

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

WRIT PETITION NO. 5231 OF 2020

Sanjay Mahadeo Japkar
Age: 41 years, Occu: Agriculture,
R/o Tagadkhel, Tq. Ashti, Dist. Beed

... Petitioner

VERSUS

1. State of Maharashtra
Through Secretary,
Department of Planning (E.G.S. Division)
Mantralaya, Mumbai.
2. The State of Maharashtra,
Through the Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
3. The District Collector, Beed,
Collector, Office, Beed.
4. District Soil & Water Conservation Officer,
Soil and Water Conservation Department, Beed
District Beed.
5. The Sub Divisional Officer, Patoda,
Sub Division Office, Patoda, Dist. Beed.

Mr B.S. Bodkhe, Advocate for the petitioner,
Shri S. B. Yawalkar, Addl. Government Pleader for the respondents

CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.

Judgment reserved on : 8th September 2020

Judgment pronounced on 9th October, 2020

JUDGMENT (Per Shrikant D. Kulkarni, J.):

1. Rule. Rule made returnable forthwith. By consent of both sides taken up for final hearing.

2. The petitioner, by taking aid of Article 226 and 227 of the Constitution of India, is challenging the Government Circular No.रोभूसं-2016/प्र.क.188/राहयो-8 dated 27th February, 2020 issued by the Planning Department (EGS Division), Mantralaya, Mumbai, with a prayer to quash and set aside the said Circular since it is not in conformity with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014.

3. The factual scenario giving rise to this petition, in brief, is as under:

Respondent No.3 decided to acquire the land of the petitioner situated at Tagadkhel, Tq. Ashti, District Beed for construction of the Village Tank. Respondent No.3, District Collector, Beed issued work order on 22.05.2002 and allotted the work of construction of village Tank No.6 to respondent no.4 - District Soil & Water Conservation Officer, Beed. Respondent No.3, after obtaining consent of the petitioner, took possession of his land on 24.12.2002, subject to completion of acquisition proceeding as per the law. The Village Tank NO.6 was sanctioned under the Employment Guarantee Scheme (EGS). Accordingly, the village tank was constructed by respondent Nos. 3 to 4. The respondent No.3 had initiated the land acquisition proceedings in the year 2006 but, due to the shortcomings on the part of the State authorities, the acquisition proceedings came to be lapsed.

4. In Writ Petition No.1279/2013, this Court has directed to the State authorities to complete the land acquisition proceedings within time limit as per law. In the year 2018, the respondents/State authorities started acquisition proceedings under the new Act i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Right to Fair Compensation Act, 2013 for brevity). The acquisition proceeding has reached the stage of declaration of provisional award. The petitioner has received notice under Section 21 (2), (4) of the Right to Fair Compensation Act, 2013.

5. On 27.02.2020, respondent No.1 issued one Circular stating that declaration of award under the Right to Fair Compensation Act,2013 in respect of the project or work done under the Employment Guarantee Scheme (EGS), in such matters/cases the Deputy Collector, Sub Divisional Officer,/District Collector shall obtain prior approval of the concerned Divisional Commissioner to fix the rate of acquired land and thereafter may declare the award. The petitioner, aggrieved by the said circular, made representation to the respondents/State authorities and requested to cancel the said circular dated 27.02.2020.

6. The petitioner contended that the respondents had decided to acquire land of the petitioner prior to 18 years on 22.05.2002 and taken possession of his land on 24.12.2002. The petitioner is fighting for getting compensation, which is his constitutional right under Article 300-A of the Constitution of India.

7. According to the petitioner, the impugned circular is against the provisions of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014. The impugned circular has given birth for undue delay in the procedure of declaring award under Act of 2013. The petitioner is fighting to get the compensation since the year 2002 and when there is light of indication to get the compensation, the same is likely to be affected due to the impugned circular. In this background, the petitioner has approached this Court and challenged the impugned Circular dated 27.02.2020 by invoking writ jurisdiction.

8. The respondents/State authorities have supported to the impugned Circular by filing reply affidavit of the Deputy Commissioner (EGS), Divisional Commissioner, Aurangabad. According to the respondents, the Circular dated 27.02.2020 has been issued by respondent No.1 strictly in accordance and in consonance with the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014. It is contended that in view of provisions of the the Right to Fair Compensation Act, 2013, the District Collector is required to determine the market value of the acquired land.

9. By taking into consideration this legal aspect, respondent No.1 has issued the impugned circular dated 27.02.2020 directing the Collector/Deputy Collector and the Sub Divisional Officer to obtain previous approval of the Divisional Commissioner of the concerned Revenue Division before declaring the rate of compensation and only

thereafter, declare the award. It is denied that because of the impugned circular, inordinate delay is being caused to complete the procedure and declare the award under the Right to Fair Compensation Act, 2013.

