such payment, will apply. As held by our Division Bench in the case of **Jitesh** (supra), the provisions of Section 12(2) are merely directory and not mandatory. Thus, there is no merit even in this part of the challenge.

8. Accordingly, there is no merit in the petition. The

petition is dismissed.

NUTAN D. SARDESSAI, J.

S. C. GUPTE, J.

NH