

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.83 OF 2018

Mrs. Bhagyashri Rajesh Kulkarni
Adult, Occ. Business and Household
R/at : Vivekanand Colony,
Ichalkaranji, Taluka Hathkanangale
District Kolhapur

.... Petitioner

versus

1. Union of India

[Summons to be served on the Learned
Government Pleader appearing for
Union of India under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908]

2. State of Maharashtra

[Summons to be served on the Learned
Government Pleader appearing for
Union of India under Order XXVII,
Rule 4, of the Code of Civil
Procedure, 1908]

3. The Sub-Divisional Officer,
Ichalkaranji,
Taluka Hathkadangale
District Kolhapur

[Summons to be served on the Learned
Government Pleader appearing for
Union of India under Order XXVII,
Rule 4, of the Code of Civil

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Procedure, 1908]

4. Maharashtra Krishna Valley
Development Corporation, through,
its Executive Engineer,
Dudhganga Left Canal, Division No.1,
Kolhapur, having its office at :
Warana Bhavan, Tarabai Park,
Kolhapur
- ... Respondents

.....

- Mr.Abhay Anturkar i/b.Mr.Tanaji Mhatugade, Advocate for Petitioner.
- Mr.Y.G. Mishra, a/w Mr.Shailendra Mishra, Advocate for Respondent No.1.
- Mr.P. G. Sawant, AGP for State/Respondent Nos.2 and 3.
- Mr.Nitin P. Deshpande, Advocate for Respondent No.4.

**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**
RESERVED ON : 25th AUGUST, 2021
PRONOUNCED ON : 01st SEPTEMBER, 2021

JUDGMENT : (Per : Sarang V. Kotwal, J.)

1. Rule.
2. Rule made returnable forthwith.
3. By this Petition, the Petitioner has challenged the
award dated 17/10/2016 passed by the Respondent No.3, Sub-

Divisional Officer, Ichalkaranji, Taluka Hatkanangale, District Kolhapur and also the notice given u/s 31(1) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the 2013 Act'). The Petitioner was concerned with the land bearing Gat No.483 (part) admeasuring 0.66.00 HR situated at village Shivnakwadi, Taluka Shirol, District Kolhapur (hereinafter referred to as 'the said property'). The notification u/s 4 of the Land Acquisition Act, 1894 (hereafter referred to as 'the 1894 Act') was issued on 18/12/2012 in respect of the said land. Before the declaration u/s 6 of the 1894 Act was issued, the 2013 Act was brought into force from 01/01/2014. After that, the declaration u/s 6 of the 1894 Act was issued on 13/02/2014. The award came to be passed on 17/10/2016. The award mentioned that it was passed u/s 11 of the 1894 Act and u/s 26, 27 and 30 of the 2013 Act. Pursuant to that award the notice u/s 31(1) of 2013 Act and u/s 12 of 1894 Act was issued in the name of the Petitioner on 22/05/2017 in respect of the said property. The amount payable to the Petitioner under that

award was Rs.1,99,14,561/-. The Petitioner has stated in the Petition that she had received that amount without prejudice to her right to challenge the award. As mentioned earlier, the Petitioner has challenged the said award and notice by way of the present Petition.

4. In the Petition, Union of India is the Respondent No.1, State of Maharashtra is the Respondent No.2, the Sub-Divisional Officer, Ichalkaranji is the Respondent No.3 and Maharashtra Krishna Valley Development Corporation is the Respondent No.4. The said land was acquired for the project of Dudhganga Left Canal and in particular for Kurundwad branch of the canal.
5. Respondent Nos.2 and 3 filed their affidavits-in-reply, on two occasions, i.e. on 27/02/2017 and 05/01/2021, opposing this Petition. Respondent No.4 also filed their affidavit-in-reply dated 10/07/2018.
6. The stand taken by the Respondent No.4 in their

affidavit is that since the State Government has constituted a tribunal to entertain proceedings u/s 31 of 2013 Act, it was open for the Petitioner to approach the said tribunal.

