

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12678 of 2022

Nandkumar s/o Tukaram Janrao ... **Petitioner**
Age 52 years, Occu: Agri.
R/o Vakti, Tq. Vaijapur Dist.
Aurangabad

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Irrigation Department, Mantralaya,
Mumbai 400 032
2. The Collector, Aurangabad ... **Respondents**
District Aurangabad
3. The Special Land Acquisition Officer,
Jaikwadi Project, Aurangabad
4. The Executive Engineer,
Nandur-Madhmeshwar Irrigation
Division,
District Aurangabad.

Shri Baliram B. Shinde, Advocate for the petitioner
Shri P. K. Lakhotiya, AGP for respondent-State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 27th June, 2023

PRONOUNCED ON : 12th July, 2023

JUDGMENT (PER Y. G. KHOBRAGADE, J):

1. Rule. Rule made returnable forthwith. With consent of both sides, the petition is heard finally at the stage of admission.

2. By the present petition, the petitioner prayed for issuance of writ of mandamus or any other appropriate writ, order or directions against the Respondents to pay compensation for his acquired land admeasuring 12 R from Gut No. 104 of village Vakti, Tq. Vaijapur Dist. Aurangabad as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short RFC & TLA & R, Act, 2013) within a period of two months from the date of order or in alternative, to deposit said compensation before this Court.

3. Mr. Shinde, the learned counsel appearing for the petitioner vehemently canvased that the petitioner's father Shri Tukaram Sakharam Janrao was owner of agriculture land bearing Gat No. 104 admeasuring 12 R at village Vakti, Tq. Vaijapur Dist. Aurangabad. In the year 1979, Respondent No. 4 acquiring body took possession of the land for construction of Nandur- Madhmeshwar Canal. On 31-01-1981, Respondent No. 3 Special Land Acquisition Officer passed an award in File No. 80/SLAO/JP/AR/39/79 and determined compensation to the tune of Rs.552/- (i.e. compensation @ Rs. 40 per R= 40 X 12 R= Rs. 480/- + Solatium Rs. 72 =Rs. 552/-) as per Schedule E to the Award. However, the petitioner or his predecessor in title,

were neither paid compensation nor the same was deposited in the Court till date. So also, no notice was issued to the petitioner or his father at any time before. Therefore, on 21-05-2018, 12-01-2022 and 21-01-2022, the petitioner submitted representations with the Respondents authorities but no positive action was taken for payment of compensation.

4. The learned counsel appearing for the petitioner submits that as per the mutation entry made in revenue record, the Respondent No. 4 acquired land of the petitioner for construction of canal in the year 1979, but till date no compensation has been paid either to the petitioner's father or the petitioner, nor it has deposited in the Court in pursuance of award dated 31-01-1981 passed by Respondent No. 2. Therefore, said award as well as acquisition proceeding lapsed as per provisions Sec. 24 of RFC & TLA & R, Act, 2013 and only recourse available to the acquiring body to initiate fresh acquisition proceeding under the new RFC & TLA & R, Act, 2013. The Respondent Government can not acquire land of the petitioner without payment of compensation.

5. To buttress this submissions he relied on the case of Vinayak R. Gayake -V- State of Maharashtra, 1988 MLR 1,

wherein it has been held that, the State Government Cannot acquire any property without payment of compensation.

6. He further relied on the case of **Pune Municipal Corporation and another -V- Harakchand Misrimal Solanki & other, 2014 (3) SCC 183**, wherein it has been held that, the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the RFC & TLA & R, Act, 2013. It is also admitted position that compensation so awarded has neither been paid to the land owners/persons interested nor deposited in the Court. The deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. Therefore, the subject land acquisition proceedings shall be deemed to have lapsed under Section 24 (2) of the RFC& TLA & R. Act, 2013.

7. The learned counsel Counsel for the petitioner further relied on order dated 14th March 2023 passed in **Writ Petition No. 557 of 2019, Ashok Anna Salunke and others . Vs. The State of Maharashtra and others** (Coram:Nitin W. Sambre & S. G. Chapalgokar, JJ.), wherein it has been observed that, possession of Petitioners land was taken on 01-10-2004 as against the

award dated 20-09-2012 but no compensation was paid till then. Therefore considering the observation made in Para 359 by the Supreme Court in case of **Indore Development Authority -Vs- Manoharlal, & Ors., (2020) 8 SCC 129**, the co-ordinate bench of this Court directed the petitioner therein to avail remedy to claim compensation under section 24 of the RFC& TLA & R. Act, 2013.

