

WRIT PETITION NO.2325 OF 2014

Mr.Dhairyasheel Sutar for the Petitioners.
Mr.Shailesh D.Chavan for Respondent Nos.1 and 2.
Mr.A.I.Patel AGP for Respondent Nos.3 to 5, 7 and 8.
Mr.Milind M.Sathaye for Respondent No.6.

DATE : 12TH JUNE, 2019.

- 1] Heard.
- 2] Rule. Rule made returnable forthwith. With consent of the parties, the petition is taken up for final disposal at the stage of admission.
- 3] The petitioners are joint owners of the landed properties situate at Satara which is subject matter of acquisition proceedings initiated by the State for benefit of Respondent No.6. The properties belonging to the petitioners are put under reservation in final development plan prepared for Satara in exercise of powers conferred under Maharashtra Regional and Town Planning Act, 1966. The petitioners contend that notification in exercise of powers conferred under section 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act came to be issued for acquisition of the petitioners' properties on 4th July, 2013. It is submitted that

the procedure prescribed in section 6 of the Land Acquisition Act has not been adhered to while making declaration and as such the proceedings for acquisition of land are vitiated. The petitioners also contend that even otherwise since the award has not been declared until enforcement of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioners are entitled to claim compensation for the land under acquisition in accordance with Act of 2013.

4] The Division Bench of this Court in view of the order dated 27th January, 2016 has directed that the challenge raised in this petition shall be restricted so far as ground incorporated in clause (viii) of paragraph 4 of the petition. It is further recorded in the order that the Government shall state as to whether the Maharashtra Ordinance No.XVII of 2015 still continues to remain enforceable. The State Government was called upon to explain whether the Maharashtra Ordinance No.XVII of 2015 is still enforceable and as to whether the provisions of Act of 2013 so far as determination of amount of compensation shall have to be applied. Clause (viii) of paragraph 4 recorded in the memorandum of writ petition is quoted below :

“(viii) The purported declaration under section 126 of M.R.T.P. Act r/w. section 6 of the Land Acquisition Act was not lawfully issued on 04.07.2013 as required by section 6 of the Land Acquisition Act. It is not a declaration in the eye of law as it was not published in 2 newspapers

published in the locality. The lands are situated in Satara, while the declaration was published in only one newspaper "Karmayogi" published in Karad city. There is no publication of the said declaration in Satara. Therefore there was no step taken u/sec. 126 of the M.R.T.P. Act within 1 year from notice."

5] So far as the ground referable to the procedure required to be adopted for issuance of declaration is prescribed in sub-section (2) of Section 6 which provides for three modes of publication of declaration. The first mode is that of publication in the official gazette whereas the second mode is by way of publication of notification in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and third mode of publication of declaration is by way of issuance of public notice of the substance of such declaration to be given at convenient places in the said locality. In the instant matter, declaration under section 6 has been published in the official gazette. It has, however, been published only in one newspaper. The affidavit in reply has been presented by the State Government wherein it has been stated that the declaration was published in daily newspaper "Karmayogi" which is circulated within Satara District as well as in Western Maharashtra and it is published in Marathi language. It is further recorded in the affidavit in reply that the newspaper publication be treated as public notice and of the declaration. It is further recorded in paragraph 2 that owner of the property

has already been served with personal notice of declaration. On reading the affidavit tendered on behalf of the State Government, it is evident that the procedure in respect of publication of the notification mandated by sub-section (2) of Section 6 has not been followed by the State Government. Though, there is mandate to publish notification in two daily newspapers circulated in the locality, the same has been published only in one newspaper whereas the Collector has failed to cause public notice of the substance of declaration to be given at convenient places in the locality. There is no display of public notice of the substance of declaration as mandated by sub-section (2) of Section 6 of the Land Acquisition Act, 1894. It is well established principle that when a thing is required to be done in particular manner as mandated by law, the same shall have to be done in the manner, so prescribed, and any deviation therefrom would not be permitted as laid down in the case of **Babaji Kondaji Garad Vs. The Nasik Merchants Co-op. Bank Ltd. AIR 1984 SC 192.**

6] It has to be recorded that the mandate in respect of publication of declaration under sub-section (2) of Section 6 shall have to be strictly adhered to and strict compliance thereof is mandatorily required to be made. In the instant matter on account of failure of the respondent – Acquisition Authority to publish the declaration in the manner provided under sub-section (2) of Section 6 of the Land Acquisition Act, 1894, the declaration is vitiated and the same deserves to be quashed and set aside.

7] Apart from the deficiency as recorded above, in view of enforcement of provisions of Act of 2013 since 1st January, 2014 the Acquisition Authority/Collector shall have to determine the amount of compensation payable to the petitioner in accordance with section 24(1)(a) of the Act of 2013. Sub-section 1(a) of Section 24 provides that where no award under section 11 of the Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply. In the instant matter, learned AGP appearing for the State informs, on instructions, that tentative amount of compensation payable in accordance with Act of 2013 has been computed and the Acquiring Body has been directed to deposit the amount. It is contended that though Acquiring Body has been called upon to deposit the sum of Rs.6,08,25,565/- by communication dated 7th October, 2015, there is no response from the Acquiring Body till this date, and amount has not been deposited with Land Acquisition Officer.

8] Learned counsel appearing for the Acquiring Body - Respondent No.6 states, on instructions, that the Education Institution is not in a position to deposit such huge amount as tentatively determined by the Acquisition Authority. In the circumstances, since the Acquiring Body is not in a position to deposit amount tentatively determined, so also on account of legal challenge raised by the petitioners in respect of publication of section 6 notification, the petition shall have to be allowed and the notification issued under Section 6 of the Land Acquisition Act on 4th July, 2013 shall have to be

declared illegal, null and void and consequently the proceedings for acquisition shall have to be quashed and set aside. It will still be open for the respondents to adopt the procedure as provided under law for acquisition of the property and quashment of the instant proceedings shall not be construed as impediment from adopting proper procedure and to take steps for acquisition of property.

9] Learned counsel appearing for respondent no.6 informs that an amount of Rs.59,85,144/- has been deposited by the Acquiring Body with the Collector in January 2012. Since the proceedings for acquisition have been quashed and set aside the amount deposited by the Acquiring Body with the Collector shall have to be returned back forthwith and as such the Collector, Satara is directed to return the amount deposited by the Acquiring Body in the year 2012 forthwith.

10] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(N. J. JAMADAR, J.)

(R. M. BORDE, J.)