IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2806 OF 2020
WITH CA/9356/2021 IN WP/2806/2020

1. Murlidhar S/o Rama Veer,
Age : 63 years, Occup: Agri.
R/o Golatgaon, Taluka and
District Aurangabad.

2. Shyamrao S/o Rama Veer,
Age : 60 years, Occup. Agri.
R/o Golatgaon, Taluka and
District Aurangabad.

3. Dagadu S/o Rama Veer
Age: 69 years, Occup. Agri,
R/o Golatgaon, Taluka and
District Aurangabad.

4. Ashok S/o Gunjaba Dhongade,
Age: 51 years, Occup. Agri,
R/o Golatgaon, Taluka and
District Aurangabad.

5. Shobhabai Govind Kahite
Age: 54 years, Occup. Agri,
R/o At Lalwadi Post Golatgaon
Taluka and District Aurangabad.

6. Ramkorabai Bharat Kahite
Age: 51 years, Occup. Agri,
R/o At Lalwadi Post Golatgaon
Taluka and District Aurangabad.

7. Shamsing S/o Shivlal Kahite
Age: 49 years, Occup. Agri,
R/o At Lalwadi Post Golatgaon
Taluka and District Aurangabad.

8. Rupchand S/o Jayram Kahite
Age: 74 years, Occup. Agri,
R/o At Lalwadi Post Golatgaon
Taluka and District Aurangabad. ...Petitioners

Versus

1. The State of Maharashtra

Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.

2. The Divisional Commissioner,
Aurangabad.

3. The Collector,
Aurangabad.

4. Special Land Acquisition Officer/
Deputy Collector (Land Acquisition),
Krishna Khore Vikas Mahamandal,
Aurangabad.

5. The Executive Engineer,
Minor Irrigation, Division no.-1
Aurangabad. ...Respondents

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Mr. V.D. Sapkal, Senior Counsel h/f Mr. S.R. Sapkal, Advocate for the Petitioners.
Mr. S.B. Yawalkar, AGP for Respondent Nos.1 to 4.
Mr. R.R. Imale, Advocate for Respondent No.5.
Mr. A.A. Kokad, Advocate for the Intervenor (Applicant in CA/9356/2021).

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

**RESERVED ON : 24th NOVEMBER, 2021
PRONOUNCED ON : 09th DECEMBER, 2021**

JUDGMENT (PER S.G. MEHARE, J.) :

1. Rule. Rule made returnable forthwith. By the consent of the learned counsel for the parties, heard finally.

2. The lands of the petitioners were declared to be acquired under the Land Acquisition Act 1894 ('1894 Act' for short). However, as no award was passed within 2 years from the declaration, the petitioners approached this Court. The Coordinate Bench of this Court, by order in W.P. No 5049 of 2015 dated 16th February 2016, declared

that the land acquisition proceeding is lapsed. Thereafter, the Requiring Body, the Deputy Executive Engineer Minor Irrigation Division No. 1/respondent no.5, had given an offer to the petitioners, that they are ready to purchase their lands directly by private negotiation and invited their consents. The petitioners gave their consent. The same authority by his letter dated 18th October 2016 again offered the petitioners to purchase the lands by private negotiations. In response thereto the petitioners have executed an agreement on 21st of October 2016 with the Requiring Body.

3. The Government of Maharashtra, by resolution dated 12.05.2015, had constituted a District level compensation determination Committee ('the Committee' for short) headed by the District Collector. The Committee was to consider the factors enumerated in Section 23 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 ('2013 Act' for short). The said Committee in its meeting dated 30.06.2017 had given the approval to the rates proposed @ Rs. 20,511 per Are to be paid to the petitioners. Again, in the meeting dated 11.10.2017, a detailed report was submitted to the Committee for the approval of rates. In the said meeting the rates were determined @ Rs. 17,39,000 per Hector and the total compensation amounts were calculated as per the Annexures attached to it.

4. Then the Superintending Engineer, Aurangabad by letter dated 21.12.2017 requested the Committee to review the rates

determined by it in the meeting dated 11.10.2017. The Committee in its meeting dated 24.04.2018 decided to apply the rates as per the ready reckoner. Respondent No. 5/ Requiring Body again by his letter dated 18.12.2017 addressed to the Superintending Engineer, Aurangabad, placed his view that the market value assessed by the Committee in the meeting dated 11.10.2017 has some deficiencies and expressed his apprehension that if such high rates are given to the petitioners, it may generate flood of compensation petitions by the other land owners. Accordingly, the Superintendent Engineer, by his letter dated 21.12.2017 requested the Collector Aurangabad to review the rates and compensation determined in the Committee meeting dated 11.10.2017. The Committee once again determined the compensation rates in its meeting dated 24.04.2018 in which the Superintending Engineer was the member. The Superintending Engineer by his letter dated 27.06.2018 again pointed out to the Committee the given norms are not applied; hence the compensation should be determined according to the norms. Thereafter, the Committee revised the rates finally in the meeting dated 29.08.2018. The Requiring Body was satisfied with the norms applied and rates/compensation determined by the Committee.

