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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 99 OF 2003

State of Maharashtra and Ors.

.. Applicants

(Ori. Defendant Nos.1, 2 and 3)

Versus

~~Prabhakar Rangnath Kulkarni~~

(Since deceased through his Legal Heirs)

Shripad Prabhakar Kulkarni and Ors.

.. Respondents

(Ori. Plaintiffs)

-
- Ms. Madhubala Kajle, 'B' Panel Counsel for Applicants.
 - Mr. Anand Kulkarni, Advocate for Respondent No.1B.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 22, 2022.

JUDGMENT:

1. By the present Civil Revision Application, the Applicants have prayed for the following relief:-

“a) that this Hon’ble Court be pleased to set aside the Judgment dated 18/2/1998 passed by 3rd Joint Civil Judge, Senior Division, Solapur in Regular Civil Suit No.873 of 1997.”

2. Respondents (Original Plaintiffs) filed Regular Civil Suit No.837 of 1997 in the Court of 3rd Joint, Civil Judge Senior Division, Solapur (for short “**Trial Court**”) on 16.09.1997 for seeking a decree of perpetual injunction to restrain Applicants (Defendants therein) from taking over possession and creating third party rights in the suit property namely agricultural land bearing Gat No.456/2 ad-measuring

2 Hectares, 2 Ares situated at Village Waluj, Taluka Mohol, District Solapur (for short “**suit land**”) .

3. Applicants (Defendants therein) filed Application for framing preliminary issue in the suit about the jurisdiction of the Trial Court to try the suit. By the impugned order dated 18.02.1998, learned Trial Court held that the Civil Court has jurisdiction to entertain the suit. In view of the aforesaid, the present Civil Revision Application was filed on 15.01.2003. On 02.12.2004, Rule was issued in terms of prayer clause ‘b’.

4. Ms. Kajle, learned AGP appearing for Applicants contended that the Civil Court would have no jurisdiction to try the suit in view of the provisions of Section 22 of the Maharashtra Project Affected Persons and Rehabilitation Act, 1986 (for short “**1986 Act**”) which was substituted in place of the Maharashtra Re-Settlement of Project Displaced Persons Act, 1976 (for short “**1976 Act**”) read with the provisions of the Land Acquisition Act, 1894 (for short “**LA Act, 1894**”). She would submit that there was a similar provision under Section 29 of the 1976 Act also which was in *pari materia* with Section 22. It is further contended that the suit land was acquired by Applicants and statutory Award was declared in September, 1986 whereas the suit was instituted in the year 1997 by Respondents for perpetual injunction. It is contended that acquisition of the suit land

was challenged by Respondents by filing the suit in the Trial Court. It is contended that suit was filed on the principal ground that provisions of the 1986 Act under Sections 13 to 16 were not duly followed before acquiring the suit land, especially with respect to the rehabilitation of the project affected persons and no *prima facie* proof of such due process whatsoever was produced by the Applicants before the learned Trial Court.

4.1. That apart, it is contended that in view of the provisions of the LA Act, 1894 no challenge is maintainable to the acquisition proceedings by filing the Civil Suit which is expressly barred under the 1986 Act. That apart, it is contended that filing of Civil Suit was an abuse of the process of law as the owner of any acquired land had no vested right in the land after its acquisition as the suit land stood acquired. Finally, it is contended that the suit suffered from gross delay and laches as it was filed after a hiatus of 11 years after the passing of the statutory Award after acquisition of the suit land.

4.2. Hence she has urged for setting aside the impugned order dated 18.02.1998.

5. *PER-CONTRA*, Mr. Kulkarni, learned Advocate appearing for Respondent No.1B has supported the impugned order passed by the learned Trial Court and contended that in the facts and circumstances of the present case, jurisdiction of the Civil Court cannot be barred

