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

WRIT PETITION NO. 7873 OF 2022

Arun Sitaram Patil and others
Versus

The State of Maharashtra and others.

...
Mr. Vijay B. Patil, Advocate for the petitioners.
Mr. Siddharth B. Yawalkar,AGP for respondent Nos. 1 and 2
Mr. Ajay D. Pawar, Advocate for respondent No.3

...

**CORAM : MANGESH S. PATIL
& S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : JANUARY 4, 2023.
PRONOUNCED ON : JANUARY 16, 2023.**

ORDER [S.G. CHAPALGAONKAR,J] :-

The petitioners have approached this Court under Article 226 of the Constitution of India seeking issuance of writ in terms of prayer clauses (B) and (C) which read thus :-

> " (B) By appropriate writ, order or direction in the like nature of writ, may please kindly be direct the respondents to determine and to pay the amount of compensation to the petitioners/claimants in respect of their acquired land in accordance with the provisions of Right to Fair compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act 2013, as per the award in SR No.37/2001 under section 11 of the Land Acquisition Act dated 29.11.2013 and for

that purposes appropriate orders may kindly bé passed in favour of petitioners.

(C). By appropriate writ, order or direction in the like nature of writ, may please kindly be transfer the references of the petitioners u/s 18 of the Land Acquisition Act filed and pending before the court of Civil Judge Senior Division Dhule as stated in EXHIBIT-D to the Authority constituted u/s 51 as references u/s 64 of Right to Fair compensation and Transparency in Land Acquisition/ Rehabilitation and Re-settlement Act 2013 and for that purposes appropriate orders may kindly be passed in favour of petitioners.

2. The petitioners are agriculturists and they were holding respective lands at village Ghodasgaon, Tq. Shirpur, Dist. Dhule. The respondent No.3 had initiated acquisition proceedings in SR/37 of 2001 for Nimna Tapi Prakalpa, Padalse Dam. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the "old Act") was published on 18.4.2010, which was followed by notification dated 4.7.2011 under Section 6 of the old Act. The award dated 29.11.2013 came to be passed under Section 11A of the old Act. However, till commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013, (Hereinafter referred to the as the "New Act") neither possession of lands was taken nor was compensation parted in favour of the petitioners.

3. In the year 2017, notices under Section 12(2) of the old Act were issued in purusnace to award passed by the respondent No.2. The possession of the lands under acquisition was taken and compensation amount came to be disbursed as per the award passed by the Special Land Acquisition Officer/Deputy Collector, Dhule.

4. Mr. Vijay B. Patil, learned counsel appearing on behalf of the petitioners would submit that though the award under section 11 of the old Act was passed on 29.11.2013, the possession of the lands continued with the petitioners. Notices under Section 12(2) of the old Act were issued in the year 2017 and possession was taken by the respondents. He would submit that in view of Section 24(1)(b) of the New Act, proceedings under the old Act would continue, however, petitioners would be entitled to the compensation as per the provisions of the new Act.

5. He would further submit that since the compensation was deposited in the year 2017 followed by delivery of possession, the proviso to Section 24(2) of the new Act would apply and the petitioners would be entitled to compensation in accordance with the provisions of the new Act.

6. Mr. Siddharth Yawalkar, learned Additional Government Pleader appearing on behalf of respondent Nos. 1 and 2 would submit that the award under section 11 of the old Act has been passed on 29.11.2013 . Therefore, the proceeding would be governed by the old Act, as if the Act has not been repealed. He would rely upon sub-clause (b) of Section 24(1) of the new Act to contend that neither there is lapsing of award nor are the petitioners entitled to compensation under the new Act.

7. Mr. Ajay Pawar, learned counsel for respondent No.6 would submit that in the facts of the present case, the proceeding would

continue under the old Act as the Award under Section 11 has been passed on 29.11.2013. As per the requisition of the respondent No.2, compensation amount has been deposited in terms of the award. The petitioners have received the compensation amount and they have filed proceeding under Section 18 of the old Act, seeking enhancement of compensation. The petitioners having accepted the award under the old Act, they are not entitled to claim compensation under the new Act. To buttress his contention, he relies upon the judgment of the Honourable Supreme Court of India in the matter of ***Indore Development Authority Vs. Manoharlal and others reported in (2020) 8 SCC 129.***

8. We have heard the rival submissions put forth on behalf of the parties. The petitioners were owners of the land which are acquired for the "Nimna Tapti Project, Padalse Dam". The proceeding for acquisition of the land was initiated on 18.11.2004 by issuing notification under Section 4 of the old Act. The award under Section 11 of the old Act was passed on 29.11.2013. Notices under Section 12(2) of the old Act were issued in the year 2017. The petitioners have parted with possession of their land after receipt of notices under Section 12(2) of the old Act. They have also received the compensation amount in terms of notices under Section 12(2) of the old Act.