10. It is further contended that the object behind issuing of the circular is to ensure that the market value of the land is correctly determined by the concerned officer. The State has taken a decision accordingly to obtain a previous approval of the Divisional Commissioner in respect of the rates determined by the concerned officer.

11. Heard Mr. B.S.Bodkhe, the learned Advocate for the petitioner and Mr. S. B.Yawalkar, the learned Additional Government Pleader for the respondents/State Authorities at length.

12. Mr. Bodkhe, the learned Advocate for the petitioner invited our attention to sections 23 and 26 of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014. The learned Advocate pointed out that according to Rule 18(1) of the Right to Fair Compensation (Maharashtra) Rules, 2014, the Deputy Collector is empowered to declare the award, if an amount of compensation to be paid is less than Rupees four crore. As per Rule 18(2) If an amount of compensation to be paid is more than rupees four crore and less than rupees 10 crore, then the Collector of the district shall declare the Award. He further invited our attention to Rule 18(3) of the Right to Fair Compensation (Maharashtra) Rules, 2014 and pointed out that if the amount of compensation to be paid is more than

rupees ten crore, then only the Collector is required obtain previous approval of the Divisional Commissioner of the concerned Revenue Division and thereafter only declare the award.

13. He highlighted the impugned Circular which has put absolute restriction for declaration of award relating to the project under Employment Guarantee Scheme whereby it is made mandatory for the Deputy Collector/Sub-Divisional Officer/Collector, as the case may be to get approved the rate of acquired land under the Right to Fair Compensation Act, 2013. He further invited our attention to section 26 of the Right to Fair Compensation Act, 2013 and submitted that the criteria and procedure is given thereunder for determination of market value of the land by the Collector. Provisions of Section 26 of the Right to Fair Compensation Act, 2013 nowhere speaks about prior approval of the Divisional Commissioner for fixation of rate of land under acquisition before passing final award.

14. According to Mr. Bodkhe, the learned Advocate for the petitioner, as per provisions of the Right to Fair Compensation Act, 2013 more particularly section 26, the jurisdiction is vested with the Collector in determining the market value of the acquired land. By way of impugned circular, the powers vested with the collector under section 26 of the new Act have been curtailed. The State cannot issue such kind of administrative circular, which may curtail the powers of the District Collector vested with him under the Statute. According to Mr. Bodkhe, the impugned circular is contrary to the provisions of the Right to Fair

Compensation Act, 2013 and the Right to Fair Compensation (Maharashtra) Rules, 2014 and therefore, the impugned circular needs to be quashed and set aside.

15. To support his argument, Mr. Bodkhe, the learned Advocate for the petitioner has placed reliance on following citations:

(1) Punjab Water Supply & Sewerage Board Vs. Ranjodh Singh & Ors, reported in 2007 (2) SCC 491

(2) Punjabrao Ganpatrao Borade Vs. The State of Maharashtra and others, reported in 2015 (6) Mh.L.J.69.

16. To combat the argument of learned Advocate for the petitioner, Mr. Yawalkar, the learned AGP invited our attention to Article 162 of the Constitution of India. The learned A.G.P. vehemently argued that the impugned circular issued by respondent No.1 is within the domain of Executive. According to Mr. Yawalkar, the learned A.G.P., the impugned circular is in conformity with provisions of section 23 of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014 framed thereunder. The Government has taken policy decision by taking into consideration the financial implications involved under the land acquisition matters. The impugned Circular cannot be said to be arbitrary, much less, defective in the eyes of law. Mr Yawalkar has placed reliance on following citation in support of his submissions :

(1) **Sant Ram Sharma Vs. State of Rajasthan and others, reported in AIR 1967 SC 1910.**

17. We have considered the submissions of Mr.Bodkhe, the learned advocate for the petitioner and Mr. Yawalkar, learned Addl.G.P. for the respondents/State. We have carefully studied the impugned circular which is the subject matter of this petition and is under challenge.

