

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

WRIT PETITION (WP) NO. 2743/2021

1. Shri Vishambhar Prasad S/o Durga Prasad Gupta,
Occu : Business, Aged about: 68 years,
R/o 149-A, Tirumala, Wardhman Nagar,
Nagpur- 440008
2. Smt. Satyfulabai wd/o Chirkut Shende,
Occ: housewife, Aged about: 68 years,
R/o Khairi, Tahsil: Kamptee,
District- Nagpur. PETITIONER(S)

// VERSUS //

1. The State of Maharashtra,
through The Collector and Upper
Special Land Acquisition Officer,
Pench-Project, Nagpur
2. The Project Director,
National Highways Authority of India
(NHAI), plot no. 159 Bunglow No.2,
"Shubhankar Apartment" Ambazari Hill Top,
Ram Nagar, Nagpur. RESPONDENT(S)

Shri Anand Jaiswal, Senior Advocate with Shri R.B. Mehadia, Advocate
for the petitioners
Shri Neeraj Patil, Assistant Government Pleader for respondent no.
1/State
Shri A.A. Kathane, Advocate for respondent no. 2

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, J.J.

DATED : 29/03/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned
counsel for the parties.

2. The requirement of furnishing Bank guarantee in view of Government Resolution dated 20.10.1995 for receiving the enhanced amount of compensation pursuant to such re-determination under Section 28A of the Land Acquisition Act, 1894 (for short the “Act of 1894”) is under challenge in this writ petition.

3. In proceedings for acquisition of various lands under the Act of 1894 for construction of Outer Ring Road, on 16.02.2002 Award was passed by the Land Acquisition Officer. In Land Acquisition Case No. 68/2005 that arose from proceedings under Section 18 of the Act of 1894 the Reference Court enhanced the amount of compensation to Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) per hectare for the acquired lands. This Award passed by the Reference Court is the subject matter of challenge in First Appeal No. 1198/2013 preferred by the State Government which is pending. In the meanwhile, the petitioners had filed Reference under Section 28A of the Act of 1894 seeking re-determination of amount of compensation in terms of what was determined in Land Acquisition Case No. 68/2005. The Additional Collector on 03.12.2017 enhanced the amount of compensation in terms of Section 28A of the Act of 1894 and held the petitioners entitled to compensation at the rate of Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) per hectare. However while doing so, it was held that since the challenge to the judgment in Land Acquisition Case No.

68/2005 was pending in First Appeal No. 1198/2013, the petitioners would be entitled to receive the amount of enhanced compensation subject to furnishing of Bank guarantee as prescribed by Government Resolution dated 20.10.1995. Being aggrieved by the aforesaid direction, the same has been challenged in this writ petition. The petitioners have also challenged Government Resolution dated 20.10.1995 as being illegal.

4. Shri Anand Jaiswal, learned Senior Advocate for the petitioners submits that the respondents having accepted the determination of compensation at the rate of Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) per hectare in Land Acquisition Case Nos. 199/2004 and 200/2004 by paying the amount of compensation at that rate and no appeal having been preferred against that adjudication, there was no reason to call upon the petitioners to furnish Bank guarantee for receiving the amount of enhanced compensation. During the course of Execution proceedings being Regular Darkhast No. 84/2018 the respondents had deposited the amount of enhanced compensation before the Lok Adalat. Since the adjudication in Land Acquisition Case Nos. 199/2004 and 200/2004 had been accepted by the respondents, the Government Resolution dated 20.10.1995 relied upon by the Additional Collector was not at all attracted in the present case and there was no reasonable justification for imposing such

condition. It was therefore submitted that said condition imposed by the Additional Collector was liable to be set aside.

5. Shri N.R. Patil, learned Assistant Government Pleader for the respondent no. 1 by relying upon the affidavit-in-reply opposed the aforesaid contentions. According to him, since the adjudication in Land Acquisition Case No. 68/2005 was challenged in First Appeal No. 1198/2013 the Additional Collector was justified in directing the petitioners to furnish the Bank guarantee for withdrawing the amount of compensation. He submitted that if First Appeal No. 1198/2013 preferred by the State Government would be allowed the State Government would not be in a position to recover the compensation that was enhanced in the present proceedings under Section 28A of the Act of 1894. He therefore submitted that the Government Resolution dated 20.10.1995 was rightly relied upon by the Additional Collector.