5. Then Requiring Body/respondent No. 5 by its letter dated 12.09.2018 requested the petitioners to submit their consent letters. He also provided the approved letters and the copy of minutes of the meeting dated 29.08.2018 to the petitioners. The petitioners have

accordingly executed the consent letters on 24th of September 2018. Thereafter, the petitioner nos. 1 to 3 executed a sale deed on 11.01.2019. In this background, the petitioners approached this Court seeking the relief to hold and declare that the compensation determined in meeting dated 29th of August 2018 by the Committee is not as per the market price, therefore, it is illegal, and direct the Requiring Body to pay the compensation of rupees as determined by the acquiring body in the meeting dated 11.10.2017 by issuing the appropriate writ, order, or direction in the nature of writ.

6. The respondents in their affidavit in reply have objected that, a consent award cannot be challenged in the writ jurisdiction. The compensation was determined as per the Act of 2013. The price of the land was correctly determined in the meeting dated 29th of August 2018. As amount of assets have also been determined and paid to the petitioner, the question does not arise to give the rates of the irrigated lands. Therefore, the petition deserved to be dismissed.

7. Heard the learned senior counsel Shri Sapkal for the petitioners and the learned Government Pleader for the State at length.

8. The learned senior counsel for the petitioners would argue that, the petitioners are entitled to get the fair compensation. The Committee had correctly determined the price in the meeting dated 11.10.2017. The petitioners are rustic. They were under an impression that the rates have been determined applying the rates of irrigated

land. On this specific condition in their consent letters dated 21.10.2016 they had consented for direct sale of their lands. The Requiring Body and the Committee has no dispute that the lands of petitioners were irrigated lands. So, this material aspect could not be ignored by the Committee to apply the rates of irrigated land. The Requiring Body/respondents confused the petitioners and forced to accept the compensation as determined by the Committee in its meeting dated 29.08.2018. The provisions of 2013 Act have not been followed scrupulously nor the conditions of agreement dated 21.10.2016 were followed. The petitioners were never invited in any of the Committee meeting. There were communications between the Requiring Body and the Committee. The petitioners were never taken in confidence when the market price was determined and revised. He also added that, the Requiring Body being State has breached the promise; hence they are bound by the doctrine of promissory estoppel. He further argued that the fraud has been played by the Requiring Body/respondents. The jurisdiction of the Civil Court is barred under Section 63 of the 2013 Act. Hence the dispute is amenable to the writ jurisdiction of the High Court. The acts on the part of Requiring Body as well as the Committee are in utter disregard of the principle of fairness and natural justice. Hence the reliefs may be granted as prayed.

9. Per contra, the learned Government Pleader argued that the petitioners never raised an objection to the rates disclosed by the respondents/Requiring Body determined in the meeting dated

29.08.2018, that the rates of jirayat lands shall be applied. On the contrary, the petitioners have executed the said deed accepting the rates offered to them. They never whispered that their lands are irrigated and the rates of irrigated lands shall be applied. The sale deeds were executed around four months after the consent given by the petitioners. Hence, it cannot be said that the respondents/ Requiring Body confused, and forced the petitioners to accept the rates as determined by the Committee. Since it was a consent sale transaction, the petition is not amenable to the writ jurisdiction of this Court. The petition deserves to be dismissed. To bolster his argument he relied on the case law, those will be discussed in due course.

10. The question that arises from the arguments advanced by the learned counsel for the parties is, whether the dispute raised by the petitioners is amenable to the writ jurisdiction?