8. The learned counsel for the petitioner also relied on the case of **Vidya Devi Vs. State of Himachal Pradesh, (2020) 2 SCC 569**, wherein the Hon'ble Supreme Court held that, right to property ceased to be a fundamental right by the Constitution (Forty Forth Amendment) Act, 1978, however, it continued to be a human right in a welfare state, and a Constitutional right under Article 300-A of the Constitution. The State can not dispossesses a Citizen of his property except in accordance with the procedure established by law.

9. Per contra, Mr. Lakhotiya, the learned AGP submitted that, the agriculture land bearing Gat No. 104 (Old Survey No. 58 C) of village Vakti Tq, Vaijapur admeasuring 0.12 HR was standing in the name of Shri Tukaram Sakharam Janrao, the petitioner's father. In the year 1979, a notification under section 4 of the Land Acquisition Act, 1894, was published and land of

the petitioner including land of other owners was included in acquisition proposal bearing No. 39/79 for the purpose of Nandur-Madhmeshwar Canal. Respondent No. 3 Special Land Acquisition Officer initiated acquisition proceeding and passed an Award on 31-01-1981. Accordingly, Respondent No. 3 determined compensation in respect of the petitioner's land to the tune of Rs. 552 including solatium as per Statement-E of Award. The acquiring body deposited compensation for the acquired land including petitioner's land. The other agriculturist/claimants namely Bhiva Yadav, Sopan Dashrath, Sukhdeo Tukaram, Jaiwanta Shika have received the compensation, however, neither the petitioner's father nor the petitioner approached to the authority to receive compensation since then. Therefore, the amount of compensation in respect of the petitioner's land came to be redeposited with Treasury. The petitioner first time made representation after lapse of more than 30 years and sought for advice about payment of compensation and under subsequent representation, the petitioner prayed for initiating acquisition proceeding under the RFC& TLA & R. Act, 2013. According to the learned AGP, the Respondent no. 3 passed an award on 31-01-1981 and the acquiring body already deposited compensation but the petitioner's father never

approached to receive the compensation, nor challenged the said award. Therefore, as per Sec. 24 of RFC & TLA & R. Act, 2013, the acquisition proceeding can only lapse, if award was not passed u/s 11 of the Land Acquisition Act or where the award was passed but compensation not been deposited on the day of commencement of RFC & TLA & R. Act, 2013 i.e. 01-01-2014. However, in case in hand prior to coming into force of RFC & TLA & R. Act, 2013, the award was passed on 31-01-1981 and amount of compensation already deposited. Therefore, prayed for dismissal of the petition.

10. The petitioner claimed that, though the Respondents Authorities acquired his land in the year 1979 itself, but no compensation has been paid to him or his predecessor in title at any point of time, therefore, the acquisition proceeding as well as award passed on 31-01-1981 lapses under section 24 of RFC & TLA & R. Act, 2013 and the Respondents are required to initiate acquisition proceeding as per RFC & TLA & R. Act, 2013. He is entitled for compensation as per provisions of the RFC & TLA & R. Act, 2013. Therefore, it is necessary to appreciate the facts of present case coupled with provisions of the RFC & TLA & R. Act, 2013, which came into force w.e.f. 01-01-2014.

11. Section 24 of the RFC & TLA & R. Act, 2013 provides as under:-

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,—

(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

12. In para 124 & 125 of **Indore Development Authority**, supra, the Hon'ble Supreme Court considered scope of Sec. 24 of RFC& TLA & R,Act,2013 and observed as under:

" 124. Section 24 of the Act of 2013 is to be given full effect. Section 24(2) has been carved out as an exception to the otherwise general applicability of the provisions contained in Section 6 of the General Clauses Act and Section 24(1)(a) and (b) apply to the proceedings which are pending. Sub-section (2) is an exception to sub-section (1) which reads: "Notwithstanding anything contained in sub-section (1)" where an award has been made, but possession has not been taken nor compensation has been paid, an exception has been carved in Section 24 where an award has been passed, but no steps have been taken to take the possession nor payment of compensation has been made in pending proceedings under Section 24(1). The provision has to be construed in the spirit behind what is saved under Section 6 (of the General Clauses Act) as provided in Section 114 of the Act of 2013 and the non-obstante clause in Section 24(2).

