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

WRIT PETITION NO. 3634 OF 2022

Vidarbha Irrigation Development Corporation through its Executive Engineer, Nagpur

vs.

The Deputy Collector (Land Acquisition No.1), Nagpur and others

WITH

WRIT PETITION NO. 3635 OF 2022, WRIT PETITION NO. 3636 OF 2022
WRIT PETITION NO. 3637 OF 2022, WRIT PETITION NO. 3638 OF 2022
WRIT PETITION NO. 3639 OF 2022, WRIT PETITION NO. 3640 OF 2022
WRIT PETITION NO. 3641 OF 2022, WRIT PETITION NO. 3642 OF 2022
WRIT PETITION NO. 3643 OF 2022, WRIT PETITION NO. 3644 OF 2022
WRIT PETITION NO. 3645 OF 2022, WRIT PETITION NO. 3646 OF 2022
WRIT PETITION NO. 3647 OF 2022, WRIT PETITION NO. 3648 OF 2022
WRIT PETITION NO. 3649 OF 2022, WRIT PETITION NO. 3650 OF 2022
WRIT PETITION NO. 3651 OF 2022, WRIT PETITION NO. 3652 OF 2022
WRIT PETITION NO. 3653 OF 2022, WRIT PETITION NO. 3654 OF 2022
WRIT PETITION NO. 3655 OF 2022, WRIT PETITION NO. 3656 OF 2022
WRIT PETITION NO. 3657 OF 2022, WRIT PETITION NO. 4116 OF 2022

AND

WRIT PETITION NO. 4115 OF 2022

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.J.B.Kasat, Advocate and Mr.V.V.Dahat, Advocate for petitioner – VIDC in all these petitions.
Ms.S.S.Jachak, AGP and Ms.T.H.Khan, AGP for respondent No.1 – Dy. Collector in all these petitions.

CORAM : MANISH PITALE J.

DATE : 20/07/2022

When these petitions were called out for hearing, three more writ petitions raising identical

question were brought to the notice of this Court and accordingly, it was directed that Writ Petition Nos.3638 of 2022, 4116 of 2022 and 4115 of 2022 are taken on board along with the already listed petitions.

2. Mr.Kasat, learned counsel for the petitioner – Vidarbha Irrigation Development Corporation i.e. acquiring body in all these petitions submitted that a common question arises for consideration in these petitions wherein Awards dated 09/07/2021 passed by the respondent No.1 – Deputy Collector passed under Section 28-A of the Land Acquisition Act, 1894, have been challenged. These were Awards passed pursuant to the exercise of re-determination of compensation under Section 28-A of the said Act.

3. The specific contention raised on behalf of the petitioner will be adverted to after stating the facts in brief.

4. The lands in question belonging to the respondent claimants were acquired from villages located in District Nagpur for the Gosikhurd Irrigation Project and insofar as the Writ Petition No.3650 of 2022 is concerned, the subject land located in District

Buldhana which was acquired for Khadakpurna Irrigation Project.

5. It is the case of the petitioner that respondent claimants in all these petitions took benefit of Government Policy manifested in Government Resolution dated 15/12/1983, whereby rehabilitation compensation was paid to the claimants, over and above the amount awarded under the Award passed by the Land Acquisition Officer under Section 11 of the said Act.

6. It was submitted that as per the scheme contemplated under the aforesaid Government Resolution, disbursal of such rehabilitation compensation was subject to specific terms and conditions, which included affidavits submitted by the respondent claimants and agreements entered into with the acquiring body, inter alia, stipulating that the claimants would not institute any proceedings for seeking enhanced compensation. In other words, they would be satisfied with the compensation, so received under the aforesaid scheme specified in the Government Resolution.

7. Some of the claimants who had not taken benefit of the said scheme under the Government

Resolution instituted reference proceedings under Section 18 of the said Act, pursuant to which Awards were pronounced granting them enhanced compensation. The respondent claimants herein initiated proceedings under Section 28-A of the aforesaid Act for re-determination of compensation payable to them, on the ground that they ought to be paid compensation equivalent to the enhanced compensation paid to identically situated claimants who had initiated proceedings under Section 18 of the said Act.

8. Initially, the said applications were rejected on the ground that such proceedings were not maintainable for the reason that the claimants had received rehabilitation compensation under the aforesaid Government Resolution. Such orders were challenged before this Court, wherein this Court allowed the petitions and held that, merely because the claimants had accepted rehabilitation compensation under the said Government Resolution, it would not mean that they were not entitled to make applications and institute proceedings under Section 28-A of the aforesaid Act.