under the provisions of Section 22 of the 1986 Act. He contended that provisions of Section 22 in fact would have no Application at all to the present case in view of not following the due process of law under Sections 13 to 16 of the Act and in that view of the matter, bar of the said provision would not apply. He would submit that the 1986 Act came into force in substitution of the 1976 Act and the purpose of acquisition of the suit land as per the Award was for resettlement of project affected persons. He would submit that, if that be the case then the provisions of Section 13 to Section 16 of the 1986 Act, which prescribe for issuance of notification by the State Government, calling for objections from the public, making enquiry, entering into agreement with the owner for acquiring the lands, etc. need to be followed and complied with. He would submit that provisions of compulsorily acquisition of the said land as provided under Section 16(2) of the said Act would thereafter arise and empower the State Government to acquire the said land mandatorily under the LA Act, 1894. That compulsory acquisition is subject to the aforementioned statutory provisions of the 1986 Act. In effect, he would submit that compulsory acquisition of any land under the 1986 Act by employing the provisions of the LA Act, 1894 would only be subject to effective compliance of the provisions laid down under Section 13 to Section 16(1) of the Act. Hence, he would submit that the impugned order has been passed in accordance with law and deserves to be sustained.

6. I have heard Ms. Kajle, learned AGP appearing for the Revisional Applicants and Mr. Kulkarni, learned Advocate appearing for the contesting Respondent and with their able assistance perused the record and pleadings of the case.

7. At the outset, it needs to be stated that the suit property came to be acquired by the Special Land Acquisition Officer No.10, Solapur for rehabilitation of persons who were affected by the 'Hingani (Pangaon) Medium Project' and accordingly Award No. LAC/SR/162/85 was passed on 18.09.1986. Perusal of the plaint reveals that the Plaintiffs (Respondents herein) challenged the acquisition of the suit property / land on the following grounds by filing the Suit before the trial Court:-

- (a) That in the Award there is no specification as to which portion out of the suit Gat No.456 was acquired;
- (b) That the water from the said project was never received for suit Gat No.456 and there is no possibility of receiving the said water in future to the suit land;
- (c) That suit Gat No.456 was never under the "benefited zone" nor there was any necessity for the Defendants (State) to acquire the same for resettlement of project affected persons;

- (d) That the project affected persons never demanded the land from village Waluj and therefore there was no necessity for acquisition of the suit land;
- (e) That Defendants (State) have not utilised the suit property for the purpose for which it has been acquired since long and therefore the acquisition has failed and lapsed;
- (f) That Defendants (State) have not considered the specific area required at the time of acquisition of the suit land;
- (g) That the Plaintiffs did not receive any notice from the Defendants (State) for the acquisition proceedings;
- (h) That most importantly Plaintiffs are still in possession of the suit land.

8. It is seen that it was contended by Plaintiffs that before passing of the Award it was incumbent upon the statutory authorities to follow the due process of law as contemplated under the provisions of Section 13 to Section 16(1) of the 1976 Act. It is seen that under the said Act compulsory acquisition can be invoked under Section 16(2) only after adopting, following and complying with the provisions prescribed under Section 13 to Section 16(1) therein. For

reference, the provisions of Section 13 to Section 16(2) of the 1976

Act are reproduced below:-

“13. Assessment of extent of land from which persons have been displaced and the extent of land available for resettlement and collection of certain information.- (1) on the publication of the notification under Section 11, the Resettlement Officer shall, subject to the provisions of this section, assess the extent of land from which persons are likely to be displaced, and the extent of land which may be available for grant to displaced persons. The Resettlement Officer, shall also indicate in such assessment the location of such lands and of the site of the gaothan or the new village or as the case may be, the area of extension of any existing gaothan where resettlement of displaced persons may be made.

(2) In selecting the site for a gaothan (hereinafter referred to as “as new gaothan”) or, as the case may be, for extension of an existing gaothan the Resettlement Officer shall have regard to the following factors, namely, -

- (i) the proximity of alternative agricultural lands (which may be earmarked for grant to the displaced persons) to the new gaothan, or as the case may be, to the extended part of the existing gaothan (the distance between such agricultural lands and the new gaothan or the extended part of the existing gaothan may ordinarily not exceed 8 kilometers);
- (ii) the availability of water sources in, or in the vicinity of, the new gaothan or extended part of the gaothan or possibility of striking water if a well is constructed in, or in the vicinity of, such gaothan;
- (iii) access to roads;
- (iv) suitability of land for constructing houses; and
- (v) such other factors as the State Government may by an order in writing specify.