18. It would be necessary to refer the impugned circular dated 27.02.2020. The said circular, in vernacular, reads thus :

महाराष्ट्र शासन
नियोजन विभाग (रोहयो प्रभाग)
शासन परिपत्रक क्रमांक :- रोभूसं-२०१६/प्र.क्र.१८८/रोहयो-८
मंत्रालय, मुंबई-४०००३२
दिनांक:- २७ फेब्रुवारी २०२०

वाचा :- महसूल व वन विभाग, भूमिसंपादन व पुनर्स्थापना करताना वाजवी भरपाई मिळण्याचा पारदर्शकतेचा हक्क अधिनियम- २०१३, दि.२७ ऑगस्ट,२०१४,

प्रस्तावना :-

रोजगार हमी योजनेअंतर्गत पाझर तलाव / गाव तलाव यासाठी संपादित जमिनींचे दर निश्चिती करताना सदर दर निश्चिती विभागीय आयुक्त यांच्या मान्यतेने निश्चित करण्याची बाब शासनाच्या विचाराधीन होती. आता यासंदर्भात खालीलप्रमाणे सूचना देण्यात येत आहेत.

शासन परिपत्रक :-

रोजगार हमी योजनेअंतर्गत भूसंपादन प्रकरणात निवाडा प्रलंबित असलेल्या प्रकरणी संदर्भाधिन अधिनियमातील तरतुदीनुसार निवाडा जाहीर करण्यापूर्वी जमिनीच्या दरास संबंधित उपजिल्हाधिकारी /उप विभागीय अधिकारी/ जिल्हाधिकारी यांनी विभागीय आयुक्त यांची पूर्वमान्यता घ्यावी व त्यानंतरच निवाडा घोषित करावा.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने

(चि.नि.सूर्यवंशी)

19. It would be also necessary to refer sections 23 and 26 of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014, which are as under:

"23. Enquiry and land acquisition award by Collector

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.

23A. (1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of

the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(2) The determination of compensation for any land under sub-section (1) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(3) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (1) shall be liable to registration under that Act."

Determination of market value by Collector

26. (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land. Namely:-

(a) The market value, if any Specified in the Indian Stamp Act, 1899 for registration of sale deeds or agreements to sell, as the case may be in the area where the land is situated: or

(b) The average sale price for similar type off and situated in the nearest village or nearest vicinity area: or

(c) Consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section I

Explanation I. - The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2. - For determining the average sale price referred to in Explanation I, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3. - while determining the market value under this section and the average sale price referred to in Explanation I or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4. - While determining the market value under this section and the average sale price referred to in Explanation I or Explanation 2 any price paid which in the opinion of the the Collector is not indicative of factual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub section (1) shall be multiplied by a factor to be specified in the First Schedule.

(J) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that -

(a) the land is situated in such area where the transactions in

land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years: or

(c) the market value has not been specified under the Indian Stamp Act, 1899 by 2 of 1899, the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the Price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (Whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition Proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of; an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

Rule 18 of the Right to Fair Compensation (Maharashtra) Rules ,2014

18. (1) If an amount of compensation to be paid is less the rupees four crore, then the Deputy Collector (Land Acquisition) or the Sub Divisional Officer, as the case may be, shall declare an award under section 23 of the Act.

(2) If an amount of compensation to be paid is more than rupees four crore and less than rupees ten crore, then the Collector of the District shall declare the Award.

(3) If an amount of compensation to be paid is more than rupees ten crore, then the Collector shall get the previous approval of the Divisional Commissioner of the Concerned revenue division and then only declare the Award.

(4) The financial limit authorized for the Deputy Collector (Land Acquisition) or the Sub-Divisional officer or the Collector specified in sub-rules (8), (9) and (10) above shall automatically be raised by ten per cent on 1st January of every year.

(5) If the land to be acquired is situated out of the limits of the municipal council area or out of the area of the municipal corporation, then the market value calculated as per sub-section

(1) of section 26 of the Act shall be multiplied by a factor notified by the State Government, from time to time.

(6) Where any excess amount is proved to have been paid to any person as a result of the correction made in an Award under sub-section (1) of section 33 and such person refused to refund the said excess amount paid to him, then such amount shall be recovered from him as an arrears of land revenue.

(7) before invoking the urgency clause to any land acquisition proceeding, the Collector shall take the previous sanction of the State Government.

(8) The provisions relating to rehabilitation and resettlement under the rules shall apply in the rural areas or urban areas, in the cases where the private company purchases land through private negotiations with the owner of the land more than 1000 hectares.”

20. Source of issuing administrative circulars/ Government circulars is from Article 162 of the Constitution of India. Article 162 of the Constitution of India provides for extent of executive power of the State to the matters with respect to which the State has power to enact laws. Such power must flow from the relevant Act itself. The executive powers in absence of legislation may be exercised, but it cannot be so exercised as to contravene any law relating to the matter. Proviso to Article 162 of the Constitution relates to concurrent subject matter where the Union or State legislatures have concurrent legislative powers. The proviso lays down that though the parliament has made the law relating to the

matters governed by the concurrent legislative list, the State is not denuded of the executive power relating to that matter except that the executive power of the State relating to that matter shall be subject to and limited by the executive power confined by the Constitution or any law made by the Parliament or any authorities thereunder.