9. By making reference to Constitution Bench Judgment of the Hon'ble Supreme Court in the case

of ***Union of India and another vs. Hansoli Devi and others (2002) 7 SCC 273***, this Court allowed the petitions filed by the claimants and remanded the matters back to the respondent No.1 – Deputy Collector for consideration on merits.

10. It is in pursuance thereof that the impugned Awards re-determining the compensation in favour of the claimants have been passed and these Awards are made subject matter of challenge in these petitions.

11. The learned counsel appearing for the petitioner-Corporation has not raised any dispute on facts to the extent that the re-determination of compensation is indeed in terms of the enhanced compensation received by identically situated claimants, who had initiated reference proceedings. But, it is submitted that the petitioner-Corporation desires to test the argument as to whether the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of *Union of India vs. Hansoli Devi* (supra) in the context of reference proceedings under Section 18 and proceedings under Section 28-A of the Act, would apply to the facts of the present case, in the backdrop of the aforesaid Government Resolution dated 15/12/1983, read with

affidavits filed by the claimants and the specific agreements executed by them.

12. It is submitted that in the case of ***Motiram Zingar Wawre vs. State of Maharashtra and others 2017(4) Mh.L.J.627***, this Court considered a similar argument in the context of entitlement of claimants to initiate reference proceedings under Section 18 of the said Act after having taken benefit of the rehabilitation compensation under the aforesaid Government Resolution. In the said judgment also this Court had held in favour of the claimant.

13. This Court has considered the contentions raised on behalf of the petitioner-Corporation. Strictly speaking the contentions sought to be raised in these petitions were available to the petitioner-Corporation when writ petitions filed by the claimants including Writ Petition No.5424 of 2019, were decided by this Court and matters were remanded to the respondent No.1 – Deputy Collector for consideration on merits.

14. Be that as it may, in the light of the law laid down by the Hon'ble Supreme Court and this Court in the aforesaid judgments, even if the scheme

contemplated under Government Resolution dated 15/12/1983 is specifically taken into consideration, the issue is no more *res integra*.

15. In the case of *Union of India vs. Hansoli Devi*(supra) one the questions framed by the Hon'ble Supreme Court, reads as follows :-

> *"2. Whether a person who has received the compensation without protest pursuant to the award of the Land Acquisition Collector and has not filed an application seeking reference under Section 18 is 'a person aggrieved' within the meaning of Section 28-A?"*

16. The said question was answered in the said judgment as follows :-

> *"11. Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other landowner's application for reference is answered by the reference court. It is apparent on the plain language of the provisions of Section 28-A of the Act.*

> *Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the legislature itself to deny the benefit of substantial right conferred upon the owner."*

17. It is significant that the aforesaid position of law was laid down by the Hon'ble Supreme Court specifically in the context of Sections 18 and 28-A of the said Act. It was specifically held that, if a person has not filed an application under Section 18 of the Act to make a reference, irrespective of the fact that he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Section 28-A of the Act and he will be entitled to make an application when reference application of some other land owner is answered by the reference Court.

18. In the case *Motiram Zingar Wawre vs. State of Maharashtra*(supra), this Court held that statutory right of land holder to seek enhancement of amount of compensation cannot be defeated by obtaining an affidavit/undertaking from the such land holder, that he would not seek enhancement in the amount of compensation.

19. This Court is of the opinion that even if the Government Resolution dated 15/12/1983 is to

be taken into consideration, and the affidavits submitted by the claimants and agreements entered into with them in pursuance of the said Government Resolution are to be considered, it would still be a situation where the law laid down and noted herein above would apply in favour of the claimants.

20. Merely, because the claimants in the present case accepted the rehabilitation compensation under Government Resolution dated 15/12/1983, and abided by the conditions specified therein of submitting affidavits and executing agreements, it cannot be said that they could not maintain applications under Section 28-A of the said Act, when a reference application filed by an identically situated land owner had resulted in an Award of enhanced compensation. Therefore, there is no substance in the contentions raised on behalf of the petitioner-Corporation.

21. There was no submission made before this Court as regards the calculations made in the impugned Awards passed by the Deputy Collector while disposing of the applications under Section 28-A of the Act, filed by the respondent claimants. Hence, there is no reason for this Court to interfere in the impugned Awards.

22. Accordingly, the writ petitions are dismissed.

JUDGE

Digitally signed byRAVIKANT CHANDRAKANT KOLHE
Signing Date:25.07.2022 10:17