

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

WRIT PETITION NO.2547 OF 2023

1. Pandurang Sandhu Rautray
Age: 69 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

2. Sarjerao s/o Yadav Rautray
Age: 62 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

3. Sahebrao s/o Yadav Rautray
Age: 66 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

4. Yashodabai Shivram Rautray
Age: 72 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

5. Durgabai Tukaram Gadekar
Age: 54 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

6. Ramdas Shankar Nidhonkar (Dead)
Through his Legal Heirs,
6-A] Shantaram Ramdas Nidhonkar
Age: 65 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

6-B] Santosh s/o Ramdas Nidhonkar
Age: 61 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

7. Vitthal s/o Majiram Sulane
Age: 44 years, Occu: Agri.,
R/o At Post – Nidhona
Taluka – Phulambri, Dist. Aurangabad

... Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Irrigation Development Department,
Mantralaya Mumbai

2. The District Collector,
Aurangabad, Dist: Aurangabad

3. Sub Divisoinal Officer,
Paithan Fulambri SDM
At Chatrapati Sambhajinagar

4. Executive Engineer,
Minor Irrigation (Jal Sandharan)
Zilla Parishad, Aurangabad
Tq. & Dist. Aurangabad

... Respondents

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Mr. D. K. Thote h/f Mr. D. B. Rode, Advocate for the Petitioners
Mr. S. B. Yawalkar, AGP for Respondent Nos.1 & 2
Respondent No.3 served
Mr. Rajdeep D. Raut, Advocate for Respondent No.4

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

DATE : 30.03.2023

FINAL ORDER : [PER S. G. CHAPALGAONKAR, J.]

1. The petitioners have approached this Court under Article 226 of the Constitution of India, thereby challenging the award dated 17/04/2016 passed by respondent No.3 under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as 'the Act of 2013' for short].

2. The petitioners contend is that they are owners of the land situated

at village Nidhona, Taluka Phulambri, District Aurangabad. Respondent No.4 took the possession of the land in pursuance of notification under Section 4 (1) of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act' for short]. However, the acquisition proceedings could not be concluded. Hence, again fresh notification dated 24/01/2013 was published. However, no award under Section 11 could be passed till commencement of Act of 2013. Finally, an award dated 17/04/2016 came to be passed under the Act of 2013. The grievance of the petitioners is that though the award is passed after commencement of the Act of 2013, the compensation has not been determined as per the provisions of the Act of 2013. Therefore, the award is defective and the same is liable to be quashed and set aside.

3. Mr. Thote, learned Advocate holding for Mr. Rode, learned Advocate for the petitioners would submit that though the acquisition proceeding was initiated under the old Act, the award is passed under the Act of 2013. The land acquisition officer while determination of the compensation amount failed to follow the provisions of Sections 26 to 30 of the Act of 2013. The valuation of the land has been considered as on the date of issuance of notification under Section 4 of the Act. Similarly, factor of 1.5 is applied, which is contrary to the notification issued by the Central Government dated 26/05/2015.

4. Mr. Yawalkar, learned AGP appearing for respondent Nos.1 & 2 and Mr. Raut, learned Advocate appearing for respondent No.4/Executive Engineer Minor Irrigation would submit that the compensation has been worked out as per the provisions of the Act of 2013. As such, there is no defect in the award.

5. We heard the learned Advocates appearing for the respective

parties and perused the record with the assistance of the learned Advocates appearing for rival parties. The record shows that though the land of the petitioners has been acquired in pursuance of notification dated 24/01/2013 issued under Section 4 of the Act, however before the award under Section 11 could be passed, the Act of 2013 came into force. Therefore, the award dated 17/04/2016 has been passed under the provisions of the Act of 2013. The perusal of the award would show that the land acquisition officer has taken a note of the provisions of Section 26 to Section 30 of the Act of 2013 for the purpose of determination of the compensation. However, while fixing the value of land, the date of issuance of notification under Section 4 of the Act has been taken into consideration and the sale deeds executed during three years in the vicinity of said date are considered. Further the land acquisition officer has applied the factor of 1.50 though the lands are fall in rural area.

6. The issue as to the determination of compensation where the land acquisition proceedings initiated under the Act of 1894 but the award passed after commencement the Act of 2013 has been dealt with by this Court in the various judgments. Recently, this Court, in Writ Petition No.13031/2021 [Dalsing Shivilal Chandwade and Others Vs. The State of Maharashtra & Others] decided on 11/01/2023, observed in Paragraph Nos.9 and 10 as under:

“9. We have carefully considered the submissions of both the sides. Admittedly, no award was passed under section 11 of the old Act and only notification under section 4 was issued. Obviously, in view of the provisions of section 24 (1) (a) of the new Act the provisions of the new Act relating to the determination of compensation would apply.

10. Section 26 of the new Act prescribes for determination of the market value of the land by the Collector and inter alia provides that the determination of the market value shall be on the date on which the notification has been issued under section 11 of the new Act. Admittedly, on 01-01-2014 is the date on which the Act was enforced. Needless to say that the compensation should have been determined by taking 01-01-2014 as the date.”

7. The aforesaid observations are made in reference to the judgments in the case of **Sahebrao Bhausahab Kalate and Ors. Vs. The State of Maharashtra and Ors.** reported in MANU/MH/2141/2019, **Hardas and Ors. Vs. The State of Maharashtra and Ors.** reported in MANU/MH/0620/2019 and **Abuli Abdul Husain Vora and Ors. Vs. Union Territory of Dadra and Nagar Haveli and Ors.** reported in MANU/MH/2370/2018 as such the issue is no more res-integra. This Court in the aforementioned two decisions as also the Allahabad High Court has taken the same view. Over and above, admittedly, the State had raised the queries with the Central Government and in response, the Central Government has also informed the State Government that the date for assessment of market value should be taken as 01/01/2014 wherever no award was passed under the old Act prior to the coming into force of the New Act.

8. In view of the aforesaid observations, it is clear that the land acquisition officer ought to have worked out compensation by taking the market value of the lands as on 01/01/2014 i.e. the date of coming into force of the New Act. Therefore, the award passed by respondent No.3 by resorting to the adopt valuation of acquired land as on the date of notification issued under Section 4 under the Act of 1894 appears to be inconsistent to the statutory mandate and liable to be quashed.

9. So far as the next contention of the petitioners that respondent No.3/Land Acquisition Officer has erroneously applied the factor of 1.5 instead of 2 as per Central Government notification dated 26/05/2015 is concerned, this Court finds that respondent No.3 had obtained an information from the Assistant Town Planer, Aurangabad to confirm location of the acquired lands, which states that the village Nidhona, Taluka Phulambri falls within the rural area and not under notified area under MRTTP Act. Therefore, the factor of 2 ought to have been applied.

Having received aforesaid confirmation, apparently, respondent No.3 erred in applying the factor of 1.5 while determining valuation of acquired land.

10. In view of the aforesaid discussion, writ petition succeeds. Hence, we proceed to pass the following order:

ORDER

- (I) The writ petition is allowed.
- (II) The impugned award dated 17/04/2016 passed by respondent No.3 is hereby quashed and set aside with further direction to the respondent to pass a fresh award in light of the above observations at earliest and in any case within a period of six months from today.
- (III) Writ Petition stands disposed of accordingly.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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