21. In exercise of its executive power, the State is charged with the duty and responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive powers cannot be circumscribed as observed by the Hon'ble Supreme Court in case of **Vishwambar Dayal Vs. State of U.P.** reported in **AIR 1982 SC 33**.

22. The executive power of the State Government under Article 162 is co extensive with the legislative power of the State legislature. But in the absence of any law, the State Government or its officer, in exercise of the executive authority cannot infringe the citizens' right merely because the State legislature has power to make laws with regard to that subject. Moreover, the proviso to Article 162 itself contains limitation to the exercise of the power.

23. In case of **Sant Ram Sharma Vs. the State of Rajasthan**, reported in **AIR 1967 (SC) 1910**, it is held by the Hon'ble Supreme Court that promotion to selection grade posts is not automatic on the basis of ranking. Promotion is primarily based on merit and not on seniority

alone. It cannot be said that since statutory rules governing promotion to selection grade posts are framed, the Government cannot issue administrative instructions regarding the principles to be followed. If cases of all eligible candidates are considered before appointment of such posts, no violation of Article 14 and 16 of the Constitution of the India. The decision in case of **Sant Ram Sharma** (Supra) does not render any assistance to the case of the respondents.

24. In case of **Punjab Water Supply & Sewerage Board** (supra) it is held by the the Hon'ble Supreme Court that a circular letter is not a statutory instrument. Even a scheme issued under Article 162 of the Constitution would not prevail over the statutory Rules. A policy decision cannot be adopted by means of circular letter and even a policy decision adopted in terms of Article 162 of the Constitution would be void.

25. In case of **Punjabrao Ganpatrao Borade** (Supra), the Division Bench of this Court has quashed the impugned notification since they were bad in law, as they are product of extraneous considerations.

26. Now coming back to the impugned circular dated 27.02.2020 which is the subject matter of the petition, we have examined the impugned circular in the background of sections 23 and 26 of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014.

27. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force

w.e.f. 01.01.2014. It is a central legislation. If we consider the statement of object and reasons of the new Act, we find that the new Act provides legal solution for farmers and their facilities whose livelihood is dependent on the land being acquired. the new law also considers the aspect of development and the acquisition of land for industrialization, infrastructure and urbanization process along-with providing machinery to implement the same in timely and transparent manner.

28. The new Act is brought into force with sufficient provisions for rehabilitation and resettlement of the affected persons and their families. The rights of people denuded of their land and displaced due to acquisition, leading to depriving them from their lands, livelihood, shelter and traditional job/work/skills including traditional resource base have been taken into consideration while protecting their rights. Attempt is made to retain their socio-cultural environment. Thus, the rights and interest of weaker sections of the Society particularly landless farmers, marginal farmers and their families, members of SC/ST under the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 have been specifically protected. Thus, the right to fair compensation and transparency in the land acquisition has been given due weightage in order to protect interest of all.

29. It is important to note that the benefits under the new law would be available in all cases of land acquisition under the Land Acquisition Act, 1894 where the award is not made or possession of the

land has not been taken. In the present case, the proceedings of acquisition of petitioner's land was initially under the old Act, 1894 and that proceedings came to be lapsed due to shortcomings on the part of the State authorities. Again acquisition proceedings came to be initiated under the new Act and the land acquisition proceedings seems to have reached at the stage of declaration of award by the Collector when the impugned circular came in the way of the petitioner, in getting the compensation.

30. On careful study of section 23 of the Right to Fair Compensation Act, 2013 it nowhere speaks about taking prior approval of the Divisional Commissioner of the concerned Revenue Division before fixation of rates of the acquired land, though it is under EGS project. According to section 23 of the Right to Fair Compensation Act, 2013, the District Collector can declare the award.

31. In exercise of power conferred by sub sections (1) and (2) of section 109 of the Right to Fair Compensation Act, 2013, and of all other powers enabling it in this behalf, the Government of Maharashtra has made Rules, called, "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules, 2014." Rule 18 is relied upon by the learned A.G.P. According to the learned A.G.P., Rule 18 is the source for issuing impugned Circular. Rule 18 (1) makes it clear that if the amount of compensation to be paid is less than rupees four crore, then the Deputy Collector (Land Acquisition) or the sub-Divisional Officer, as the case may be, shall

declare an award under section 23 of the Act. Rule 18(2) speaks that if the amount to be paid is more than rupees four crore and less than rupees ten crore, then the Collector of the District shall declare the Award. Rule 18 (3) provides that if an amount of compensation to be paid is more than rupees ten Crore, then the Collector shall get the previous approval of the Divisional Commissioner of the concerned Revenue Division and then only declare the Award.

