

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 WRIT PETITION NO.13031 OF 2021

DALSING SHIVLAL CHANDWADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr Dhananjay K. Thote
AGP for Respondent/State : Mr A.S. Shinde

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

DATE : 11-01-2023

ORAL ORDER : (MANGESH S. PATIL, J.)

Heard.

2. Rule. Rule is made returnable forthwith.

3. The learned Assistant Government Pleader waives service of notice for the respondents. At the joint request of the parties, the matter is heard finally at the stage of admission.

4. The petitioners are challenging the award dated 31-03-2017 passed purportedly under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "**new Act**") dated 31-03-2017 on two grounds.

(i) Incorrect application of multiplier.

(ii) Incorrect assessment of compensation.

5. The learned advocate for the petitioners submits that a wrong multiplier has been applied without assigning any reason. The petitioners' land falls in rural area and as per the notification dated 26-05-2015, the appropriate multiplier was 2, instead the multiplier 1.5 as has been applied.

6. He would further submit that though the notification under section 4 of the Land Acquisition Act, 1894 (old Act) was issued, no award was passed under section 11 of the old Act and consequently, in view of the provisions of section 24 (1) (b) of the new Act, the award should have been passed under the new Act. He would further submit that the provisions of section 26 of the Act specifically provides the manner of assessment of the market value by holding the cut off date as 01.01.2014. It was the date of coming into force of the new Act. However, the award has been passed by resorting to the valuation by taking the date of notification issued under section 4 which is contradictory to the statutory mandate and is *void ab-initio*. The learned advocate places reliance on the following Judgments :-

- (i) ***Sahebrao Bhausahab Kalate and Ors Vs. The State of Maharashtra and Ors; MANU/MH/2141/2019***
- (ii) ***Hardas and Ors. Vs. The State of Maharashtra and Ors; MANU/MH/0620/2019***
- (iii) ***Abuli Abdul Husain Vora and Ors. Vs. Union Territory of Dadra and Nagar Haveli and Ors; MANU/MH/2370/2018***

7. The learned AGP by referring to the affidavit-in-reply raises a primary objection regarding availability of alternate and efficacious remedy under section 64 of the new Act. He submits that the Court should not

exercise the extraordinary power under Article 226 of the Constitution of India in view of such alternate and efficacious statutory remedy. All the issues being raised by the petitioners could have been raised before the Tribunal.

8. The learned AGP further submits that apart from the statement made in the affidavit-in-reply, even the award specifically mentions that the land of the petitioners falls under the development plan and consequently, correct multiplier has been applied in accordance with Sr. No. 2 of the notification dated 26-05-2015.

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.

11. Even 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 01-04-2014 wherever no award was passed under the old Act prior to the coming into force of the new Act.

12. True it is that the petitioners could have resorted to the statutory remedy under section 64 of the Act raising all these disputes. However, simultaneously, even we cannot ignore the fact that the respondents seek to exercise the right of eminent domain which comes with an inherent duty to act fairly. If the actions of the State are in blatant violation of the legislative provisions, the action would be certainly arbitrary and capricious and this Court in exercise of the extraordinary power under Article 226 of the Constitution of India, should step in and rectify the error or the mischief of the State. In such circumstances, it would not lie in the mouth of the State to raise the objection regarding availability of alternate remedy or even the delay and laches.

13. At this juncture, the learned AGP submits that the entire award may not be quashed as apart from the petitioners such order would grant relief even to the other persons/farmers covered by the same award but who have not challenged it.

The E-statement shows that the award has been passed in respect of four (4) persons and three (3) of them are before us as petitioners. The fourth person is a lady whose 6 Are land has been acquired. We have demonstrated the illegality in the award and also how it

is arbitrary and capricious and demonstrates utter lack of application of mind. In the circumstances allowing the award to *stand qua* her would be like ignoring the injustice caused to her. Therefore, we discard the submission of the learned AGP.

14. Irrespective of the petitioners putting up a grievance or otherwise, the respondents should have acted fairly and passed the award in tune with the provisions of the new Act. Precisely for this reason, we are ignoring the objections being raised on behalf of the respondents regarding availability of the alternate remedy and the delay and laches.

15. We allow the writ petition partly, quash and set aside the award and direct the respondents to pass a fresh award in the light of the above observations as early as possible and in any event within a period of six months from today.

16. The writ petition to the extent of challenge to the multiplier, is dismissed.

17. Any amount paid to the petitioners and the fourth land holder, shall be set off against the compensation to be determined pursuant to this order.

18. Rule is made absolute in the above terms.

[S.G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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