

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3351 OF 2017

Pitambar Murlidhar Patil
Age: 54 years, Occu: Agri
R/o: Fulgaon, Tq. Bhusaval
Dist. Jalgaon

... Petitioner

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
(Revenue and Forest Department)
Mantralaya, Mumbai-32
2. The Collector,
Jalgaon
3. The Special Land Acquisition Officer &
The Sub Divisional Officer,
Bhusaval Division
Dist. Jalgaon
4. The Executive Engineer
Building Division
Maharashtra State Power Generation Company
Ltd. Bhusaval Division,
Dist. Jalgaon.

... Respondents

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Mr. A. B. Kale, Advocate for Petitioner
Mr. S. B. Pulkundwar, AGP for Respondent Nos.1 to 3
Mr. A. N. Sikchi, Advocate for Respondent No.4

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**CORAM : NITIN W. SAMBRE &
S. G. CHAPALGAONKAR, JJ.**

Closed On : 06.04.2023

Pronounced On : 19.04.2023

FINAL ORDER :- (PER S. G. CHAPALGAONKAR, J.)

1. The petitioner approaches this Court under Article 226 of the Constitution of India with a prayer, which reads thus:

“B. To direct the respondents to determine amount of compensation for acquisition of land Gut Number 295 admeasuring 2 H 84 R situated village Pimprisekam Tq. Bhusaval Dist. Jalgaon in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 by issuing writ of mandamus or any other writ or order in the like nature”

2. The petitioner contends that he owns the land bearing Gat No. 295, admeasuring 2 Hectare 84 R, situated at Pimprisekam, Taluka Bhusaval, District Jalgaon. Under an award dated 01/07/2010, the land to the extent of 11 R was acquired by the respondents/authorities for the purpose of construction of separate railway line and parallel road leading to power generation station at Pimprisekam. Subsequently, the respondent needed additional land for the same purpose. Accordingly, a notification under Section 4 of the Land Acquisition Act, 1894 [hereinafter referred to as ‘the old Act’ for short] dated 21/10/2011 was issued followed by notice dated 20/12/2011 under Section 9 of the old Act. The petitioner raised an objection regarding valuation of land and made claim of Rs.42,00,000/- per hectare for his land.

3. On 16/01/2012, the respondents invoking the provisions of Section 17(1) of the old Act took the possession of the land. On 25/01/2012, an amount of Rs.68,40,000/- was paid

towards 80% of the compensation amount determined by respondent No.3. The balance of amount has been released after commencement of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation & Resettlement Act, 2013 [hereinafter referred to 'the New Act' for short] came into force. The petitioner has been paid balance amount of Rs.42,00,000/- on 12/11/2014. Therefore, the petitioner contends that in view of Section 24(2), he is entitled for determination and release of the compensation as per the New Act, since the entire compensation amount determined under Act of 1894 was not released to him before commencement of the New Act.

4. In response to the notice issued by this Court, respondent No.3/acquiring body filed an affidavit-in-reply. It is not disputed that the land admeasuring 2 Hectare 84 R situated at Village Pimprisekam has been acquired. The compensation of Rs.68,40,000/- has been paid to the petitioner on 25/01/2012 and possession of the land has been taken. The remaining amount of Rs.48,78,000/- has been paid to the petitioner on 12/11/2014. According to the respondent, the award under the old Act has been passed prior to commencement of New Act i.e. 01/01/2014. The 80% of the compensation amount was paid to the petitioner on 25/01/2012 and the possession of the acquired land was also taken. Only because partial compensation amount has been released on 12/11/2014 i.e. after commencement of the New Act, the petitioner cannot claim re-determination of compensation under the New Act.

5. Learned Advocate Mr. Kale appearing for the petitioner would submit that in view of Section 24 of the New Act, if the land acquisition proceeding has been initiated under the old Act, however compensation amount is not paid, then, all the beneficiaries specified in the notification for acquisition under Section 4 of the old Act, shall be entitled to compensation in accordance with the provisions of the New Act. He would, therefore, urge that the respondents be directed to recalculate the compensation amount in accordance with the New Act and release the same in favour of the petitioner. He would rely upon the judgment dated 02/02/2016 passed by this Court, in ***Writ Petition No.7947/2013, in the case of Narayan Sahebrao Gaikwad & Ors. Vs. the State of Maharashtra & Ors.*** Relying upon observations in the aforesaid judgment, he would urge that since the compensation amount has been paid to the petitioner after the commencement of the New Act, the petitioner is entitled for the compensation in terms of the provisions of the New Act. He invites attention of this court to the observations in Paragraph No.12 of the said judgment, which reads as thus:

“12. In the present matter, there is no dispute regarding the fact that the award has been passed on 3.12.2012. In view of our directions, additional affidavit has been filed by the respondents No.2 and 3 dated 7.1.2016, which shows that, compensation has been paid the farmers in the present acquisition on 10.9.2014 and 18.9.2014. This would be after coming into force of the New Act on 1.1.2014. Keeping these aspects in view and considering Section 24, it is clear that, the award passed has not been made five years or more prior to the commencement of the New Act. Thus, sub-section (2) of Section 24 does not apply. What applies is sub-section (1)(b) that an award under Section 11 was already made before 1.1.2014. Considering the proviso below Section 24, although award had been made, compensation in respect of majority of land holdings had not been made or deposited in the Account

of the beneficiaries when the New Act came into force on 1.1.2014. In view of this, the respondent Land Acquisition Officer is obliged to determine amount of compensation payable to the petitioners in accordance with the provisions of the New Act.”