9. There is no controversy as regards the factual aspects of the matter. The only question that is posed for our consideration is regarding applicability of proviso appended to sub-Section (2) of Section 24 of the new Act. The only contention that has been advanced on behalf of the petitioners is that they are entitled to compensation as per the new Act since till the date of commencement of the new Act, i.e. 1.1.2014, the

possession of the land continued with them and compensation was also paid to them in the year 2017 in terms of the award under Section 11 of the old Act.

10. Section 24 of the new Act reads 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 (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.”*

11. The plain reading of aforesaid provision would show that

where the award under Section 11 of the old Act has been passed, prior to commencement of the new Act, the acquisition proceedings would continue to be governed by the old Act, as if that Act has not been repealed. It is, therefore, evident that there is no lapsing of reservation in the facts of the present case, since the award under Section 11 was passed on 29.11.2013.

12. Sub-Section (2) of Section 24 provides that where award under Section 11 has been made five years or more **prior** to the commencement of the new Act, but the physical possession of the land has not been taken, or compensation has not been paid, the proceeding would be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate proceeding of such land acquisition afresh in accordance with the provisions of the new Act.

13. The proviso appended to sub-clause (2) of Section 24 puts an exception to the effect that if the compensation is not deposited in respect of majority of land holdings in the accounts of the beneficiaries, then the beneficiaries would be entitled to compensation in accordance with the provisions of the new Act.

14. In our considered view, sub-section (2) of Section 24 of the new Act or proviso, as indicated above, has no application in the facts of the present case. It is an admitted fact that the award under Section 11 was passed during the window period of five years. Sub-section (2) of Section 24 has application only when the award under old Act has been passed five years or more prior to the commencement of the new Act i.e. 01.01.2014. In that view of the matter, the claim of the petitioners that

they are entitled to compensation as per the new Act, cannot be accepted.

15. We are guided by the observations of the Supreme Court of India, in the matter of Indore Development Authority Vs. Manoharlal and others (cited supra) which clarified the position emerging from lapsing provisions under the new Act. The relevant observations of the apex Court in para.189 and 190 of the judgment are as under :-

> "Section 24(1)(a) operates where no award is made in a pending acquisition proceeding; in such event all provisions of the new Act relating to determination of compensation would apply. Section 24 (1) (b) logically continues with the second situation, i.e. where the award has been passed, and states that in such event, proceedings would continue under the Act of 1894. Section 24 (2) - by way of an exception, states that where an award is made but requisite steps have not been taken for five years or more to take possession nor compensation has been paid then there is lapse of acquisition. If one of the steps has been taken, then the proviso can operate. Time is the essence. It is on the basis of time-lag that the lapse is provided and in default of payment for five years as provided on failure to deposit higher compensation is to be paid. It is hased on that time-lag higher compensation has to follow. It is not the mere use of colon under section 24(2) but the placement of the proviso next to Section 24 (2) and not below Section 24(1) Thus, it is not permissible to alter a placement of proviso more so when it is fully in consonance with the provisions of section 24(2). Section 24(2) completely obliterates the old regime to the effect of its field of operation. Under section 24(1)(a), there is a partial lapse of the old regime because all proceedings, till the stage of award are preserved. The award, in such proceedings, made after coming into force of the Act of

2013 has to take into account its provisions, for determination of compensation. Thus, proceedings upto the stage of the award are deemed final under the old Act. In the case under section 24(1)(b), the old regime prevails. The proviso is an exception to section 24(2) and in part the new regime for payment of higher compensation in case of default for 5 years or more after award.
In re: Proviso to be read as part of provision it is appended

190. A proviso has to be construed as a part of the clause to which it is appended. A proviso is added to a principal provision to which it is attached. It does not enlarge the enactment. In Case the provision is repugnant to the enacting part, the proviso cannot prevail. Though in absolute terms of a later Act."

16. Applying the aforesaid principles enunciated by the Honourable apex Court, the case of the petitioners that they are entitled to compensation as per the new Act cannot be approved.

17. The writ petition being sans merit is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE.

[MANGESH S. PATIL]
JUDGE.

grt/-