

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7864 OF 2019
WITH
WRIT PETITION NO.7865 OF 2019

(1) WRIT PETITION NO. 7864 OF 2019

Satguru Coporate Services Pvt. Ltd.
CIN-U74999MH2001PTC131234
(earlier known as Somani and Co.
Pvt. Ltd.)
Having its registered office at 505,
Acme Plaza, Andheri Kurla Road,
Andheri (East), Mumbai-059.
Having its Coporate Office at 5h Floor,
Sunteck Center, Subhash Road,
Ville Parle (East), Mumbai-057,
Acting through its authorized
representative – Seema Ketan Mehta. .. Petitioner

.. Versus ..

- 1] Land Acquisition (Rehabilitation and Resettlement) Authority,
Divisional Commissionerate Building,
Opp. General Post Office,
Civil Lines, Nagpur-01.
- 2] Deputy Collector,
(Land Acquisition No.4)
Mumbai Suburban District,
Near Circle Garden, Government
Colony, Mumbai.
- 3] Estate Manager,
Brihanmumbai Electric Supply and
Transport (BEST), 1st Floor, BEST
Bhavan, BEST Marg, Colaba,
Mumbai-400 001.
- 4] Jhankar Parmar (HUF),
Partner of P.H. and Co.
Having office at C/o. Dhiraj Creations,

Shop No.1, Building No.62,
2nd Booiwada Lane, Bhuleshwar,
Mumbai-02.

..Respondents

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Shri Deoul Pathak, Advocate for the petitioner,
Shri K.L. Dharmadhikari, AGP for respondent nos.1 and 2,
Shri S.G. Deshpande, Advocate for respondent no.3,
Shri Shriram Deoras, Advocate for respondent no.4.

.....

WITH

(2) WRIT PETITION NO.7865 OF 2019

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Having its registered office at 505,
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Colony, Mumbai.
- 3] Estate Manager,
Brihanmumbai Electric Supply and
Transport (BEST), 1st Floor, BEST
Bhavan, BEST Marg, Colaba,
Mumbai-400 001.
- 4] Mohanlal Jain,

Proprietor of M.M. and Co.
C/o. Raj Plastics, Gala No. K-42,
Old Sonal Heavy Industrial Estate,
Kach Pada, Ramchandra Lane,
Moti Udyog, Malad (West),
Mumbai-064.

..Respondents

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Shri Deoul Pathak, Advocate for the petitioner,
Shri K.L. Dharmadhikari, AGP for respondent nos.1 and 2,
Shri S.G. Deshpande, Advocate for respondent no.3,
Shri Shriram Deoras, Advocate for respondent no.4.

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CORAM : N.B. SURYAWANSHI, J.

RESERVED ON : 11.08.2021.

PRONOUNCED ON : 30.09.2021

COMMON JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. Since common question of law and facts is involved in both the writ petitions, they were heard together and are being disposed of by this common judgment.

3. Writ Petition No. 7864 of 2019 takes exception to the order dated 07th September, 2019, passed below Exhibit-28 and Exhibit-29, thereby rejecting the applications filed by the petitioners seeking rejection of claim of the respondents and for striking off the statement of claim and Writ Petition No. 7865 of

2019 takes exception to the order dated 07th September, 2019, passed below Exhibit-23 and Exhibit-23A.

4. Facts, in short, leading to these petition are as follows :

The respondent no.2 – Deputy Collector (Land Acquisition No.4), Mumbai passed an Award under Section 11 of the Land Acquisition Act on 17.12.2015, by which the total area under acquisition came to be declared and total compensation payable was decided. On the same day, notice under Section 12 (2) of the Land Acquisition Act, 1984 was issued. The respondent no.4, being aggrieved by the Award dated 17.12.2015, filed a Reference on 14.3.2016 (Annexure-E) under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act of 2013') before the respondent no.2. Without waiting for the adjudication of the said Reference application, the respondent no.4 filed application (Annexure-F) under the second proviso to Section 64 of the Act of 2013 before the respondent no.1-Land Acquisition (Rehabilitation and Resettlement) Authority. The application filed before the respondent no.2 came to be rejected vide communication dated 01.09.2018.

5. In the meanwhile, the petitioners appeared before the authority and resisted the claim of the respondent no.4. The respondent no.4 thereafter filed application for appropriation,

titled as 'Statement of Claim' (Annexure-I) whereby prayer for enhanced compensation was made. The petitioners therefore filed applications Exhibit-28 (Annexure-K) and Exhibit-23 seeking rejection of consolidated statement of claim on the ground that the same is not permissible in law and, therefore, by exercising powers under Order VI Rule 11 of the Code of Civil Procedure, the statement of claim may be dismissed. Another applications Exhibit-29 (Annexure-L) and Exhibit-23A were filed seeking striking off the consolidated statement of claim.

