

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 22891 OF 2017

Sou. Nandu Ramesh Giri
Gosavi and ors. ... Petitioners.
V/s.
Government of Maharashtra,
through Department of PWD and ors. ... Respondents.

Mr. V.S. Kapse for the Petitioners.
Mr. P.P. More, AGP for Respondent Nos.1 to 5- State.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.
DATE : 3rd JANUARY 2019.

P.C.:

- 1] Heard the respective Counsel appearing for the parties.
- 2] The petitioners are objecting to the award passed by the respondents- State in respect of the lands belonging to the petitioners. The acquisition of the land is meant for purposes of laying down Four Lane Road.
- 3] It has been pointed out by the Counsel appearing for the respondents - State that the grievance raised by the petitioners in this petition will not survive since the award has already been

declared by the Sub-Divisional Officer on 14th April 2017. It is also pointed out that the Sub-Divisional Officer has determined the amount of compensation in accordance with provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “Act of 2013”). In view of declaration of award and determination of the amount of compensation payable to the claimants, the instant petition objecting to the award and resisting the acquisition of the property belonging to the petitioners for the public purpose need not be entertained. The petitioners are entitled to avail the remedies available in law for claiming enhanced amount of compensation and all the objections which can be legally raised before the Authority can be raised by the petitioners in the proceedings under reference within contemplation of Section 64 of the Act of 2013.

4] The Counsel appearing for the petitioners state that the petitioners have not received any notice as regards declaration of award nor any individual notice within contemplation of Section 23 of the Act of 2013. The petitioners are also not in receipt of the

notice from the Collector as provided under Section 21 of the Act of 2013. It is the contention of the petitioners that they gained knowledge of declaration of award only after presentation of an affidavit-in-reply by the Sub-Divisional Officer together with copy of the award declared on 14th April 2017, in the instant petition.

5] Section 64 of the Act of 2013 provides for a reference to the Authority. It is provided that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested.

6] Sub-section (2) of Section 64 of the Act of 2013 provides that the application shall be made:-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire.

The second proviso provides that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

7] In the instant matter, admittedly, the petitioners were not present or represented before the Collector at the time when the award was declared as such period of limitation provided under clause (a) of sub-section (2) of Section 64 of the Act of 2013 will not be attracted. The petitioners are also not in receipt of notice from the Collector under Section 21 of the Act of 2013 nor they have been issued notice of declaration of award and as such the period of limitation provided under clause (b) of sub-section (2) of Section 64 of the Act of 2013 may not be attracted. It has been pointed out that a notice under Section 12(2) of the Act of 1894 and within contemplation of Section 23 of the Act of 2013 has

been issued to the petitioners and as such the limitation would commence from the date of said notice dated 20th July 2017. Firstly, the notice annexed at Exhibit-H (page 67 to the petition) cannot be said to be within contemplation of Section 23 of the Act of 2013. The notice records the name of 77 individuals and the petitioners are amongst them. Section 23 of the Act of 2013 relates to enquiry and land acquisition award by the Collector. It is provided that on the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 21, to the measurements made under Section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of-

- (a) the true area of the land;
- (b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under Section 31 and which in his opinion

should be allowed for the land; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

8] In the instant matter, the particulars which are required to be intimated to the claimants within contemplation of Section 23 of the Act of 2013 does not appear to have been recorded in the notice at Exhibit-H at page 67 to the petition. The petitioners have also admittedly been not issued notice within contemplation of Section 37 of the Act of 2013. In these peculiar facts and circumstances of the case, according to us, the limitation for presenting an application seeking reference to the Collector will commence from the date of knowledge by the petitioners as regards the declaration of award which they could gather only on presentation of the affidavit in the instant petition by the Sub-Divisional Officer together with a copy of the award. It would be thus open for the petitioners to tender an application seeking reference to the Authority provided under Section 64 of the Act of 2013 and it would be obligatory for the Collector to refer the

matter for determination of the Authority. The petitioners shall file reference, if they desire, within a period of four weeks from today.

9] In view of above, Writ Petition is disposed of.

(V. L. ACHLIYA, J.)

(R.M.BORDE, J.)