11. The Hon'ble Supreme Court in the case of ***Ranveer Singh Vs. State of Uttar Pradesh through Secretary and others, (2016) 14 SCC 191***, relied on by the learned Government Pleader, has observed in paragraph 10, that once parties agree to the compensation payable and consent award is passed, the same would bind the parties unless it is set aside in appropriate proceeding by the Court of competent jurisdiction. The facts of the said case were that the notifications under Section 4 and 6 of the Land acquisition Act,1894 were issued. The possession of the lands of the landowners were also taken. After taking over the possession, proceedings for determination

of payment of compensation on the basis of agreement was initiated. The agreement was executed under the Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Awards by Agreement) Rules 1997. As agreed, the entire compensation was paid on the same date the landowners accepted the amount of compensation without any demure and protest. On these facts, the ratio was laid down by the Hon'ble Apex Court as above. In the said appeals, the landowners had claimed the interest under Section 34 of the Land Acquisition Act.

12. In second case of ***State of Karnataka and Another Vs. Sangappa Dyavappa Biradar and Others, (2005) 4 SCC 264***, relied on by the learned Government Pleader, the parties entered into negotiations as regards the market price. Pursuant thereto and in furtherance thereof the consent awards were passed by the Special Land Acquisition Officer. In light of those facts, the question that arose before the Court was whether the applications filed by the respondents therein in terms of Section 18 of the Land Acquisition Act before the Special Land Acquisition Officer seeking reference to the Civil Court for determination of the quantum of compensation were maintainable. The Hon'ble Supreme Court pronounced that the condition precedent for maintaining application for reference under Section 18 is non-acceptance of award by the awardee.

13. In the case at hand, the Committee was constituted by the Government considering the provisions of 2013 Act which permits the

acquisition of land by direct purchase by negotiation with the land owners, determining the market price applying the guiding factors prescribed in Sections 26 to 30 of the 2013 Act. Hence, the provisions of 2013 Act would apply in the case at hand.

14. Section 23A of 2013 Act provides that 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. The Section is very clear that after the land acquisition proceeding is initiated by the Collector, at any stage of such proceeding if the parties/ landowners agree in writing, then without going into the procedure to acquire the land, he may pass a consent award.

15. We have no doubt that the consent terms or award binds the parties to such consent award. Herein the case only paper publication inviting the objections was made by the Requiring Body. The Requiring Body itself had given the offer to purchase the land by negotiation based on the Government Resolutions dated 12.05.2015 and 30.09.2015. Accordingly, the Committee determined the rates and compensation amount. The record does not reveal that at any time the petitioners were called in the Committee meetings. There was no direct

negotiation with the petitioners. The Requiring Body got the price determined from the Committee and offered it to the petitioners.

16. In the light of aforesaid facts, it is to be considered whether such sale transactions are the consent awards as provided in Section 23A of 2013 Act and thereby oust the petitioners from the legal remedy under writ jurisdiction of this Court?

17. Section 63 of 2013 Act is relevant to determine the issue of the jurisdiction of the High Court. It would be advantageous to reproduce it as under;

> *"63. Jurisdiction of Civil Courts barred — No Civil Court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or Authority is empowered by or under this Act, and no injunction shall be granted by any Court in respect of any matter".*

18. The provision is crystal clear that the powers of the High Court under Article 226 and 227 of the Constitution have not been disturbed by the 2013 Act relating to any dispute relating to the land acquisition. We have no hesitation to hold that the High Court has writ jurisdiction to deal with the dispute regarding the land acquisitions.

19. Taking the advantage of registered sale deed in favour of the Requiring Body, the learned Government Pleader has vehemently argued that the petition is barred under the doctrine of alternate remedy. He went on arguing that the fraud or misrepresentation are

the issues that shall not be tried in writ jurisdiction, on this count also the petition should not be entertained.

20. Recently the Hon'ble Apex Court in the case of *M/s Radha Krishna Industries Vs. The State of Himachal Pradesh* in Civil Appeal No. 1155 of 2021 pronounced on 20.04.2021 in paragraph no.23 as under:

" The principles of law that emerges are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has a discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exception to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When the right is created by statute, which itself prescribe the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedy is a rule of policy, convenience and discretion; and

> (vi) *In case there are disputed question of fact, the High Court may decide to decline jurisdiction in writ petition. However, if the High Court is objectively of the view that the nature of controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

21. The remedy to the aggrieved person in the land acquisition case as of now in 2013 Act is the reference under Section 64 of the said Act. For that purpose, there shall be an award passed by the Collector and person interested must not accept the award. Herein there is no award passed by the Collector. The Requiring Body got the market price determined from the Committee and offered the same to the petitioners and got the sale deeds executed. Since, there was no award, the sole remedy of reference under Section 64 of 2013 Act for the petitioner has gone. Besides the remedy under said Section is restricted to the quantum of compensation, the measurement of the land the apportionment of the amount payable and the right of Rehabilitation and Resettlement. The facts of the case in hand is altogether different. The petitioners, after the execution of sale deed, realized that the rates of their lands are not determined as per the grade of their field, i.e. irrigated lands.