125. It was also submitted on behalf of the States that neither a transitory provision nor a repealing law could be interpreted so as to take away, disturb or adversely affect rights created by operation of law. It cannot divest the State Government of the land absolutely vested in it. Reliance has been placed on K. S. Paripoornan V. State of Kerala & Ors. 91 thus:

12.It is further necessary to bear in mind that the amending Act has added, among others, the provisions of Section 23(1-A) and Section 28-A and has amended the provisions of Section 23(2). It has also made independent transitional provision in its Section

30. The relevant provisions of Section 30 read as follows:

30. Transitional provisions.— (1) The provisions of sub-section (1- A) of Section 23 of the principal Act, as

inserted by clause (a) of section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,—

(a) every proceeding for the acquisition of any land under the principal Act pending on 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People], in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

(2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.

The date of the introduction of the Bill of the amending Act is 30- 4-1982 and the date of its commencement is 24-9-1984.

91 1994 (5) SCC 593 ***

38. The transitional provision is by its very nature an enabling one and has to be interpreted as such. In the present case, it is made to take care of the period between 30-4-1982 and 24-9- 1984, i.e., between the date of the introduction of the Bill of the amending Act and the date of the commencement of the Act. Since some awards might have been made by the Collector and the reference Court during the said interregnum, the legislature did not want to deprive the awardees

concerned either of the newly conferred benefit of Section 23(1-A) or of the increased benefit under Sections 23(2) and 28. The second object was to enable the Collector and the Court to give the said benefits in the proceedings pending before them where they had not made awards. The only limitation that was placed on the power of the Collector in this behalf was that he should not reopen the awards already made by him in proceedings which were pending before him on 30-4-1982 to give the benefit of Section 23(1-A) to such awardees. This was as stated earlier, for two reasons. If the said awards are pending before the reference Court on the date of the commencement of the amending Act, viz., 24-9-1984, the reference Court would be able to give the said benefit to the awardees. On the other hand, if the awardees in question had accepted the awards, the same having become final, should not be reopened. As regards the increased benefit under Sections 23(2) and 28, the intention of the legislature was to extend it not only to the proceedings pending before the reference Court on 24-9-1984 but also to those where awards were made by the Collector and the reference Courts between 30-4-1982 and 24-9-1984. Hence these awards could not only be reopened but if they were the subject-matter of the appeal before High Courts or the Supreme Court, the appellate orders could also be reopened to extend the said benefits.

*** 71. Section 30 of the amending Act bears the heading "Transitional provisions." Explaining the role of transitional provisions in a statute, Bennion has stated:

“Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the court is required to draw inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended.”

(Francis Bennion: Statutory Interpretation, 2nd Edn., p. 213) The learned author has further pointed out:

“Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect. It is important for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act.” (p. 213) Similarly Thornton in his treatise on Legislative Drafting [3rd Edn., 1987, p. 319 quoted in *Britnell v. Secretary of State for Social Security*, (1991) 2 All ER 726, 730 Per Lord Keith], has stated: “The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force.” For the purpose of ascertaining whether and, if so, to what extent the provisions of sub-section (1-A) introduced in Section 23 by the amending Act are applicable to proceedings that were pending on the date of the commencement of the amending Act it is necessary to read Section 23 (1-A) along with the transitional provisions contained in sub-section (1) of Section 30 of the amending Act.” (emphasis supplied)

13. In the case of **Delhi Development Authority -Vs- Godfrey Phillips (I) Ltd., AIR 2022 S.C. 2282**, it is held that if the compensation in respect of entire land is deposited, there would not be lapsing of acquisition proceedings.

