
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15028 OF 2022

Bapu Tatoba Chougule & Ors.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

+Mr. Tejpal S. Ingale, Advocate for the Petitioners.

Mr. R.S. Pawar, AGP for the State/Respondent.

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : NOVEMBER 29, 2023

P. C.

1. Rule. Mr. Pawar, the learned AGP waives service on behalf of the Respondents. Rule made returnable forthwith. Heard finally by consent of parties.

2. By way of the present Writ Petition, the Petitioners are challenging the impugned inaction of the Respondents in not completing the acquisition proceedings and paying compensation to the Petitioners for their acquired land bearing Gat No.328 admeasuring 1-H 24-R situated at Village Kothali, Taluka Shirol, District Kolhapur. This land was acquired for resettlement of the Warna Dam Project affected persons in the year

1991. A further direction sought is to complete the acquisition proceedings in respect of the said land and determine the compensation for the same by passing an Award and making payment of compensation to the Petitioners.

3. The brief facts of the present case are that one Bapu Tatoba Chougule, Petitioner No.1 [deceased] [for short “**BTC**”] was a landholder of Gat No.1459 and Gat No.1464 out of Gat No.1459, and out of Gat No.1464, O-H 42-R [totally admeasuring 1-H 24-R] came to be notified for acquisition for resettlement of the Warna Dam Project displaced persons by issuing a Notification under Section 4 of the Land Acquisition Act, 1894 [for short “***the 1894 Act*** ”], and which was published in the Government Gazette on 22nd September, 1983. Thereafter, a Section 6 Declaration also came to be published in the Government Gazette on 17th July, 1986.

4. The said BTC, being aggrieved by the aforesaid acquisition, filed Writ Petition No.5791 of 1986 in this Court. Subsequently, the said Writ Petition was withdrawn on 20.09.1991 when the said BTC voluntarily offered his alternate land, being Gat No.328 admeasuring 1-H 24-R, for the purpose of acquisition. In other words, instead of part of Gat No.1459 and 1464, the said BTC offered Gat No.328 for acquisition.

5. This offer was accepted by the Respondent Authorities and accordingly, BTC filed a voluntary Affidavit dated 15th November, 1990 before the District Resettlement Officer, Kolhapur to surrender the said alternate land, namely, Gat No.328 admeasuring 1-H 24-R, for resettlement of the Warna Dam Project affected persons. After verifying the land, the District Resettlement Officer, Kolhapur obtained possession of the said Gat No.328 by Kabjepatti Panchnama on 27.02.1991. Thereafter, by Mutation Entry No.2567, the name of the Collector and Deputy Director Resettlement, Kolhapur was entered in the record of rights in relation to Gat No.328. After possession of Gat No.328 was taken, the same was allotted to the project affected person by name Laxman Patil and he was put in possession of land admeasuring 0-H 81-R by order dated 11th June, 1992 passed by the Collector, Kolhapur. Thus, by Mutation Entry No.2772 dated 11th June, 1992, the name of the said project affected person was entered in the record of rights as he was put in possession of the alternate acquired land, namely, part of Gat No.328.

6. It is the case of the Petitioners that BTC during his life time made several representations to the Respondent Authorities and requested them for paying compensation towards the acquired land, namely Gat No.328. Because of the follow-ups, the Authorities thereafter issued a Notification under Section 4 of the 1894 Act dated 07.06.2001 in relation

to Gat No.328. After this, the Respondent Authorities also issued a Notification under Section 6 of the 1894 Act dated 15th August, 2002 in relation to Gat No.328, and also issued Notices under Section 9[3] & 9[4] asking him to submit his claim for compensation in respect of Gat No.328. It is the case of the Petitioners that thereafter BTC visited the office of the S.L.A.O. and submitted an Index Register of the sale transactions of the lands from his village of the year 2000-2001 and requested for passing an Award for Gat No.328 as early as possible and making payment of the same as his family was in need of financial help.

7. However, on enquiry with the office of the S.L.A.O., Kolhapur, BTC was informed that for want of getting 2/3rd amount of compensation from the concerned Department, the Award was not yet passed. This position continued despite repeated follow-ups, after which BTC expired on 25.01.2019. His legal heir namely the son of BTC [Petitioner No.1A] filed a representation before Respondent Nos.2 and 3 on 27.10.2020 and requested for payment of compensation for the acquired land [Gat No.328]. In fact Petitioner No.1A personally visited the office of Respondent Nos.2 and 3 [after the aforesaid representation] and on enquiry learnt that the Collector's Office, Kolhapur through Respondent No.3, by letter dated 9th November, 2020 had directed Respondent No.2 to submit a fresh acquisition proposal in respect of Gat No.328 as per the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short "*the 2013 Act*"] as the earlier acquisition proceedings initiated in the year 2001 had lapsed. Accordingly, the office of Respondent No.2 submitted a fresh acquisition proposal on 07.12.2020 as per the provisions of the 2013 Act. Despite this, till date the Petitioners have not received any compensation and which has given rise to the filing of the present Petition.