22. As discussed above, Section 63 of 2013 Act bars the Civil Court from entertaining disputes relating to land acquisition in respect of which the Collector or the Authority is empowered by or under the said act. The dispute relating to land acquisition is essentially the dispute as regards the rights of the landowners to have fair

compensation, apportionment of shares and measurement of the lands. Since the issue is of not giving the fair compensation as per the provisions of 2013 Act by the responsible Committee headed by the Collector and in the absence of any other remedy, the petitioners approached this Court.

23. Herein the case, the earlier proceeding which was initiated under the old 1894 Act was lapsed. Then the Requiring Body the Minor Irrigation Department published an advertisement and gave an offer to the petitioners and on their consent, the proposals were placed before the Committee. The said Committee never called upon the petitioners for negotiation and finally determined the compensation considering the factors provided in the 2013 Act in the meeting dated 29.08.2018.

24. Before the last meeting, the Committee had determined the price of the lands of the petitioners in the meeting dated 11.10.2017 and 24.04.2018. It must be noted here that through the procedure of notification etc. is avoided to acquire the lands but the factors to determine the price of the land as provided under 2013 Act were binding. To avoid the delay in completing the projects and bring the uniformity in the compensation of the lands to be acquired, the Government has constituted the Committee to determine the Compensation of the lands by negotiation. The negotiation with the land owners was the prime factor to proceed with the determination of compensation. But there is no evidence on record to believe that the

Committee or the Requiring Body had any dialogue with land owners on the market price of their lands. The Committee has played a limited role of determining the rates of the lands.

25. The Requiring Body had given a simple offer first time by the letter dated 18.10.2016 to the petitioners. Factually, no specific price was offered. Thereafter, the agreements dated 21.10.2016 were executed among the petitioners and respondent no. 5. In the said agreement it was specifically agreed that the land of the petitioners is irrigated land and that factor shall be considered while determining the market price to be determined as per Government Resolutions dated 12.05.2015 and 30.09.2015 as well as the provisions of the 2013 Act. Then the Requiring Body raised the objections against the price determined by the Committee. Finally, the rates were determined on the basis of sale transactions of Jirayat land by the Committee on 29.08.2018. Lastly, by a letter dated 12.09.2018, the petitioners were again called upon to submit their consent on a stamp of Rs. 100 on or before 30.09.2018. The petitioners believed that the approval granting the rates by the Committee dated 29.08.2018 is award, and under the said belief complied with the directions of the letter dated 12.09.2018 by executing the consent deeds undated on stamp paper of Rs. 100. In the said agreement it was mentioned that the petitioners are agreeing to sell their lands as market price is determined applying the Jiryat land as per the government resolution. A specific amount was also mentioned therein. Lastly the sale deeds were executed on

10.01.2019 referring to the rates approved by the District Level Committee dated 29.08.2018.

26. It is the law that the registered document of sale deed carries the presumption that the transaction was genuine one. Such documents are subject to cancellation in case the fraud, misrepresentation, coercion, undue influence or misrepresentation, is proved. Normal remedy to get such documents cancelled lies with the government to determine the compensation for the acquisition of land otherwise than the regular proceeding as contemplated under 2013 Act, with specific directions to apply the principles and norms prescribed in the said Act. The Sub-Divisional Officer cum Land Acquisition Officer was monitoring the acquisition proceeding and was the part of the Committee and directing the Requiring Body to get the sale deed executed as per the price determined by the Committee time to time. So, the transaction of sale has a touch of 2013 Act. If the petitioners wish to get the sale deed cancelled on the ground of fraud, misrepresentation etc, the only remedy for them is before the Civil Court. Section 63 of 2013 Act bars the jurisdiction of the Civil Court. In the case at hand, the petitioners have no alternate remedy. Hence, no question arises to apply the doctrine of alternate remedy.

27. The claim of petitioners is very limited to pay them compensation applying the rates of irrigated land which were considered by the Committee in its meeting dated 11.10.2017.