14. The learned Counsel for the petitioner relied on order dated 24-02-2021 passed in **W. P. No. 3723 of 2018 Anilkumar Kisanlal Nawandar -Vs- State of Maharashtra** by co-ordinate bench of this Court (Sunil P. Deshmukh & Abhay Ahuja, JJ.),

wherein it has been observed that the acquisition proceedings pursuant to the RFC & TLA & R, Act, 2013 be undertaken and carried out to logical end by 30th September, 2021 including final award and payment of compensation in case possession of the land was already taken without initiation of acquisition proceedings. However, in the cited order, land of the petitioner was not notified for acquisition for Nandur-Madhmeshawer Canal along with the present petitioner's land. Therefore, it is not applicable to the facts and circumstances of the present case.

15. In the case in hand, it is not in dispute that, the petitioner's father Shri Tukaram Sakharam Janrao was in possession of Agricultural Land Gat No. 104 admeasuring 0.12 HR at village Vakti, Tq. Vaijapur. It is an admitted fact that in the 1979, Notification was published under sec. 4 of the Land Acquisition Act, 1894 and lands Gat. Nos. 84, 88, 94, 102, 104 of village Vakti were acquired for construction of Nandur-Madhmeshwar Canal. The petitioner's father Tukaram Sakharam Janrao was owner of Gat No. 104 admeasuring 0.12 HR, whereas others i.e. Bhiva Yadav, Sopan Dashrath, Sakhdeo Tukaram and Jaiwanta Bhika were in possession of Gat Nos. 84, 88, 94, 102. It is an admitted fact that, on 31-01-1981, the Respondent no. 3 Special Land Acquisition Officer passed an

award and determined appropriate compensation. The petitioner has not disputed about passing of award and determination of compensation to the tune of Rs.552/- (i.e. compensation @ Rs. 40 per R X for acquisition 12 R= Rs. 480/- + Solatium Rs. 72 =Rs. 552/-) as per Schedule E to the Award for his acquired land. The grievance of the petitioner is that the said compensation is neither paid to his predecessor in-title nor to him nor it is deposited in the Court till date.

16. Mr. Appasaheb Chaghanrao Shinde, Deputy Collector, Land Acquisition, Jaikwadi Project filed affidavit reply as well as additional affidavit reply and made a statement that after passing of award, the acquiring body deposited amount of compensation for the acquired land before the competent authority. Subsequently, other neighbouring land owners /claimants namely Bhiva Yadav, Sopan Dashrath, Jaiwanta Shika already received compensation on 05-03-1981. Since the petitioner's father did not approach to receive the said compensation, on 30-03-1981, the Respondent deposited the undisbursed amount with the Government Treasury. Respondent Nos. 2 & 3 produced Form "CC" which indicates about deposit of compensation by the acquiring body with the Respondent No. 3. The Petitioner filed rejoinder but not denied the fact of receipt of

compensation by the other land owners whose land acquired in the year 1979 as per award dated 31-01-1981. Therefore, it substantiates that except petitioner's father, all other land owners have accepted the compensation. The petitioner has not brought any material on record to show that, his father did not agree with the award passed by Respondent No. 3 or his father had challenged said award before the competent Court. The petitioner's father had not approached the authority to receive compensation and did not claim the same for more than 30 year period. The petitioner and his father slumbered over their right for more than 3 decades and did not approach the competent authority to revive the compensation. Therefore, as per the law laid down in the the Case of *Indore Development Authority* (supra), the petitioner is entitled for the interest as per the provisions of Land Acquisition Act, 1894 and the award dated 31-01-1981 passed by the Respondent No. 3 under Sec. 11 of the of Land Acquisition Act, 1894 can not said to be lapsed because as per Sec. 24 of RFC & TLA & R, Act, 2013, the acquisition proceeding can only lapse, if award was not passed u/s 11 of the Land Acquisition Act or where the award was passed but compensation not been deposited on the day of commencement of RFC & TLA & R, Act, 2013 i.e. 01-01-2014. However, in case

in hand, prior to coming into force of RFC & TLA & R, Act, 2013, the award was passed on 31-01-1981 and amount of compensation was already deposited. Therefore, the petition fails. However, the petitioner can be allowed to receive the compensation determined under Award dated 31-01-1981 with the interest accrued thereon.

17. In view of above discussion, we proceed to pass the following order:

ORDER

- (1) The petition is dismissed.
- (2) Rule discharged. However, Respondent No. 3 is hereby directed to pay the compensation determined under Award dated 31-01-1981 with interest @ 9% per annum there from within period of 90 days from today.
- (3) No order as to cost.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan