

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13464 OF 2017

WITH

WRIT PETITION NO. 13476 OF 2017

The Ichalkaranji Cooperative Spinning
Mills Ltd.

... Petitioner.

V/s.

The State of Maharashtra and ors.

... Respondents.

WITH

WRIT PETITION NO. 13477 OF 2017

Sou. Kishori P. Awade and ors.

... Petitioners.

V/s.

The State of Maharashtra and ors.

... Respondents.

Mr. Prashant Bhavake for the Petitioner in all the petitions.

Mr. R.S. Pawar, AGP for Respondent Nos.1 to 3 – State.

Mr. N.P. Deshpande for Respondent No.4.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.

DATE : 31st JANUARY 2019.

COMMON JUDGMENT: (Per R.M. BORDE, J.)

1] Heard Mr. Prashant Bhavake, learned counsel for the petitioners, Mr. R.S. Pawar, learned AGP for respondent Nos.1 to 3 and Mr. N.P. Deshpande, learned counsel for respondent No.4.

2] Rule in each of the petitions. With the consent of parties, all the petitions are taken up for final disposal at the admission stage.

3] Since the issues involved in all these petitions are interlinked and therefore, it is only appropriate that all these petitions are taken up and disposed of together by common judgment and order.

4] Though the petitioners in these petitions have raised challenge to the land acquisition award, however, the learned counsel appearing for the petitioners, on instructions, states that the petitioners do not want to agitate the grievance as regards the challenge to the award already declared by the Land Acquisition Officer and would restrict its claim only so far as the claim relating to grant of rental compensation payable to the petitioners under the Government Resolution (G.R.) dated 1st December 1972, 2nd July 1979 and 14th June 2001 with all the arrears together with interest at the rate of 15% per annum.

5] It is the contention of the petitioners that the possession of land has been taken over before initiation of proceedings under the Land Acquisition Act, 1894 and as such the petitioners are entitled to claim rental compensation. The petitioners have also

tendered applications to the Sub-Divisional Officer, Special Land Acquisition Officer/Collector as well as Acquiring Body requesting them to determine the amount of rental compensation and pay the same to the petitioners. It is further pointed out that though the applications are tendered to the Special Land Acquisition Officer as well as the Acquiring Body, there is no determination of the amount of rental compensation and as such, the petitioners are deprived of the monetary benefits.

6] In the aforesaid circumstances, all these petitions can be disposed of by issuing directions to the District Collector that District Collector himself or through his sub-ordinate Officers either Sub-Divisional Officer or Special Land Acquisition Officer to determine the amount of rental compensation with further directions to the Acquiring Body as well as the Collector to pay the amount so determined to the petitioners within specified time period.

7] The State Government has formulated policy in respect of payment of rental compensation to the claimants in such of those

cases where the landed properties have been taken over in possession prior to initiation of proceeding under the Land Acquisition Act. Under the G.Rs. dated 1st December 1972 and 2nd April 1979, the State has provided for the Scheme for payment of rental compensation at the rate of 6.5% of the final award value in respect of both non-agricultural and agricultural lands. The amount of rental compensation has been enhanced to 8% in view of G.R. dated 2nd April 1979. In the matter of **Maimune Banu Hamidali Khan and ors. Vs. State and others – 2001 (3) Bom.C.R. 529**, the Division Bench of this Court upheld entitlement of such of those claimants whose lands have been taken over in possession by the Acquiring Body or the State prior to initiation of proceeding under the Land Acquisition Act to receive rental compensation at the rate prescribed under G.R. dated 24th March 1988 and, it was further directed to release the amount as expeditiously as possible. The matter was carried to the Hon'ble Supreme Court by the State and the Hon'ble Supreme Court in the matter of **State of Maharashtra and ors vs. Maimune Banu and others – 2003 (4) Mh.L.J. (SC) 727**

confirmed the order passed by the High Court. In paragraph 9 of the judgment, the Hon'ble Supreme Court has observed thus:

“There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary re-determination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If however the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step”.

