

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 2997 OF 2020**

- 1] Duneswar Suryabhan Pethe  
Aged about 46 years, Occupation-Business,  
R/o Plot No.25, Near Jalaram Mangal Karyalaya,  
Hiwri Nagar, Bhandewadi, Bagadganj,  
Nagpur-440 008.
- 2] Meena Duneswar Pethe,  
Age about 41 years, Occupation-Housewife,  
R/o Plot No.25, Near Jalaram Mangal Karyalaya,  
Hiwri Nagar, Bhandewadi, Bagadganj,  
Nagpur-440 008.
- 3] Kirti Chinteshwarrao Pethe,  
Age about 36 years, Occupation-Housewife,  
R/o Plot No.256, Bhandara Road,  
Hiwari Layout, Bhandewadi, Bagadganj,  
Nagpur-440 008.
- 4] Chinteshwarrao Suryabhan Pethe,  
Age about 44 years, Occupation-Business,  
R/o Plot No.256, Bhandara Road,  
Hiwari Layout, Bhandewadi, Bagadganj,  
Nagpur-440 008.
- 5] Khemshankar Dhulaji Sewak,  
Age about 56 years, Occupation-Business,  
R/o. Maa Bhagvati Niwas, Plot-N-25 EWS Colony,  
Near Rajurkar Bhichhayat Kendra,  
Hiwari Layout Wardhaman Nagar,  
Nagpur-440 008.
- 6] Premji Raja Thakrani,  
Age about 71 years, Occupation-Business,  
R/o. Plot No.11, Wathoda Ring Road,  
Opp. Ajay Ata Chakki, Maa Sharda Nagar,  
Wathoda, Bhandewadi, Nagpur- 440035.

- 7] Harikishan Chhaganlal Jhaver,  
Aged about 69 years, Occupation-Business,  
R/o. House No.570, Dharaskar Road,  
Vyanketesh Mandir, Itwari,  
Nagpur-440 002.
- 8] Anand Daulal Purohit,  
Aged about 49 years, occupation-Business,  
R/o.Near Swaminarayan School,  
Swaminarayan Apartment,  
255, East Wardhman Nagar,  
Bagadganj, Nagpur-440 008.
- 9] Pritiben Nagindas Vakharia,  
Aged about 76 years, Occupation-Business,  
R/o 99, Farmland, Dev Ashish Society,  
Ramdaspath, Nagpur-440 012.
- 10] Bharat Ghanshyandas Motwani,  
Aged about 41 years, Occupation-Business,  
R/o. Shri Swami Narayan Enclave,  
Tower-2, Flat No.40, Wathoda Road,  
Bhandewadi, Nagpur-440 035.
- 11] Ashwini Abhay Pethe,  
Aged about 33 years, Occ-Business,  
R/o. Plot No.196, Wathoda Road,  
Jai Bhim Chowk, Padole Nagar,  
Bhandewadi, Bagadganj, Nagpur-440 008.
12. Pawansingh Sarjusing Rajput,  
Aged about 48, Occupation-Business,  
R/o A/11, KDK College Road,  
Near Uday Lawn, NIT Layout, Darshan Colony,  
Hanuman Nagar, Nagpur-440 009.
- 13] Omprakash Ramlalji Jangid,  
Aged about 65, Occupation-Business,  
Plot No.73-A, Wathoda Ring Road,  
Maa Sharda Nagar, Nagpur-440 035.

14. Vijay Ambadas Thaokar,  
Aged about 51, Occupation-Business,  
Plot No.52, Wathoda Ring Road,  
Near NIT Garden, Anmol Nagar,  
Hudkeshwar Bk. Nagpur-440 034.
15. Vithal Mahadeorao Katole,  
Aged about 60, Occupation-Business,  
Near Pandav College, Plot No.833,  
New Nandanwan Layout, Trimurti Chowk,  
Hanuman Nagar, Nagpur-440 008.
- 16] Ganpat Harbhau Wankhede,  
Aged about 38, Occupation-Business,  
Kamptee, Sawali, Dighori-Kale,  
Nagpur-441 202.