(3) The Resettlement Officer shall draw up a list of lands which may be available for resettlement of the displaced persons and in doing so, may indicate the area which may be included in the benefited zone, or which may be specified under Section 10. Such lands shall consist of,-

- (a) Government waste lands;
- (b) Government forest lands which are available or which may be available, for cultivation after deforestation;
- (c) lands which may be included in the benefited zone, or in any village, or area to be specified under Section 10 and which may be acquired under the Land Acquisition Act, 1894, (I of 1894), in accordance with the provisions of Section 16;
- (d) lands acquired under Section 16;

- (e) *any other land vesting in the State Government and available for the resettlement of displaced persons.*

(4) *For the purpose of making assessment under this section, the engineer in charge of the implementation of the Project (hereinafter referred to as “the Project Engineer”) shall, -*

- (a) *prepare or cause to be prepared an index map of the submergence area which is likely to be submerged showing the villages at different reservoir levels, i.e.,-*
 - (i) *for storage with gates, and*
 - (ii) *for storage without gates;*
- (b) *prepare or cause to be prepared with village maps indicating the submerged area, and the actual survey numbers which may be submerged;*
- (c) *collect information regarding,-*
 - (i) *the extent of land required for the Project;*
 - (ii) *the extent of land which is likely to be benefited by the Project, together with a list of survey numbers in each village.*

(5) *The maps prepared under sub-section (4) and the information collected under that sub-section shall be sent by the Project Engineer to the Resettlement Officer.*

(6) *On receipt of the maps and information under sub-section (5), the Resettlement Officer shall collect information regarding,-*

- (a) *Government lands available for resettlement, the extent of lands in the area which is likely to be the benefited zone and which may have to be acquired under the provisions of Section 16;*
- (b) *details of persons affected by the Project, such as, the extent of the holding of the displaced person, the extent of area therefrom to be acquired for the Project, the number of structures to be acquired for the Project, the number of members in the family of each displaced person;*
- (c) *the location of the new gaothan or extension of the existing gaothan, preferably in consultation with the persons who are likely to be displaced on account of undertaking works relating to the Project.*

(7) *The Resettlement Officer shall send a copy of his assessment made under sub-sections (1) and (2) to the State Government, the Commissioner and the Deputy Director.*

14. Provisional declaration of affected zone and benefited zone.-

(1) *As soon as may be after the receipt of the copy of the assessment under Section 13, the State Government shall, after*

such inquiry as it thinks fit, provisionally declare by notification in the Official Gazette and also in the manner provided by sub-section (2) of Section 11,-

- (a) the area which is required for the Project, and thereby would be adversely affected by or under the Project; and*
- (b) if the Project is an irrigation Project or is a composite Project consisting of irrigation Project, power Project and any other Project of public utility or any combination thereof the area under the command of the Project which is likely to be benefited by the Project.*

(2) The declaration under sub-section (1) shall call upon the person interested in the land to make (if any) objections to and suggestion for the inclusion of any land in the area referred to in clause (a) or clause (b) of sub-section (1) and send them to the Collector or Deputy Director of Resettlement (Land) within a period of not less than thirty days as may be specified in the notification.

(3) A copy of the notification shall be sent to the Commissioner, the Deputy Director and the Resettlement Officer who may make such suggestions relating to the notification as he thinks fit.

15. Final declaration of affected zone and benefited zone; and power to make changes in such zones.- *The Collector and Deputy Director of Resettlement (and) shall with all reasonable despatch forward the objection and suggestion, if any, received by him by under sub-section (2) of Section 14, together with his report in respect thereof to the State Government and, on considering the report and the objections and suggestions, if any as also the suggestions, if any received by it under sub-section (3) of Section 14, the State Government shall finally declare by notification in the Official Gazette and also in the manner provided by sub-section (2) of Section 11,-*

- (a) the extent of area which shall constitute the area of affected zone under the Project;*
- (b) if the Project is a project falling under clause (b) of sub-section (1) of Section 14, the extent of area which shall constitute the area of benefited zone under the Project.*

(2) A copy of the notification shall be sent to the Commissioner, the Deputy Director and the Resettlement Officer.