28. The State Government constituted the District Level Compensation Committee under the chairmanship of the District Collector, who is most responsible person to follow the law and directions of the government. Unfortunately, he acted upon the requests of the Requiring Body and entertained its request to review the rates determined in the meeting dated 11.10.2017. We are not oblivious of the powers to review of the District Collector in such matters. He may entertain the request of the Requiring Body, but must find a substantial ground to revise the rates against the facts of the case. The record reveals that, the Committee as well as Requiring Body had the knowledge that the lands of the petitioners were irrigated land. They also had the knowledge that the rates shall be paid for the irrigated lands. However, the Committee has changed its earlier determination of the rates only on the ground that the project cost is going high, it may burden the State Exchequer and there may be petitions for enhancement of the compensation.

29. The acquiring body is a State. States have legal obligation to protect and promote human rights, including the rights to social security, and ensure that people can realize their rights without discrimination. The State shall be fair with the citizen. The State shall have to build the trust in the citizen. No citizen shall deprive of a right to have a just compensation for his acquired land. A bureaucrat like the District Collector has a great responsibility to maintain the trust of the citizens in the government.

30. Article 300 A of the Constitution of India confers the right to property to the citizens. It is the right of the citizen that he shall not be deprived of his property save by authority of law. It is the constitutional right of the citizens. The deprivation of right can only be in accordance with the procedure established by Law. The compulsory acquisition of the lands under 2013 Act or Land Acquisition Act, 1894 would legally deprive the citizen of their rights to have the property. The State has taken the care that no property shall be acquired unless the compensation is paid to the landowner. The 2013 Act is named as “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013’. The very title of 2013 Act mandates that the compensation shall be fair and there must be transparency in the land acquisition. It is the responsibility of the Officer designated by the State to be fair in determining the compensation and have the transparency. The Committee was consisting of all responsible Officers. They were not expected to be unfair in determining the compensation and violate the guidelines issued by the Government under the provisions of law. The hike in project cost and apprehension of more litigations is not the sound and reasonable ground to apply the rates of Jirayat land as against the irrigated lands of the petitioners. A conscious go-by to the rights of the citizen itself is a good ground to the aggrieved person to approach the High Court. Such an act is apparently arbitrary and against the law.

31. The petitioners also have claimed that the doctrine of promissory estoppel applies and the Requiring Body cannot apply the

rates of non-irrigated land. The elements of promissory estoppel claim are (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) the reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. Promissory estoppel is a doctrine that a promise made without the exchange of consideration is binding and enforceable if; the defendant made it clear and unambiguous promise. Promissory estoppel applies when the promisor has made a promise to the promisee. The promisee must have relied on the promise and suffered a loss due to non-performance of the contract. The doctrine prevents the promisor or enterprise from going back on their word or promise. Herein the case, before the execution of the sale deed there was a consent and the terms of the contacts were settled and then the sale deeds were executed. It is not the case that the promisor did nothing out of the agreement. Having regard to the facts of the case, we find that the petitioners are not entitled to get the benefit of promissory estoppel.

32. Civil Application No.9356 of 2021 has been filed by the legal heirs of Rambhau @ Rama S/o. Dagadu Vir for intervention. They are claiming interest in the compensation amount. To prove their interest in the property acquired, they wish to intervene in the present petition. The present petition is not for enhancement of the compensation. It pertains to the grade of land which was not considered by the Committee or the Requiring Body, while determining

the compensation. The petitioners have independent remedy to claim the share from petitioner no.2. The present petition can be decided even in the absence of these applicants. Hence, we do not find any substance in the civil application.

33. In view of the facts of the case and apparent violation of the guidelines issued by the Government vide Government Resolutions dated 12.05.2015 and 30.09.2015, in the absence of remedy before the Civil Court and the dispute is touching the land acquisition by the Collector, we are of the considered view that this is a fit case to exercise our jurisdiction under Article 226 of the Constitution of India. We record that the acts of the Committee and Requiring Body are against the law and they put the petitioners to loss and deprived them of their legitimate right to get fair compensation for their lands. Hence, the petition deserves to be allowed and we pass the following order;

ORDER

I) The petition is allowed.

II) The rates of land determined by the District Level Compensation Determination Committee, Aurangabad in its meeting dated 29.08.2018 applying the rates of Jirayat land, is set aside.

III) The above Committee is directed to determine the compensation applying the rates of perennial or seasonal irrigated lands as the case may be within three months from today.

IV) The Committee shall give a hearing to the petitioners for the determination of the compensation.

V) The Requiring Body/respondent no.5 shall pay the difference amount of compensation determined by the above Committee within four months of its decision.

VI) No orders as to costs.

VII) Rule made absolute in the above terms.

VIII) Civil Application No.9356 of 2021 stands disposed off.

(S.G. MEHARE, J) **(RAVINDRA V. GHUGE, J)**

Mujaheed//