7. The Respondent Nos.2 and 3 have stated in their affidavits-in-reply that the declaration u/s 6 of the 1894 Act, was published in the Gazette for the period 06/03/2014 to 12/03/2014. It was published in daily newspapers on 02/03/2014 and 03/03/2014. It was also published on the notice board of the Gav Chawadi on 25/06/2014 and on the notice board of Tahasildar on 07/07/2014. It is stated in the affidavit-in-reply dated 27/02/2017 that while determining the compensation amount, provisions of section 26 to 30 of the 2013 Act were followed and based on these provisions the award was passed. The award was passed on 17/10/2016. It was within two years from the date of the publication. Therefore the award was legal and proper as it was passed within the period stipulated u/s 11A of the 1894 Act. The Respondent Nos.2 and 3 had taken a stand in their affidavit that section 4

notification under the 1894 Act was made before coming into force of 2013 Act and therefore provisions of section 24(1) of the 2013 Act will be applicable. The provisions of the 2013 Act relating to the determination of compensation would apply.

8. We have heard Mr.Abhay Anturkar, learned counsel for the Petitioner, Mr.Y.G. Mishra a/w Mr.Shailendra Mishra, learned counsel for Respondent No.1, Mr.P. G. Sawant, AGP for State/Respondent Nos.2 and 3 and Mr.Nitin P. Deshpande, learned counsel for Respondent No.4.

9. Mr.Anturkar referred to section 24(1)(a) of 2013 Act. He submitted that since award u/s 11 of the 1894 Act was not passed as on 01/01/2014, provisions of the 2013 Act would be applicable. He submitted that the Respondent Nos.2 and 3 have not followed the provisions under the 2013 Act, as is clear from the award itself. Mr.Anturkar further submitted that, in any case, it cannot be said that the land acquisition proceedings were initiated under the 1894 Act, before 01/01/2014 when the 2013

Act was brought into force. He submitted that the declaration u/s 6 of the 1894 Act was itself not tenable in the eyes of law because by that time, the 1894 Act had already lapsed. The authorities, could not have taken steps pursuant to the declaration issued on 13/02/2014 u/s 6 of the 1894 Act. In support of his contention Mr.Anturkar relied on the judgment dated 15/02/2018 passed by this Court (Coram : Ranjit More And Prakash D. Naik, JJ.) in Writ Petition No.10852 of 2014, in the case of Sheetalkumar Sadashiv Zambare Vs. State of Maharashtra & others. He submitted that even otherwise the award was passed after the period of two years mentioned u/s 11A of 1894 Act from publication of the declaration. On all these counts, the award and the subsequent notice are required to be set aside. He made a categorical statement that the Petitioner had accepted the amount of Rs.1,99,14,561/- as the compensation amount without prejudice to her rights and that if the award is set aside, the Petitioner is willing to return that amount to the authorities.

10. Learned AGP representing the Respondent Nos.2 and 3 opposed these submissions by relying on the affidavits-in-reply filed on behalf of these Respondents. He submitted that the compensation was fixed by following the procedure laid down u/s 26 to 30 of the 2013 Act and therefore there was nothing illegal about it. He submitted that the Petitioner has already accepted the compensation amount and therefore no relief should be granted to her.

11. Learned counsel Mr.Deshpande for Respondent No.4 also opposed this Petition and submitted that the Petitioner has an option of approaching the tribunal u/s 31 of 2013 Act for redressal of his grievance.

12. We have considered these submissions.

. Section 24(1)(a) and (b) of 2013 Act read thus;

***“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases -
(1) Notwithstanding anything contained in this Act,***

in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) -

- (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or”*
- (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.*

Therefore it is clear that the proceedings which were already initiated under the 1894 Act, were protected and continued under the new 2013 Act, where no award u/s 11 of the 1894 Act was passed. The main consideration in this regard is about initiation of the land acquisition proceedings prior to coming into force of 2013 Act. In the present case, admittedly, the declaration u/s 6 of the 1894 Act was issued on 13/02/2014, i.e. after 01/01/2014 when the 2013 Act was brought into force.