6. The respondent no.4 filed common reply and opposed both the applications. The petitioners thereafter filed reply on merits (Annexure-N). By common order, both the applications Exhibit-28 and Exhibit-29 so also Exhibit-23 and Exhibit-23A came to be dismissed. The dismissal is challenged in the present petitions.

7. Heard the learned Advocate for the petitioners, the learned Assistant Government Pleader for respondent nos.1 and 2, the learned Advocate for respondent no.3 and the learned Advocate for respondent no.4.

8. The learned Advocate for the petitioners submitted that since the Collector had refused to make reference vide order dated 01.09.2018, the application made by the respondents directly to

the authority was not maintainable. In absence of the reference made by the Collector and in view of the orders passed by the High Court, the application filed directly before the authority was liable to be rejected. The application so filed by the respondent was not in consonance with the second proviso to Section 64 of the Act of 2013. The same was in absence of reference by the Collector and, therefore, the authority had no jurisdiction to adjudicate on the consolidated statement of claim. The respondent has bypassed the provisions of Section 64 (1) (2) of the Act of 2013. The respondent no.1 authority has failed to appreciate the objection raised by the petitioners vide Exhibit-28 and Exhibit-29 so also Exhibit-23 and Exhibit-23A. The impugned order passed by the respondent no.1 thereby rejecting the applications is based on erroneous appreciation of facts and the relevant provisions.

The respondent no.1 ought to have rejected the statement of claim and ought to have allowed the prayer for striking off the consolidated statement of claim filed by the respondent no.4. The impugned order passed by the respondent no.1 is in contravention of Section 64 (1)(2) of the Act of 2013.

9. Per *contra*, the learned Advocate for the respondent no.4, submitted that the Collector has no authority to reject the reference and he has to forward the reference. In this behalf, he placed reliance on the decision of the Division Bench of Allahabad

High Court in **Ayub Hasan and 4 others .vs. State of U.P. and 2 others, 2018 (3) ALL WC 2776**. Further submission is that in view of the orders passed by the High Court, all the matters were sent to the authority/respondent no.1. By placing reliance on Section 60 (3) of the Act of 2013, the learned Advocate submitted that the respondent no.1/authority has the power to regulate its own procedure subject to the other provisions of the Act of 2013 and of the rules made thereunder. The authority is not bound by the procedure laid down in the Code of Civil Procedure, but it is guided by the principles of natural justice. He, therefore, submits that the respondent no.1 authority has rightly passed the order rejecting the objection and there is no merit in the petitions and the petitions are liable to be dismissed.

10. The learned Assistant Government Pleader appearing for respondent nos.1 and 2 adopted the arguments of the respondents and supported the impugned orders.

11. Heard the learned Advocate for the petitioners, the learned Advocate for the respondents and the learned Assistant Government Pleader for the respondent-State at length. Perused the grounds raised in the writ petitions and the documents placed on record.

12. The record reveals that this Court rendered decision in

LAR No. 06 of 2016 and connected matters i.e. Notice of Motion Nos. 2969/2016, 1734/2017, 1621/2017 and 1633/2017 by granting liberty to the petitioners therein to approach the competent Court within thirty days from the date of the order. On filing of the applications by the petitioners within thirty days, the authority was directed to decide the same on its own merits. All the contentions of the parties on merit were kept open. Therefore, the proceedings before Respondent No.1-authority is referred to it by this Court.

13. Pursuant to the decision of this Court, Respondent No.4 filed an application for reference under Section 64 of the Act of 2013 read with Section 18 of the Land Acquisition Act, 1894, before the Respondent No.2 – Deputy Collector on 14.03.2016. Since the same was not decided by the Collector, Writ Petition No.1917/2018 was filed in this Court at Bombay. Vide order dated 07.08.2018 passed in the said writ petition, this Court permitted the respondent no.4 to file application for reference dated 14.03.2016 as per Section 18 of the Act of 1894 and directed the Special Land Acquisition Officer to decide the matter within a period of eight weeks. Thereafter, the Deputy Collector, vide order dated 01.09.2018, decided the matter thereby rejecting the prayer of the respondent no.4 for making reference.