(3) If at any time during the course of execution of a Project, the Resettlement Officer is satisfied that any change in the affected zone or benefited zone is necessary, he shall communicate such change to the State Government through the Deputy Director and the Commissioner; and shall likewise

forward to the State Government any plans and particulars relating to the change.

(4) On receipt of the communication under sub-section (3), the State Government may, after making such inquiries as it thinks fit, make provisional and final declarations in respect of such change in according with the provisions of Section 14 and this section.

4. Validation of final declaration issued under Section 15, and of acquisition of land under Section 16 of Mah.XLI of 1976.-

(1) Notwithstanding anything contained in the Principal Act or any judgment decree or order of any Court every final declaration made or purporting to have been made under Section 15 of the principal Act, before the commencement of the Maharashtra Resettlement of Project displaced Persons (Amendment and Validation) Act, 1985 (Mah. XIII of 1985) shall be and shall be deemed always to have been, valid and effective in accordance with law; and no such declaration shall be called in question in any Court of law merely on the ground that the provisions of Sections 14 and 13 of the principal Act have not been complied with in part or in whole are that an opportunity of being heard not given to the person affected by such declaration, or that no further enquiry was made by the State Government, before making such declaration.

(2) Notwithstanding anything contained in the principal Act, or in any judgment, decree or order of any Court,-

(a) No acquisition of land or rights in or over land made or purporting to have been under and for the purposes of, the principal Act Before the commencement of Maharashtra Resettlement of Project Displaced Persons (Amendment and Validation) Act, 1985 (Mah. XIII of 1985) and no action taken or thing done (including any order made, agreement entered into, or any notice or notification published) in connection with such acquisition and the grant or distribution of such land for resettlement of any displaced person shall be deemed to be invalid, or ever to have become invalid merely on the ground:-

(i) That before making the final declaration under Section 15 of the principal Act, the provisions of Sections 13 and 14 of the principal Act, have not been complied with, in part or in whole, or that an opportunity of being heard was not given to the persons affected by such declaration, or that no further inquiry was made by the State Government; and

(ii) *That before or after publishing any notification in connection with the provisions of Section 16 of the principal Act, and the Land Acquisition Act, 1894 (1 of 1894) the provisions of Sections 19, 20 and 21 or any provisions of the principal Act, have not been complied with, in part or in whole;*

(b) *Any acquisition in pursuance of notification issued under the provisions of Section 16 of the principal Act and the Land Acquisition Act, 1894 (1 of 1894), before the commencement of Maharashtra Resettlement of Project Displaced Persons (Amendment and Validation) Act, 1895 (Mah.XIII of 1895) may be made after such commencement, and no such acquisitions and no action taken or thing done (including any order made, agreement entered into or notice or notification published, or grant or distribution of such land made for resettlement of displaced persons) whether before or after such commencement in connection with such acquisition or grant or distribution of land shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.*

16. Power to require land for purposes of this Act.-

(1) *The State Government may enter into an agreement with any person for the purchase or exchange, of any land required for carrying out the purposes of this Act.*

(2) *Subject to the provisions of this section, the State of Government may also for carrying out the purposes of this Act compulsorily acquire land under the Land Acquisition, 1894 (1 of 1894) and the acquisition of any land for the said purposes shall be deemed to be a public purpose within the meaning of that Act."*

9. That apart, the provisions of Section 29 of the 1976 Act relating to the bar of jurisdiction on the Civil Court is also relevant and is reproduced below:-

"29. Bar of jurisdiction.- *No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Director, Commissioner, Deputy Director, Resettlement Officer or the State Government."*

10. It needs to be stated that pursuant to the 1976 Act, the 1986

Act came to be enacted w.e.f. 01.01.1990 and came into force. The 1986 Act also had identical provisions for effecting compulsory acquisition after complying with the statutory provisions for rehabilitation of project affected persons.