13. Learned counsel Mr.Anturkar rightly relied on the judgment of this Court in Writ Petition No.10852 of 2014. Paragraph Nos.7 and 8 of the said judgment are relevant in the facts of the present case. Those paragraphs read as under:

“7. Similar issue fell for consideration of another Division Bench of this Court in Nilima Bhole (supra). The Division Bench after considering the provisions of relevant enactments and the decision of Hon'ble Supreme Court in case of Babu Barkya Thakur Vs. State of Bombay (AIR-1960-SC-1203) and Patel Gandlal Somnath Vs. State of Gujarat (AIR-1963-GuJ.-51) concluded that publication of notification under Section 4 or notice under Section 4(1) of the Old Land Acquisition Act would not tantamount to initiation of the acquisition proceedings. It was further held that the land acquisition proceedings can be said to have been commenced after declaration under Section 6 of the Old Land Acquisition Act is issued. This ratio of the judgment of co-ordinate Bench is perfectly applicable to the present case.

Mr.Gokhale, learned 'B' panel counsel for State, could not cite any other decision in support of his contention that the acquisition proceedings can be said to have been initiated after issuance of notification under Section 4 of Old Land Acquisition Act.

8. As stated above, admittedly Section 6 declaration was published on 8th May 2014 i.e. subsequent to the coming into force of the New Land Acquisition Act. Though the award makes reference to New Land Acquisition Act, the same is passed under Section 11 of the Old Land Acquisition Act. In above circumstances, we have no alternative but to quash and set aside the impugned award qua the petitioner. The petition is accordingly allowed in terms of prayer clauses (b) and (f1) of the petition. No order as to costs.”

14. From the ratio of this judgment it is clear that this Court has held that the land acquisition proceedings can be said to have commenced after declaration u/s 6 of the 1894 Act was issued. In the present case, that declaration was issued as mentioned earlier on 13/02/2014. Therefore the land

acquisition proceedings were not initiated under the 1894 Act before 01/01/2014 when the 2013 Act was brought into force. Therefore these proceedings cannot be saved u/s 24(1)(a) of the 2013 Act. We also agree with Mr.Anturkar that declaration u/s 6 of the 1894 Act itself was illegal because on 13/02/2014, the 1894 Act had already lapsed. The impugned award makes a specific reference to the declaration dated 13/02/2014 issued u/s 6 of the 1894 Act.

15. The stand taken by the Respondent Nos.2 and 3 that the award was passed within stipulated period of two years, as mentioned u/s 11A of the 1894 Act from the date of declaration, is not factually correct. The affidavit of Respondent Nos.2 and 3 itself mentions that the declaration u/s 6 of the 1894 Act was published in the Gazette for 06/03/2014 to 12/03/2014. It was published in daily newspapers on 02/03/2014 and 03/03/2014. It was also published on the notice board of the Gav Chawadi on 25/06/2014 and on the notice board of Tahasildar on 07/07/2014. The award was passed on 17/10/2016, which is

passed after more than 2 years from publication of declaration u/s 6 of the 1894 Act. However, this issue is not necessary to be dealt with in view of the discussion in the earlier paragraphs hereinabove.

16. Considering the above discussion, the Petition must succeed. However, directions are also required to be issued in respect of the compensation amount, which is already accepted by the Petitioner, though it was accepted without prejudice to her rights. Hence, the order:

ORDER

1. Rule is made absolute in terms of prayer clauses A and B qua the Petitioner which read as under;

(A) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the award dated 17th October 2016 issued by the Respondent no.3 in respect

of the suit property of the Petitioners herein as violative of the provision of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act No.30 of 2013].

(B) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the notice dated 22nd May 2017 purporting to be the notice under section 31[1] of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, issued by the Sub-Divisional Officer Ichalkaranji.”

2. The Petitioner shall return the amount of Rs.1,99,14,561/- to the authorities within a period of 12 weeks from the date of this order.
3. The Petition is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)

(SMT. SADHANA S. JADHAV, J.)