Shri A.A. Kathane, learned Counsel for the respondent no. 2 supported the submissions made on behalf of the respondent no. 1 and urged that the condition as imposed in the impugned Award be maintained.

6. We have heard the learned Counsel for the parties and we have perused the documents on record. It is not in dispute that in Land Acquisition Case No. 68/2005 the Reference Court awarded

compensation at the rate of Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) per hectare. This adjudication is the matter of challenge in First Appeal No. 1198/2013 by the respondents. The claimants therein have also filed Cross-objection seeking further enhancement and these proceedings are pending. It is further apparent from the record that the adjudication in Land Acquisition Case Nos. 199/2004 and 200/2004 wherein compensation was also granted at the rate of Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) per hectare has not been challenged by the State Government. On the contrary, the claimants therein have been paid the amount of compensation in Execution proceedings.

7. As per Government Resolution dated 20.10.1995, certain guidelines have been issued in the matter of making award under Section 28A of the Act of 1894. It is stated that where it has been decided not to file any appeal against an award passed under Section 18 of the Act of 1894, the amount of compensation under Section 28A of the Act of 1894 could be paid to the land owners. It further states that with regard to an award wherein appeal is proposed to be filed or has been filed, Bank guarantee should be obtained from land owners while paying the amount of compensation re-determined under Section 28A of the Act of 1894.

Thus, both contingencies, that is in cases where no appeal has been filed and in cases where appeal is proposed to be filed or has been filed are taken care of by Government Resolution dated 20.10.1995. Though this Government Resolution has been challenged by the petitioners as being illegal and contrary to Section 28A of the Act of 1894 we do not find anything illegal therein to accept the challenge to its validity. In fact, Clause 1 of Government Resolution dated 20.10.1995 applies to the case of the petitioners.

8. The respondents would have been justified in relying upon Clause 3 of the Government Resolution dated 20.10.1995 had they challenged the Award passed in Land Acquisition Case Nos. 199/2004 and 200/2004 where compensation was granted at the rate of Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) per hectare. That is not the case here. The amount of compensation as awarded in Land Acquisition Case No. 68/2005 alone has been challenged. The adjudication in Land Acquisition Case Nos. 199/2004 and 200/2004 having been accepted and these proceedings having arisen from the same notification issued under Section 4 of the Act of 1894 pertaining to lands from the same village, there would be no justification for the Additional Collector to insist upon the petitioners to furnish Bank guarantee for receiving the amount of compensation as determined under Section 28A of the Act of 1894. It is thus clear that Clause 3 of the

Government Resolution dated 20.10.1985 is not attracted in these facts but the case of the petitioners is covered by Clause 1 thereof.

9. In that view of the matter, we find that the Additional Collector was not justified in directing the petitioners to furnish Bank guarantee for receiving the amount of compensation that was re-determined under Section 28A of the Act of 1894. We may however observe that in *Union of India Vs. Munshi Ram* [2006(4) Mh.L.J. 488(SC)] the Hon'ble Supreme Court has held that the compensation payable to the applicants under Section 28A is the same that is finally payable to those claimants who sought reference under Section 18 of the Act of 1894. In case of reduction of compensation by the superior Courts, the applicants under Section 28A may be directed to refund the excess amount received by them in the light of the reduced compensation finally awarded. That right of the respondents will thus have to be kept open. Accordingly, the following order is passed:-

(i) The writ petition is allowed.

(ii) The direction in the Award dated 03.10.2017 passed under Section 28A of the Act of 1894 requiring the petitioners to furnish Bank guarantee as per paragraph 3 is set aside.

(iii) The amount of compensation be released in favour of the petitioners within a period of twelve weeks from today.

(iv) However, the legal remedies available to the respondents after adjudication of First Appeal No. 1198/2013 in terms of the judgment in *Union of India Vs. Munshi Ram* [2006(4) Mh.L.J. 488(SC)] are kept open for being availed in accordance with law.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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