8] In the matter of **Bhagwat Nathu Patil vs. The State of Maharashtra and others - 2009 (3) Mh.L.J. 413** while considering the request of petitioners for payment of rental compensation the Division Bench of this Court referring to the judgment of *Maimune Banu (supra)* and other judgments including the judgment in the matter of **Dinkar Sandipan Gholve and others vs. The State of Maharashtra and others (Writ Petition No. 2559/2008 decided on 24-7-2008)** observed in paragraph Nos. 9 and 13 of the judgment thus:

“9. -----In the same Judgment, where possession was taken before initiation of proceedings under Section 4 of the Land Acquisition act, the Supreme Court has held that land

owners are not entitled to the benefit under section 23(1A), between the date of possession and publication of notification nor are they entitled to the interest in terms of section 34 of the Act. Thus, a land owner whose land has been taken in possession without initiation of proceedings under the Land Acquisition Act, is denied interest in terms of Section 34 of the Act, though they cease to be in possession of the land having surrendered the land by virtue of private negotiations between the parties and promise held out by the State Government that for such dispossession, they would be paid rental compensation in terms of the Government Resolutions.

*13. Even if it is to be read that there is a departure in Government Resolution of 26/12/2003, in our opinion, the respondent State and/or acquiring body, would be bound by the promises made and which were held out to the land owner, who surrendered possession of his land on the express understanding that he would be paid rental compensation in terms of the Government Resolutions as they stood at the time possession was taken. Question of payment of rental compensation would not arise in the cases wherein possession is taken after 26/12/2003, except in those cases covered by Government Resolution dated 17/10/2003. If possession is taken after 26/12/2003, the rental compensation would be payable in terms of Government Resolution dated 26/12/2003. If a party has acted on a promise by the State to his detriment, the State would be bound to be held by its promise. The doctrine of promissory estoppel and the principle thereto has evolved over a period of time in this Country. The Supreme Court in *M.P. Mathur v. D.T.C. and Ors*; AIR 2007 SC 414 has observed that promissory estoppel is based on equity or obligations. It is not based on vested right. In equity the Court has to strike a balance between individual rights on one hand and the larger public interest on the other hand. The principle of promissory estoppel was invoked by the Supreme Court in the case of *Union of India v. Anglo Afghan**

Agencies, AIR 1968 SC 718, wherein it was laid down that even though the case would not fall within the terms of Section 115 of the Indian Evidence Act, which indicates the rule of estoppel, it would be still open to a party who has acted on the representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of formal contract as required by Article 299 of the Constitution. The principle has been evolved by equity to avoid injustice and is neither in the rule of contract nor in the rule of estoppel.

The Division Bench has issued directions in paragraph No. 17 of the judgment. Direction Nos.1 to 4 are relevant for consideration and those are as quoted below:

(1) Rental compensation is payable on the awarded value at the rate of 6 and ½ % from 1/12/1972 and at the rate of 8% from 2/4/1979 till the full amount of final award is paid to the land owner. Awarded value would include all amounts determined under section 23, except section 23(1A) and section 23(2).

(2) If in reference or in proceedings under section 28(1A) or in appeal, the awarded amount is increased, the rental compensation will have to be re-determined in terms of the market value as re-determined.

(3) The interest payable on the rental compensation, not paid, would be at the rate of 6% for the period in default. This amount would be, however, payable only from 1/4/2000.

(4) Considering the observations in R.L. Jain (D), the rental compensation will be decided by the Special Land Acquisition Officer. While deciding rental compensation, the Special Land Acquisition Officer, Collector, would hear the interested persons, i.e. land owners or other

parties have interest as also the acquiring body. While doing so, if the date of taking possession of the land is not set out in the award, the Special Land Acquisition Officer to decide the same.”

9] In the matter of ***Dinkar Sandipan Gholve and others vs. State of Maharashtra and others in Writ Petition No. 2559 of 2008 decided by Division Bench of this Court on 24th July 2008***, the points framed for consideration were as recorded below:

“1. Whether the land owners whose lands were taken by private negotiations before the Notification under section 4 are entitled for additional amount under section 23 (1A) of the Land Acquisition Act as also interest on the compensation awarded under section 34 of the Land Acquisition Act?

2. In the alternative are the petitioners entitled to rental compensation in terms of Government Resolution dated 1st December, 1972 read with G.R. dated 2nd April, 1979 and if so whether rental compensation is to be worked out on the market value or the Award value and in that context what will be the meaning of expression “Award Value” and secondly whether such rental compensation is to be paid from the date of taking possession till the date on which the full amount of final Award is paid or the date of Section 4 Notification.”