8. In this factual backdrop, the learned Advocate appearing on behalf of the Petitioners submitted that despite the Respondent Authorities initiating acquisition proceedings for Gat No.328 way back in the year 2001, the same has not culminated in passing of an Award or payment of compensation. He submitted that in these circumstances, the Respondent Authorities ought to be directed to complete the acquisition proceedings and pay compensation to the Petitioners in relation to acquired land, namely Gat No.328. He submitted that for the first time, in the Affidavit-in-Reply filed to the present Petition, the Respondent Authorities have now come with a case that prior to taking over possession of Gat No.328, acquisition proceedings in relation to the earlier land namely, a part of Gat No.1459 and 1464 was completed and an Award was also passed on 06.05.1988. He submitted that the aforesaid Award was never communicated to the Petitioners or to BTC

and admittedly no Notice under Section 12(2) of the 1894 Act was given to BTC or the Petitioners. Further, he submitted that admittedly possession of Gat Nos.1459 and 1464 was never taken by the Respondent Authorities and that the area of 1-H 24-R of Gat Nos.1459 and 1464 were never acquired. He submitted that this is admitted by Respondent Nos.1 and 2 in their Affidavit-in-Reply dated 10th January, 2023. He submitted that once this is the case and admittedly no compensation has been determined with reference to acquisition of Gat No.328, the Authorities have to be directed to determine the compensation as per the provisions of the 2013 Act. In this regard, the learned Counsel relied upon a decision of a Division Bench of this Court in the case of ***Shital Anna Walawade & Ors. Vs. State of Maharashtra & Ors.***¹ Relying upon the aforesaid decision, the learned Advocate submitted that the facts in the case of ***Shital Anna Walawade [supra]*** were almost identical to the facts of the present matter, and the Court after examining the facts and the law, directed the Respondent Authorities to determine the compensation in terms of the 2013 Act. He, therefore, submitted that the same directions be passed against the Respondent Authorities in the present matter as well.

9. On the other hand, the learned AGP appearing on behalf of the Respondents submitted that initially 82-R of Gat No.1459 and 42-R of Gat No.1464 was the subject matter of the acquisition. For acquiring part of the said two Gat Numbers, a Notification under Section 4 of the 1894 Act was published in the Maharashtra Government Gazette on 22.09.1983. Thereafter, a Declaration under Section 6 of the 1894 Act was also published in the Maharashtra Government Gazette on 17.07.1986 and an Award also came to be passed under Section 11 on 06.05.1988 by the then Special Land Acquisition Officer No.14, Kolhapur. Under this Award, the compensation determined was Rs.42,676/-, which is lying in the Revenue Deposit of the office of Respondent No.3. This was done because BTC had preferred a Writ Petition in this Court being Writ Petition No.5791/1986. He submitted that BTC withdrew the said Writ Petition and offered the alternate land, namely Gat No.328, for acquisition. He, therefore, submitted that the entire acquisition was completed in the year 1988 and possession of land bearing Gat No.328 was also taken in 1991. This being the case, Mr. Pawar submitted that there was no merit in the aforesaid Writ Petition and the same ought to be dismissed.

10. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition.

11. It is not in dispute that originally the subject matter of the acquisition was a part of Gat Nos.1459 and 1464 [1H-24R]. It is also not in dispute that the said acquisition was challenged in this Court by filing Writ Petition No.5791 of 1986. That Writ Petition came to be withdrawn on 20.09.1991 because BTC had offered alternate land for acquisition, namely, Gat No.328. In fact, the Respondent Authorities initiated acquisition proceedings in relation to Gat No.328 by issuing Notifications under Section 4 as well as Section 6 of the 1894 Act. Notices were also issued under Section 9(3) and 9(4) of the 1894 Act to BTC. However, that did not culminate into passing of an Award because according to the Petitioners, the concerned Department did not deposit 2/3rd of the amount of the estimated acquisition compensation with the S.L.A.O. In fact, there is a letter on record dated 9th November, 2020, by which Respondent No.3 directed Respondent No.2 to submit a fresh acquisition proposal in respect of Gat No.328 as per the provisions of the 2013 Act because the earlier land acquisition proceedings initiated in the year 2001 had lapsed. Accordingly, Respondent No.2 in fact submitted a fresh acquisition proposal on 07.12.2020 as per the provisions of the 2013 Act. Once this is the factual position, we fail to understand how the Respondents can negate the claim of the Petitioners by relying upon an Award passed in the year 1988, which was an Award not in relation to Gat No.328, but in relation to Gat Nos.1459 and 1464. Those acquisition

proceedings in fact were never acted upon by either of the parties because BTC had offered an alternate land for acquisition [i.e. Gat No.328], and which was accepted by the Respondent Authorities. Once this is the position, we are of the view that the Petitioners are fully justified in contending that compensation for Gat No.328 would now have to be calculated as per the provisions of the 2013 Act.