..... **PETITIONERS**

**..V E R S U S..**

- 1] State of Maharashtra,  
through its Secretary in the Ministry of  
Revenue and Forests, Mantralaya,  
Mumbai-400 032.
- 2] Collector, Nagpur District,  
Nagpur-440 001.
- 3] Sub-Divisional Officer and Land Acquisition Officer,  
Nagpur(City), Nagpur- 440 001.
- 4] National Highway Authority of India,  
Having office at Nagpur through its Project Manager.
- 5] Nagpur Municipal Corporation,  
Civil Lines, Nagpur through its Commissioner.
- 6] Assistant Director, Town Planning, Nagpur  
Municipal Corporation, Civil Lines, Nagpur.
- 7] Nagpur Improvement Trust,  
Kingsway, Nagpur through its Chairman.

..... **RESPONDENTS**

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Shri S.V.Bhutada, Advocate for petitioners.

Ms Mayuri H. Deshmukh, Assistant Government Pleader for respondent nos. 1 to 3.

Shri Anand Parchure, Advocate for respondent no.4.

Shri J.B.Kasat, Advocate for respondent nos. 5 and 6.

Shri G.A.Kunte, Advocate with D.D.Khedikar, Advocate for respondent no.7.

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**CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.**

**ARGUMENTS WERE HEARD ON : 03/03/2022**

**JUDGMENT IS PRONOUNCED ON : 06/04/2022**

**JUDGMENT (Per A.S.CHANDURKAR, J.)**

**Rule.** Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the award dated 07.08.2020 issued by the Sub-Divisional Officer and Land Acquisition Officer, Nagpur (City) insofar as the same relates to the petitioners properties. This is for the reason that according to the petitioners despite being owners of their respective apartments in the building standing at Survey No.421, Mouza Pardi, Nagpur and portion thereof having been acquired by the respondents for the purposes of road widening and other development works, no notice has been issued to them in complete disregard to the relevant statutory provisions. By amending the writ petition, a further challenge is raised to the order dated 25.10.2021 that has been passed by the Sub-Divisional Officer rejecting the

proposal/objection raised by the petitioners under Section 94 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013').

3. The facts relevant for considering the aforesaid challenge is that on 16.07.2019 the Nagpur Municipal Corporation forwarded a proposal for acquisition of various lands to facilitate activities of road widening and other ancillary reasons. Accordingly on 16.09.2019 a Notification under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the Act of 1966') came to be published in the Gazette of the Government of Maharashtra. Pursuant thereto on 07.08.2020 an award came to be passed by the Sub-Divisional Officer and Land Acquisition Officer, Nagpur (City). It was stated that in the matter of grant of compensation for the lands acquired, the same would be payable in accordance with the Act of 2013. It is the case of the petitioners that though the properties occupied by them as owners thereof were included in the said award for being acquired, their names did not figure in the award in question. The petitioners therefore apprehended that while acquiring the said properties, the legal rights of the petitioners would be affected without any due notice to them. When the concerned authorities visited the site in question and sought to take further steps towards acquiring these properties, the petitioners filed the present writ petition challenging the

award in question.

4. On 02.09.2021 pursuant to the notice issued in the writ petition, the Collector, Nagpur found that even though the petitioners were occupiers of the building that was standing on the land under acquisition, none of the petitioners had been issued any notice. It was stated on behalf of the Collector that fresh notices were proposed to be issued to all the concerned occupiers for taking necessary action for distributing the amount of compensation as per the Act of 2013. Accordingly fresh notices were duly issued and thereafter the names of the petitioners came to be included by following the provisions of Section 21 of the Act of 2013. By the affidavit dated 27.07.2021 revised details of properties especially CTS No.421 were obtained from the Office of the City Survey Officer and those details included the names of the petitioners. Pursuant to the aforesaid, the grievance of the petitioners with regard to absence of their names in the award to enable them to receive compensation pursuant to acquisition of the part of the building standing on CTS No.421 now stands redressed.

5. Thereafter the petitioners submitted a representation under Section 94 of the Act of 2013 stating therein that since a portion of building occupied by them was proposed to be acquired and the remaining portion after such acquisition would not be of use to them, the entire building itself be acquired.