14. The order passed by this Court no where states that the

petitioners have to file fresh applications for reference before the Collector. In the Reference, not only the Respondent No.4 but all the interested parties were present. Therefore, in terms of the orders passed by this Court in LAR No.06/2016 and connected matters, the authority has rightly entertained the application and the statement of claim filed by Respondent No.4 as it was filed within 30 days from the date of the order of this Court.

15 Section 64 of the Act of 2013 reads thus:

“Section 64 : Reference to Authority :- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested :

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority.

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken.”

First proviso to Section 64 (1) of the Act of 2013

mandates that the Collector shall, within a period of thirty days from the date of the receipt of application, make a reference to the appropriate Authority. Thus, the first proviso to Section 64 casts a duty on the Collector to make reference within 30 days from the date of receipt of the application. In that view of the matter, the Collector was not justified in passing the order dated 01.09.2018 thereby refusing to make reference. The order passed by the Collector was contrary to Section 64 of the Act of 2013. The Collector could not have rejected the application and it was mandatory for the Collector to forward the reference to Respondent No.1. The ratio in **Ayub Hasan** (*supra*), supports the contention of the respondents that the Collector had no authority in law to reject the reference. Respondent No.4, therefore, was justified in approaching the Respondent No.1-authority.

16 It is a matter of record that Respondent No.1 received the record from this Court at Bombay on 28.06.2018. At that time, the post of Presiding Officer was vacant. After the Presiding Officer joined, notices were issued to the parties on 12.09.2018 and the parties appeared before the authority on 05.10.2018. The respondent no.2-Deputy Collector has filed necessary information, as required under Section 65 of the Act of 2013. Thus, it is clear that the respondent no.4 had approached the respondent no.2-Deputy Collector seeking reference. All those matters were sent to the respondent no.1. Thus, it can be said that the proceeding

before respondent no.1 was in continuation of the proceeding before the High Court. The information submitted by the Deputy Collector (R-2) under Section 65 of the Act of 2013 can be said to be the reference made by the respondent no.2.

17. Section 60 of the Act of 2013 defines the powers of the authority and procedure before it. Section 60 reads thus :

Section 60 : Powers of Authority and procedure before it : (1) The Authority shall, for the purposes of its functions under this Act, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

(2) The Authority shall have original jurisdiction to adjudicate upon every reference made to it under section 64.

(3) The Authority shall not be bound by the

procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made thereunder, the Authority shall have the power to regulate its own procedure.

(4)

(5)

18. It is thus clear that the respondent no.1-authority, while functioning for the purposes under the Act of 2013, is not bound by the procedure laid down in the Code of Civil Procedure, but is guided by the principles of natural justice and has the power to regulate its own procedure subject to the other provisions of this Act. In view of the provisions of Section 60 (3) of the Act of 2013, the respondent no.1-authority was justified in entertaining the statement of claim and the consolidated statement of claim filed by the respondent no.4. The submission of the learned Advocate for the respondent no.4 that the consolidated statement of claim was filed at the instance of the authority-respondent no.1, is acceptable.

19. The petitioner has raised a hyper technical objection, which, in the facts of this case, in my view, is unsustainable. The Act of 2013 is a beneficial legislation introduced for the persons whose lands are acquired. In that view of the matter also, the technical objection raised by the petitioners is liable to be rejected at the threshold.

20. While passing the impugned order, respondent no.1 has taken into consideration the record, the orders passed by this Court at Bombay, the provisions of Section 64 and the respondent no.1 has rightly rejected the applications Exh.28 and 29 filed by the petitioners in W.P. No.7864 of 2019 and Exhibit-23 and Exhibit-23A in W.P. No.7865 of 2019. In the facts of the present case, the respondent no.1 was right in coming to the conclusion that the submission of the information of the respondent no.1 in prescribed proforma as enumerated in Section 65 of the Act of 2013 by the respondent no.2-Deputy Collector amounts to submission of reference. The impugned orders are passed by giving valid reasons and no merit is found in the challenged raised by the petitioners. Both writ petitions, being devoid of merit, are hereby dismissed, with no order as to costs.

Pending Civil Applications, if any, do not survive and stand disposed of accordingly.

21. At this stage, learned advocate for the petitioner seeks continuation of the interim order passed in its favour on 02.12.2019, so as to enable him to approach the Hon'ble Supreme Court.

Ad interim relief in terms of prayer clause "B", granted to the petitioner, to continue for a period of six weeks from today.

(NITIN B. SURYAWANSHI)
JUDGE