32. On careful study of the above said Rule 18(1) to 18(3), it is crystal clear that the previous approval of the Divisional Commissioner of the concerned Revenue Division is mandatory when the amount of compensation to be paid is more than rupees ten crore and in remaining cases covered by Rule 18(1) and 18(2) do not require such kind of previous approval of the Divisional Commissioner of the concerned Revenue Division.

33. By impugned circular dated 27.02.2020, before declaration of award in respect of projects under the EGS, it is now mandatory on the part of the concerned Deputy Collector/Sub Divisional Officer/District Collector to obtain previous approval regarding the rate of the acquired land from the concerned Divisional Commissioner and then only declare the award.

34. On careful examination of the impugned circular, we do not find any source for such issuance from sections 23 and 26 of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair

Compensation (Maharashtra) Rules, 2014. The impugned circular is not in consonance with the above said provisions of the Right to Fair Compensation Act, 2013 and the Right to Fair Compensation (Maharashtra) Rules, 2014. On the other hand, the impugned circular dated 27.02.2020 is found contrary to the above said provisions of the Right to Fair Compensation Act, 2013 and the Right to Fair Compensation (Maharashtra) Rules, 2014. By issuing such kind of administrative circular, the executive cannot override the statutory provisions of the Law and Rules. The provisions of Law and Rules do not permit such kind of administrative arrangement.

35. The Government Circular cannot override the statutory provisions and Rules. The circular is not in consonance with Rule 18. The rules framed are part of subordinate legislation. The circular issued under the executive powers cannot override the rules. The executive can issue instructions in respect of aspects not covered by legislation. If legislation is in place, then executive instructions cannot override the legislative rules. The executive instructions have to conform to the rules. The powers derived by the authorities under the rules cannot be circumscribed by executive instructions. It cannot supplant the law. The executive must abide by the provisions of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules, 2014, which are in force and cannot ignore or act contrary to that Rule or Act in exercise of powers under Article 162 of the Constitution of India.

36. In case of the **State of Maharashtra & others Vs. Girish Hanumant Thitte and others** the Division Bench of this Court in Writ petition No. 3344 and 3345 of 2017, decided on 30.11.2018, to which one of us (S. V. Gangapurwala, J.) was party, in para 11, observed as under:

"11. It is the prerogative

2. of the State Government to formulate a particular policy. Framing a policy is within the competence of State in its executive authority. The policy decision is in the domain of the executive authority of the State. The efficacy or otherwise may not be questioned so long the same does not offend any provision of the Statute or the Constitution of India. It is not for the Courts to consider the relative merit of the different policies. The Court can not sit in judgment of the policy of the Legislature or the Executive. The executive power can be exercised by issuing administrative Orders, Circulars, Instructions or Resolutions, so long the Legislature does not make any law on that subject. Purely administrative decision can be reviewed by the authority at any time provided no constitutional provision is violated thereby and one administrative order may be changed by another administrative order. The Administrative Rules or Orders may be relaxed, altered or revoked without any formality provided there is no legislation or statutory Rules to the contrary and no provision of the Constitution is violated by such change."

37. In the present case, the impugned circular issued by respondent No.1 dated 27.02.2020 by invoking Article 162 of the Constitution is found contrary to the Rule 18 (1) to 18(3) of the Right to Fair Compensation (Maharashtra) Rules ,2014.

38. The impugned Government Circular does not pass the legal test. The impugned Circular seems to have been issued overlooking the statutory provisions of the Right to Fair Compensation Act, 2013 and Rule 18 of the Right to Fair Compensation (Maharashtra) Rules ,2014. In this background, the impugned circular dated 27.02.2020 needs to be quashed and set aside.

39. We, therefore, arrive at conclusion to quash and set aside the impugned circular dated 27.02.2020 and accordingly, it is quashed and set aside.

40. It is painful to note that the petitioner has been deprived of his livelihood way back in the year 2002 because of lapses on the part of the State Authorities. We hope and trust that the State authorities may expedite the entire process and take appropriate steps to complete the acquisition proceedings under the new Act of 2013.

41. In view of the above, writ petition stands allowed. Rule is made absolute accordingly. No order as to costs.

(SHRIKANT D. KULKARNI, J.)

(S. V. GANGAPURWALA, J.)

JPC