6. Learned AGP Mr. S. B. Pulkundwar for respondent Nos.1 to 3 and the learned Advocate Mr. A. N. Sikchi appearing for respondent No.4 would urge that the claim of the petitioner is based on misinterpretation of the provisions of Section 24 of the New Act. They would submit that in the present case, the award has been passed by respondent No.3 on 27/12/2013. The compensation was determined to Rs.1,17,18,000/-. The possession of the land was taken by invoking urgency clause under Section 17(1) of the old Act. The amount of Rs.68,40,000/- has been paid to the petitioner on 25/01/2012 towards 80% of the compensation. After passing final award dated 27/12/2013, the balance amount of compensation has been released on 12/11/2014 in favour of the petitioner. In that view of the matter, once the award is passed under the old Act and possession was also taken over by the Government and 80% compensation amount was also released in favour of the petitioner, none of the provisions contained under Section 24 of the New Act would attract in facts of present case.

7. We have considered the submissions advanced by the learned Advocates appearing for the respective parties and have perused the record and pleadings. The parties are *ad-idem* to the factual aspect of the matter. Admittedly, the land of the petitioner bearing Gat No.295 admeasuring 2 Hectare 84 R has been acquired for the purpose of construction of separate railway line leading to power generation set at Pimprisekam.

Under the award dated 05/05/2009, 11 R land was acquired from the ownership of the petitioner. Thereafter, the balance of the land has been acquired under the award dated 27/12/2013. The possession of the land was taken by invoking urgency clause under Section 17(1) of the old Act on 16/01/2012. The compensation of Rs.68,40,000/- is released on 25/01/2012 and balance of compensation has been released on 12/11/2014. The entire procedure of acquisition of the land of the petitioner has been completed under the old Act.

8. The petitioner is raising the claim for re-determination of compensation in terms of the New Act for the reason that the part of compensation amount has been paid to him after the commencement of the New Act. The petitioner relies upon the proviso under sub clause 2 of section 24 to contend that even part payment of compensation after commencement of new act would confer right to land owner to get redetermined compensation in terms of new act. The provisions of Section 24 of the New Act, which reads thus:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.-(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), - (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the

commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

9. The petitioner is further relying upon the observations of this Court, in Writ Petition No.7947/2013, particularly Paragraph No.12, referred (supra). The issues raised in this matter are no more *res-integra*. The larger bench of Supreme Court of India, in the case of **Indore Development Authority Vs. Manoharlal & Others** reported in (2020) 8 SCC 129, resolved controversy arising out of conflicting views pertaining to interpretation of Section 24 of the New Act and concluded thus:

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word ‘or’ used in Section 24(2) between possession and compensation has to be read as ‘nor’ or as ‘and’. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.”

10. The aforesaid conclusions drawn in the judgment delivered by Full Bench in the matter of Indore Development

Authority Vs. Manoharlal & Others (*Supra*), it is evident that once the award is passed within the window period of five years, the proceedings will be governed by the old Act. Merely because, the minor fraction of the compensation has been released after the commencement of the New Act would not have any consequences on proceeding concluded under old Act. Admittedly, in the present case, the award has been passed prior to the commencement of the New Act. Similarly, the possession was also taken and 80% part of the compensation was also released to the petitioner. In that view of the matter, neither there is lapsing of acquisition nor can the petitioner gets right to seek re-determination of compensation. The provisions of Section 24 of the New Act have no application in the fact and circumstances of the present case.

11. In view of the aforesaid interpretation of Section 24 of the New Act adopted by Supreme Court of India in case of Indore Development Authority Vs. Manoharlal & Others (*Supra*), the view taken by this Court, in Writ Petition No.7947/2013, in the matter of Narayan Sahebrao Gaikwad & Ors. Vs. the State of Maharashtra & Ors. stood impliedly overruled and would not be of any assistance to the petitioner. The case in hand would be governed by Section 24(1)(b) and proceedings will be continued to be governed by the old Act since the award has been made prior to the commencement of the New Act. Admittedly, award pertains to petitioners only. No other landholder has been affected under acquisition and Award in question. The petitioner had parted possession of land and received 80% compensation of the amount before commencement of new act. Hence section 24 (1) (b) of New

Act would apply in present case as interpreted by Supreme Court in case of Indore Development Authority (Supra). Apparently, proviso under sub clause 2 of section 24 has no application in facts of present case.

12. In that view of the matter, there is no merit in the writ petition. Hence, the writ petition is dismissed without any order as to costs.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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