12. In the view that we have taken, we are squarely supported by the decision of the Division Bench of this Court in the case of ***Shital Anna Walawade [supra]***. In the facts of this case also originally the land bearing new Gat No.68/1B+2/A admeasuring 1-H : 21-R situated at Village Mirajwadi, Taluka Walwa, District Sangli was the subject matter of acquisition and a Notification under Section 4 was issued in relation thereto. The Petitioners therein had filed Writ Petition No.236 of 1989 *inter alia* praying for quashing and setting aside the said Notification issued under Section 4 as well as the the Declaration under Section 6. Thereafter, during the pendency of the said Writ Petition, the Petitioners forwarded a proposal of alternate land namely Gat No.1616/B instead of Gat No.68/1B + 2A. Since the alternate land offered was found as Saline land, the project affected persons were not ready and willing to accept the same. Therefore, another land bearing Survey No.205/1+2A was offered and which was accepted by the Respondents. No compensation was

however paid in relation thereto. In these facts, the Division Bench of this Court directed that the Petitioners would be entitled to seek compensation and all other benefits permissible under the provisions of the 2013 Act. The relevant portion of the aforesaid decision reads thus:-

"9. It is submitted that the second alternate land was required to be offered by the Petitioners in view of the fact that the first alternate land offered by the Petitioners was not acceptable to the Respondents on the ground that the same was Saline land, not cultivatable, not being accepted by any project affected person. It is submitted that the second alternate land offered by the Petitioners was also in furtherance of the land under acquisition which was the subject matter of the first writ petition filed by the Petitioners and thus the Respondents not having deposited the compensation in the Court or paid to the Petitioners prior to 1st April, 2014, the Petitioners would be entitled to seek compensation under the proviso of Section 24(2) of the said Act.

10. Mr. Rajpurohit, learned A.G.P. of the Respondents on the other hand relied upon Section 14(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and submitted that the Commissioner or the Collector authorized by him under the provisions of the said Maharashtra Project Affected Persons Rehabilitation Act, 1999 is empowered to purchase or exchange any land for the purpose of the said Act by general or special order. He submitted that the exchange of land was accepted by the Commissioner under Section 14(1) of the said Rehabilitation Act. He submitted that insofar as the payment of compensation is concerned, in case of exchange of land under Section 14(1), in view of proviso to Section 14(1), at the most, the Petitioners would be entitled to compensation payable for the alternate land at par with the compensation if required to be paid if acquisition was under Section 14(2) of the Resettlement Act. He submitted that there is no question of any enhancement of claim in view of the exchange of the land under Section 14(1) and whatever amount is deposited by the authority in the PLA Account, the Petitioners are at liberty to withdraw the said amount. He submitted that the provisions of the Fair Compensation Act, in these circumstances, would not apply.

11. It is not the case of the Respondents that the powers were exercised by the Respondents for acquisition of the second alternate land offered by the Petitioners by exercising the power under Section 14(2) of the Rehabilitation Act. Admittedly, the original property of the Petitioners was under acquisition under the provisions of the Land Acquisition Act, 1894. We are informed that an award was also made in respect of the said land during the pendency of the first writ petition filed by the Petitioners. In view of the Respondents having accepted the offer of the Petitioners to handover the first alternate land, this Court disposed off the earlier writ petition. The acquisition proceedings as such did not come to an end. Be that as it may, the acquisition proceedings at the most can be considered as having come to an end only in respect of the original land.

12. Admittedly, the Respondents have not offered the compensation to the

Petitioners as required under Section 12(1) of the Land Acquisition Act, 1894. Instead of paying the compensation to the Petitioners directly or depositing in the Court, the Respondents chose to deposit the compensation in the PLA Account.

13.The provisions of Section 24(2) of the Fair Compensation Act, 2013 indicates 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 the Fair Compensation Act, 2013.

14.In this case, though an award was made in respect of the original land, which was the subject matter of the land acquisition, which was substituted by the second alternate land offered by the Petitioners to the Respondents, the compensation was not deposited in the account of the Petitioners, who are the beneficiaries prior to 1st April, 2014 though an award was already made prior to 1st April, 2014. In our view, the Petitioners would therefore be entitled to compensation in respect of the second alternate land under the provisions of the Fair Compensation Act, 2013."

13. In these circumstances, we find that the Respondent Authorities are not justified in the stand that they have taken. We therefore, direct that compensation to the Petitioners should be granted as per the provisions of the 2013 Act.

14. We accordingly pass the following order:-

(a) The Petitioners would be entitled to seek compensation and all other benefits permissible under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of Gat No.328 admeasuring 1-H 24-R.

(b) The concerned authority shall compute the amount of compensation payable to the Petitioners under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a

period of three months from today and shall release the amount of compensation alongwith all other benefits permissible under the 2013 Act within a period of three months thereafter.

15. It is needless to clarify that the Respondent Authorities are free to acquire Gat No.328 and determine the compensation by private negotiations as well as per the Government Resolution dated 12th May, 2015.

16. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]