11. It is seen that Respondents (Plaintiffs therein) challenged the acquisition of the suit property whereas the Revisional Applicants (Defendants therein) challenged the maintainability of the suit in view of the bar of Section 29 of the 1976 Act. Provisions of Section 29 when read reveal that there is a clear bar for entertaining the suit by the Civil Court to settle, decide or deal with any question which is by or under the said Act and is however required to be settled, decided or dealt with by the project affected authority, Collector, Commissioner or the State Government.

12. In the present case, the Award was passed on 18.09.1986 whereas the 1986 Act came into effect on 01.01.1990 i.e. after the passing of the Award. Thus, the provisions of the 1976 Act would therefore apply to the present case. It is seen that the argument of the Revisional Applicants that bar of Section 29 would apply to the facts and circumstances of the present case has been rejected by the learned Trial Court. This is so because the 1986 Act came into force on 01.01.1990 though it was enacted in 1986. Perusal of the 1986 Act and more specifically Section 26 thereof reveal that the 1986 Act is

enacted in place of the earlier Act i.e. the 1976 Act. There is no provision enacted in the 1986 Act which would show that its provisions would have retrospective Application. Considering that in the present case Award was made on 18.09.1986, it is therefore clear that the 1976 Act would therefore apply.

13. Considering that the 1976 Act would apply for application of the bar under Section 29 of the Act, the provisions of Sections 13 to 16(2) have to be complied with. If that is not done then the bar of Section 29 would not apply.

14. The learned Trial Court has however considered this aspect and returned a specific finding in that respect in paragraph No.15 of the judgment which is relevant and reproduced below:-

“15. In the case in hand, the plaintiffs have challenged the acquisition of the suit property by the defendants for resettlement of project affected persons on the ground that the defendants while acquiring the suit property have not followed procedure laid down either in the said acquisition of resettlement Act. The defendants have not produced any record at this stage to see as to whether the procedure has been followed as per the special statute. From the tend of the objection of the defendants about the jurisdiction of this Court, it is seen that the defendants have challenged the maintainability of the suit in view of the bar created by section 22 of Rehabilitation Act and nothing else. But as aforesaid the Rehabilitation Act can not be made applicable as far as present case is concerned. In such circumstances, in view of the aforesaid rations definitely the Civil Courts get jurisdiction to examine as to whether the authorities have followed procedure laid down under special statute. Merely because of showing some provision creating bar in instituting the suit, it can not easily be inferred that there is exclusion of the jurisdiction of the Civil Court.”

14.1. However, this finding is with respect to considering the applicability of the 1986 Act. As stated above, both Acts have similar provisions of the statutory bar as well as compliance with the due process before compulsory acquisition.

15. In this context, it would be worthwhile therefore to consider the provisions of Section 13 to Section 16(2) of the 1976 Act which are alluded to and reproduced herein above and which apply to the present case. It is seen that sub-section 2 of Section 16 empowers the State Government to acquire the land compulsorily under the provisions of the LA Act, 1894, but however the said provision is subject to the provisions contained under Sections 13 to 16(1) of the said Act. Hence for the purpose of invoking the provisions of Section 16(2) of the Act, it would thus be necessary for the statutory authorities to follow the due process of law contemplated under Section 13 to Section 16(1) of the Act and unless and until the said provisions are adopted and followed and taken to its logical end, the empowerment of the State Government to acquire the land compulsorily under Section 16(2) under the LA Act, 1894 would not arise.

16. In this respect the learned Trial Court has considered the decision in the case of *Gulab Shankar Walve Vs. Special Land Acquisition Officer*¹ which squarely applies to the facts and circumstances of the present case. Paragraph Nos. 5 to 13 are relevant

¹ 1981 Mah.L.J. 881

and read thus:-

“8. This makes it necessary to examine contents of Section 16. It is convenient to quote the same in extenso to test the validity of this contention.

"Sec. 16: (1) The State Government may enter into an agreement with any person for the purchase or exchange, of any land required for carrying out the purposes of this Act.

(2) Subject to the provisions of this section, the State Government may also for carrying out the purposes of this Act compulsorily acquire land under the Land Acquisition Act, 1894, and the acquisition of any land for the said purposes shall be deemed to be a public purpose within the meaning of that Act.