By the order dated 11.10.2021 the Collector was directed to decide the representation made under Section 94 of the Act of 2013 by following the procedure prescribed. The Collector accordingly on 25.10.2021 decided that representation and held that the petitioners did not have any right under Section 94 of the Act of 2013. The writ petition was accordingly amended and the order dated 25.10.2021 was also challenged. It is in the aforesaid backdrop that the writ petition has been heard.

6. Shri S.V.Bhutada, learned counsel for the petitioners submitted that the Collector was not justified in rejecting the representation dated 07.10.2021 made by the petitioners under 94 of the Act of 2013. Section 94 was in *pari materia* with Section 49 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') and while interpreting the provisions of Section 49(1) of the Act of 1894 it had been held that if a part of any house or building is proposed to be acquired and the owner of that house or building desires that the entire house or building should be acquired, the same should be accordingly done. There were only two options for the Collector who could either acquire the entire building or withdraw from the acquisition itself. There was no other option available in law. In that regard the learned counsel referred to the decisions in *State of Bihar and anr. vs. Kundan Singh and anr. AIR 1964 SC 350* and *Saramma Itticheriya vs. State of Kerala and others AIR 2008 Kerala 72*. In

view of the stand taken by the respondents in their additional affidavits, it was urged by the learned counsel that the representation made under Section 94 of the Act of 2013 deserves favourable consideration notwithstanding the fact that the Notification dated 16.09.2019 had been issued under Section 126(4) of the Act of 1966. Placing reliance on the decision of the Division Bench in *Shri Chandrakant Mahadev Patil and others vs. State of Maharashtra and others 2018 SCC Online BOM 2825*, it was submitted that since the provisions of the Act of 2013 had been incorporated in the Act of 1966 and the acquisition was to be done in the manner provided by Section 19 of the Act of 2013, there was no reason to exclude the applicability of Section 94 of the Act of 2013. The provisions of Section 125 of the Act of 1966 merely excluded the provisions of Section 4 to 15 of the Act of 2013 which would indicate that other provisions of the Act of 2013 stand included for all purposes. He also referred to the provisions of Section 126(3) of the Act of 1966 and submitted that the provisions of the Act of 2013 had been made applicable to acquisition thereunder. Hence it was clear that the provisions of Section 94 of the Act of 2013 were applicable. Even the impugned order dated 25.10.2021 deciding the representation did not state that the said provision was not applicable. It was thus submitted that by holding the provisions of Section 94 of the Act of 2013 to be applicable, the representation as made by the petitioners ought to have been allowed.

7. Ms. Mayuri Deshmukh, learned Assistant Government Pleader for the respondent nos. 1 to 3 opposed the aforesaid submissions and relied upon the additional reply as filed by the Sub-Divisional Officer. It was submitted that by virtue of provisions of Section 105-A of the Act of 2013 in absence of any notification being issued, the provisions of the Act of 2013 could not be made applicable for acquisition that was made after invoking the provisions of Section 125 and 126 of the Act of 1966. A similar stand was taken by Shri J. B. Kasat, learned counsel for the Acquiring Body-respondent nos. 5 and 6. He submitted that in the Fifth Schedule to the Act of 2013 there was reference to the Act of 1966 as a result of which the provisions of the Act of 2013 were not applicable to acquisition of land under the Act of 1966. He relied upon the decision in *Sahebrao Bhausaheb Kalate vs. State of Maharashtra and others 2020 (2) Mh.L.J. 210* and submitted that the provisions of Section 94 of the Act of 2013 could not be resorted to in the case in hand. Shri Anand Parchure, learned counsel for the respondent no.4 and Shri G.A.Kunte, learned counsel for the respondent no. 7 supported the stand taken by the respondents and submitted that the writ petition was liable to be dismissed.

8. We have heard the learned counsel for the parties at length and with their assistance we have gone through the documentary material placed

on record. It is seen that pursuant to Notification dated 16.09.2019 that was published in gazette of the Government of Maharashtra, the Collector proposed acquisition of various lands in public interest for road widening and other ancillary reasons. This notification has been published under the Act of 2013 as well as under Section 126(4) of the Act of 1966. Pursuant thereto final award was passed by the Sub-Divisional Officer and the Land Acquisition Officer, Nagpur (City). The award specifically refers to such acquisition being made pursuant to the proposal submitted under Section 126(4) of the Act of 1966 and after following procedure for acquisition under Section 19 of the Act of 2013. In the light of the Notification dated 16.09.2019 and the award dated 07.08.2020 the question with regard to applicability of the provisions of Section 105-A of the Act of 2013 would have to be considered.