So far as entitlement of land owners whose lands were acquired by private negotiation before issuance of notification under section 4 of the Act to claim amount under section 23 (1A) of the Act and interest under section 34 of the Act is concerned,

the Division Bench held in negative. Referring to the judgment in R.L. Jain's matter, the Division Bench held that such claimants are not entitled to benefits under section 23(1A) and section 34 of the Land Acquisition Act in respect of amount payable from the date of possession which is prior to issuance of section 4 notification. So far as entitlement of such of the claimants to receive rental compensation in terms of G.Rs. dated 1st December 1972 and 2nd April 1979 is concerned, the Division Bench has held in affirmative and further upheld their entitlement to claim compensation on award value i.e., on consideration of full amount of the final award, i.e., either passed by the Land Acquisition Officer or by the Civil Court. Relevant observations are found in paragraph Nos.11 and 14 of the judgment which read thus:

“11. The rental compensation has to be paid in terms of the Government G.R. In terms of the Government Resolution rental compensation is worked out at 8% of the Awarded value. The awarded value, therefore, considering section 23 of the Land Acquisition Act would include all components included under section 23. It must be borne in mind that this rental compensation is payable based on two aspects (1) possession has earlier been taken and for possession earlier taken, the interest in terms of section 34 is not payable and also non-payment of additional amount under section 23 (1A). The rental compensation, therefore, payable is the compensation worked out at the rate of 6½ per cent or 8 per cent as the case may be on the awarded value and is

payable from the date of taking possession till the full amount of final award is paid to the land owner.

14. Having answered the issue in our opinion, it would be appropriate that the petitioners are relegated to appear before the Special Land acquisition Officer who will consider the following aspects:-

- (i) Date of actual taking over possession.*
- (ii) Date of publication of Notification under section 4 (1) (whichever is first) gazette, newspaper or publication in the locality.*

The Special Land Acquisition Officer will then work out the rental compensation at 8 per cent from the date of taking possession till the amount awarded under the Award has been paid or in the case of dispute till the amount is deposited before the reference Court. Interest will be payable on the said rental compensation at the rate of 6% from the expiry of six months as contemplated in Government G.R. dated 24th March, 1988 till payment as contemplated by Government G.R. dated 1st December, 1972.”

10] For the reasons recorded as above, these petitions can be disposed of by relegating the petitioners to appear before the Special Land Acquisition Officer/ Collector who shall consider the issues on following aspects:-

- (i) Date of actual taking over possession of the property under acquisition;
- (ii) Date of publication of Notification under section 4 (1) in the Gazette, newspaper or publication in the locality.

The Special Land Acquisition Officer/ Collector will then work out the rental compensation at the rate of 8% from the date of taking possession till the amount under the Award has been paid or in the case of dispute till the amount is deposited before the reference Court. Interest will be payable on the said rental compensation at the rate of 6% from the expiry of six months as contemplated in G.R. dated 24th March, 1988 till payment as contemplated by G.R. dated 1st December, 1972.

11] It is needless to mention the proposition that if in reference or in proceedings under section 28(A) or in appeal, the awarded amount is increased, the rental compensation will have to be re-determined in terms of the market value as re-determined. The Collector or Special Land Acquisition Officer while dealing with the issue of determination of rental compensation shall have to give due regard to the judgment delivered by this Court in the matter of ***Mahadu s/o. Shivram Hrimale and ors vs. State of Maharashtra and others – 2015 (4) Mh.L.J. 819*** and shall determine the amount of rental compensation and shall also

extend the benefits of interest on the amount of rental compensation so determined in accordance with the determination of the issue in the aforesaid reported judgment. The Collector / Special Land Acquisition Officer shall determine the amount of rental compensation after extending an opportunity of hearing to the petitioners as well as Acquiring Body, on consideration of all relevant factors in accordance with law, as expeditiously as possible and preferably within a period of six months from today. On determination of amount of rental compensation, the Acquiring Body as well as the Collector shall ensure the disbursement of the amount to the petitioners within a period of four months from the date of such determination of rental compensation.

12] With directions as above, all Writ Petitions are disposed of. Rule in each of the petitions is made absolute to the extent as specified above. In the facts and circumstances of the present case, there shall be no order as to costs.

(V. L. ACHLIYA, J.)

(R.M.BORDE, J.)