(3) The State Government may also acquire lands included in a gaothan in the affected zone as far as practicable according to the provisions of Part I of Schedule 'A' hereto.

(4) For the purpose of resetting displaced persons on land, the State Government may, subject to any rules made in this behalf, acquire land from holdings in the benefited zone or from, any village or area specified under Section 10 as far as practicable, according to the provisions of Part II of Schedule 'A' hereto.

(5) All lands acquired under this section shall form part of the land pool."

The section is not very happily worded. A superficial reading thereof may give some apparent plausibility to the contention of Mr. Saldhana. A close examination of the different clauses, however, would expose the fallacy and untenability thereof.

9. To begin with, acquisition of land is an integral part of the resettlement scheme of this Act and all the provisions of the Act would apply to such acquisitions as soon as any project is notified under section 11 of the Act. Section 16 providing for such acquisition power, contemplates acquisition of the required land for this purpose either by negotiation or by recourse to statutory compulsion under the Land Acquisition Act. The question of acquisition of any land cannot arise unless preliminary processes as to assessment of land required and available, affected and benefited, by the project as contemplated under sections 13 to 15 of the Act are finalized. Reference to Land Acquisition Act in sub-section (2) of section 16 is intended to adopt the mechanism of acquisition evolved thereunder. Recourse thereto for this compulsory acquisition by itself does not make the acquisition otherwise than under the Act and cannot relieve the authorities of their obligation to

comply with sections 13 to 15 of the Act.

10. Secondly, it is fallacious to assume that section 16 contemplates two different modes of compulsory acquisitions i.e. one under this Act and the other under the Land Acquisition Act. Sub-section (2) of section 16 merely adopts the Land Acquisition Act for the requirement of the land under this Act. Creating fiction of the purposes of the Act being a public purpose is intended to remove any possible doubts as to the validity of the contemplated acquisitions. Sub-sections (3) and (4) merely indicate the source from which the lands required are to be acquired by recourse to the provision of the Land Acquisition Act under section 16(2) of the Act. The wording of clause (C) of section 13(3) or the Act fortifies this view and demonstrates the fallacy of the contention. The extent of land liable to be acquired and covered by sub-sections (3) and (4) of section 16 has to be first ascertained and area thereof identified. This can be done only on preliminary assessment and enquiry under sections 13 to 15 of the Act. Any assumption that sub-section (2) is independent or unconnected with sub-sections (3) and (4) would prevent application of Land Acquisition Act to the acquisition of lands covered by sub-sections (3) and (4) of section 16. The Act does not provide for any other mechanism of acquisition, and the fiction of acquisition being for public purpose would also be inapplicable in that case. All this goes a long way to show how contrary contentions are ill-founded.

11. This apart, section 16 cannot be so interrupted as to permit option of acquiring land under this Act or under the Land Acquisition Act without exposing it to the attack of being violative of Article 14 of the Constitution, as it would be difficult to find out, in that case, any criteria with section to determine when and why the one should be invoked and not the other.

12. Our attention was also drawn to the wording of clauses (c) and (d) of section 13(3) of the Act, suggesting that the basis of acquisition of land covered by clause (c) is different from the one covered by clause (d). The detail description of land under clause (c) tallies with its description under sub-section (4) of section 16. This is another instance of bad drafting. It is difficult to know why this land is placed in separate clause (c) when it is liable to be covered also by clause (d). In the context now, the clause (d) shall have to be interpreted to cover only lands acquired by negotiation and the "Goathan" land covered by sub-section (3) of section 16, though it is wide enough to cover land referred to in clause (c). We have already seen how express reference to the Land Acquisition Act in clause (c) herein fortifies our view that acquisition of lands covered by sub-section (4) of section can be secured only by recourse to Land Acquisition Act and by no other provisions of this Act and how this rather runs counter to Mr. Saldhana's arguments.