9. In this regard, it would be necessary to refer to the provisions of Section 105-A of the Act of 2013 that has been incorporated by Maharashtra Act No.XXXVII of 2013. By virtue of Section 105-A (1), the provisions of the Act of 2013 have been made inapplicable to acquisition of land under enactments specified in the Fifth Schedule. The Act of 1966 is included in the Fifth Schedule. Under sub-section (2) of Section 105-A the State Government can by issuing a notification within a period of one year from commencement of the Amendment Act of 2018 direct any of the provisions of the Act of 2013

relating to determination of compensation, rehabilitation and resettlement being beneficial to the affected families being made applicable with such exceptions or modifications without reducing the compensation or diluting the provisions of the Act of 2013 in the matter. Such notification has to be issued consequent upon resolution passed by both the Houses of the State Legislature.

Admittedly, no such notification pursuant to such resolution passed by both the House of the State Legislature has been brought on record. As a result for the acquisition of aforesaid lands under the Act of 1966, the provisions of Section 94 the Act of 2013 would not become applicable.

10. In this context, the decision in *Chandrakant Mahadev Patil and others* (supra) relied upon by the learned counsel for the petitioners may be referred to. The question considered therein was whether the provisions of the Act of 2013 had been included in the Act of 1966 by a mere reference or citation of one statute into another or by incorporation ? By referring to the observations in paragraph 21 of that decision it was sought to be urged that since the acquisition was sought to be commenced under Section 126(4) of the Act of 1966 in the manner provided under Section 19 of the Act of 2013 and as the provisions of Section 126(4) of the Act of 1966 merely excluded the provisions of Sections 4 to 15 of the Act of 2013, the provisions of Section 94 of the Act of 2013 would become applicable. This contention cannot be

accepted. It was held in the aforesaid decision that the provisions of the Act of 2013 as found in Sections 125 and 126 of the Act of 1966 were by way of incorporation and not by way of reference. This aspect is also clear from the decision in *Sahebrao Bhausaheb Kalate* (supra) wherein it has been held that in absence of any Notification under Section 105-A(2) of the Act of 2013, the provisions of the Act of 2013 cannot be made automatically applicable to proceedings for acquisition initiated under the Act of 1966.

11. Thus, from the aforesaid we find that the acquisition proceedings having commenced pursuant to the proposal dated 16.07.2019 thereby resulting in issuance of Notification dated 16.09.2019 under Section 126(4) of the Act of 1966 read with the provisions of the Act of 2013 and thereafter culminating into award dated 07.08.2020. The provisions of Section 94 of the Act of 2013 cannot be made applicable in the absence of any notification being issued by the State under Section 105-A(2) of the Act of 2013. Though inapplicability of the provisions of Section 94 of the Act of 2013 to the present acquisition has not been stated in the order dated 25.10.2021 issued by the Sub-Divisional Officer while rejecting the petitioners representation, the same cannot have the effect of vitiating such adjudication. Once it is found that the provisions of Section 94 of the Act of 2013 would not at all be applicable in the present proceedings, it would not be necessary to go into the reasons for

rejection of the representation made by the petitioners.

12. Hence for the aforesaid reasons, we do not find any merit in the challenge raised by the petitioners to the rejection of their representation dated 07.10.2021 by the Sub-Divisional Officer dated 25.10.2021. Needless to state that if the petitioners are aggrieved by the amount of compensation determined for such acquisition, they are free to take recourse to the remedies provided under law.

The writ petition therefore stands dismissed. Rule stands discharged with no order as to costs. Pending civil application also stands disposed of.

13. At this stage, learned counsel for the petitioner seeks continuation of the interim relief that has been operating. This request is opposed by the learned counsel for the respondents.

Considering the purpose for which the acquisition has been proposed, the request is refused.

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

(A.S.CHANDURKAR, J.)

*Andurkar..*