13. The reliance on the word "also" in section 16(2) is equally misconceived. The word is intended to highlight the availability of one more mode of securing the required land under the Act in addition to its acquisition by negotiations provided for in sub-section (1) and not to emphasise any power of acquisition in connection with sections 13 to 15. Section 16(2) contemplates recourse to the Land Acquisition Act for the acquisition of the land "required" for the purposes of the Act. Such "requirement" can be ascertained only by the process as provided under sections 13 to 15 of the Act. Sub-sections (3) and (4) only reflect the crystallisation of this process and it is for the land as required that mechanism of the Land Acquisition Act is intended to be adopted under section 16(2) of the Act. The word "also" in sub-section (3) does not have any significance excepting to emphasise that even land 'affected' is liable to be acquired if needed for "gaothan" though the Act contemplates resettlement on benefited and other zones.

17. Further the decision in the case of *Sharad Mukunda Patil Vs. State of Maharashtra and Ors.*² is also relevant in the present case as it clearly distinguishes the provisions of the said Act vis-a-vis the provisions of the LA Act, 1894. Paragraph No.8 is relevant and reads thus:-

"8. We have referred in detail to the observations of the two Division Benches and the Full Bench only in order to point out that the submission of the learned Assistant Government Pleader that the provisions of the Resettlement Act brought about, as held in Pandurang's case, implied repeal of sections 4 and 6 of the Land Acquisition Act and that, therefore, section 7 of the Bombay General Clauses Act would become available, would be untenable. In fact, for the application of section 7 of the Bombay General Clauses Act, it is necessary that either that Act or any Bombay Act or Maharashtra Act made after the commencement of the Bombay General Clauses Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not have the consequence of bringing about the effect enumerated in Clauses (a) to (e) of that section. There is nothing in the Resettlement Act which would show that after a notification under section 4 of the Land Acquisition Act is issued earlier, the notification under section 11 of the Resettlement Act cannot be issued. Section 11(1) of the Resettlement Act is an enabling provision. If the State Government is of the opinion that it is

2 1992 Mah.L.J. 443

necessary or expedient in the public interest so to do, for the resettlement of displaced persons, it may declare that the provisions of that Act shall apply to such project. There is nothing in any of provisions of the Resettlement Act which would run counter to the requirements of section 4 of the Land Acquisition Act and having regard to the general scheme of Chapter III and particularly to the provision of section 16, which vests in the Government the power to acquire land for the purposes of that Act, it is apparent that the provisions of section 11 of the Resettlement Act are in addition to and supplement those of section 4 of the Act. Nonetheless the modalities of the Land Acquisition Act have to be followed should an opinion be formed as contemplated by section 11 of the Resettlement Act. Considering these factors, we find it impossible to agree with the learned Assistant Government Pleader that two irreconcilable and separate modalities are contemplated for the acquisition of the land, one by initiating action under section 4 of the Land Acquisition Act, and the other by resort to the provisions of Chapter III of the Resettlement Act. Once this position is understood, it would be clear that all the requirements of Chapter III would have to be fulfilled upon a notification being issued under section 11(1) of the Resettlement Act and unless that is done, as pointed out by the Full Bench, action for acquisition in the teeth of non-compliance of the provisions of sections 13 to 15 of the Resettlement Act, would become unsupportable. We are clear that merely because a notification under section 4 of the Land Acquisition Act has been issued, it would not do away with the compliance of the provisions of Chapter III, if a notification under section 11 of the Resettlement Act has been issued.”

18. In view of the above, it is clear that the suit as filed by the Plaintiffs cannot be barred in view of the provisions of either Section 22 of the 1986 Act or Section 29 of the 1976 Act as the mandatory procedure is not followed by the statutory authorities. Merely declaring the Award without following the mandatory steps contemplated under Section 13 to 16(1) of the 1976 Act and / or under Sections 10 to 17 of the 1986 Act is impermissible and hence the statutory bar of jurisdiction clause would not apply to the case of the Respondents .

19. The impugned judgment and order dated 18.02.1998 is therefore sustained.

20. Considering that the suit is of the year 1997, the learned Trial Court is directed to determine the suit as expeditiously as possible and preferably within a period of 12 months from today.

21. With the above directions, Civil Revision Application is dismissed.

[MILIND N. JADHAV, J.]

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