

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6048 OF 2021

**1. Shital Anna Walawade,
Age : 39 yrs., Occupation : Agriculture**

**2. Neminath Anna Walawade,
Age : 37 yrs., Occupation : Agriculture**

**3. Suman Anna Walawade,
Age : Adult, Occupation : Agriculture,
All R/o. At Village Ashta,
Tal. Walwa, Dist. Sangli**

..... Petitioners

VERSUS

**1. The State of Maharashtra,
Through the Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai – 400 032**

**2. The Deputy Director of Settlement,
Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai**

**3. The Additional Commissioner,
Pune Division, Pune**

**4. The District Collector, Sangli,
Having Office at Collector Office Building,
Sangli – Miraj Road, Miraj.**

**5. The Deputy Collector (Land Acquisition),
No.9, Sangli & Special Land
Acquisition Officer No.9, Sangli,
Having office at Collector Office Building,**

Sangli – Miraj Road, Sangli.

**6. The District Resettlement Officer, Sangli,
Having Office at Collector Office Building,
Sangli – Miraj Road, Sangli**

7. Ld.Tahsildar, Walwa, Islampur Respondents

Mr.Umesh H.Pawar for the Petitioners.

Mr. N.K.Rajpurohit, A.G.P. for the State – Respondent nos.1 to 7.

Ms.Tejaswini Patil, Tahasildar Punarvasan Sangli present in Court.

**CORAM: R. D. DHANUKA AND
M.M. SATHAYE, JJ.
DATE : 12TH JANUARY, 2023**

ORAL JUDGMENT (Per :- R.D.Dhanuka, J.) :-

Rule. Learned A.G.P. waives service for the Respondents. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioners seek a writ of mandamus against the Respondents to forthwith initiate land acquisition proceedings of the Petitioners' land described in prayer clause (b) of the petition under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to pay the compensation amount as per the provisions of the said Act and for

other reliefs.

3. The State of Maharashtra has published a notification under Section 4 of the Land Acquisition Act, 1894 in respect of the land bearing no. 1248/1 B + 2 B having new Gat No. 68/1B + 2/A admeasuring 1-H : 21-R situated at Village Mirajwadi, Taluka Walwa, District Sangli on 12th January, 1984. The Petitioners filed writ petition bearing no. 236 of 1989 in this Court inter alia praying for a writ of certiorari for quashing and setting aside the said notification dated 12th January, 1984 issued under Section 4 and the declaration dated 18th October, 1986 under Section 6 of the Land Acquisition Act, 1894. During the pendency of the said writ petition, the award came to be made in furtherance of the notification under Sections 4 and 6 of the Land Acquisition Act, 1894 on 24th February, 1989.

4. During the pendency of the said writ petition, the Petitioner forwarded a proposal of alternate land 1616/1B situated at Village Karandwadi, Taluka Walwa instead of 1248/1B+2/2 of Village Mirajwadi. The said proposal was accepted by the Respondents. In view of the Respondents accepting the said alternate land offered by

the Petitioners, Survey No. 1616/1B from Karandwadi instead of land bearing Survey No. 1248/1B+2/2 of Village Mirajwadi, this Court disposed off the said writ petition bearing no. 236 of 1989 recording that in view of the acceptance of alternate land, the acquisition proceedings in respect of the notified land did not survive.

5. The alternate land offered by the Petitioners bearing no.1616/1B however was found as Saline land (Ksharpad) and therefore project affected persons were not ready and willing to accept this alternate land, as the same was not fit for agriculture. The Petitioners therefore suggested another land bearing survey no. 205/1+2A of Village Karandwadi on 26th February, 2013. It is common ground that this alternate land proposed by the Petitioners, was accepted by the Respondents and therefore the Petitioners were entitled to the compensation in respect of the second alternate land offered by them. In this regard, the order was passed by the Collector on 8th April, 2013 recording this fact and accepting the second alternate land offered by the Petitioners.

6. Insofar as the issue of compensation is concerned, it is the case

of the Respondents that the compensation was deposited by the Respondents in the PLA Account on 10th April, 2001.

7. The provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“the said Act” for short) came into force w.e.f. 1st January, 2014. A question that falls for consideration of this Court is whether the Respondents not having deposited the compensation payable to the Petitioners in the Court or not having paid to the Petitioners prior to 1st April, 2014, whether the Petitioners would be entitled to seek compensation under proviso to Section 24(2) of the said Act or not.

8. It is submitted by the learned counsel for the Petitioners that the land acquisition proceedings initiated in respect of the original land were pending when the writ petition was filed by the Petitioners. The Petitioners had offered the alternate land to the Respondents in lieu of the original plot which was the subject matter of the acquisition proceedings. The Respondents had accepted the alternate land offered by the Petitioners, in lieu of the acceptance of the first alternate land by the Respondents from the Petitioners. The acquisition proceedings in

respect of the original land did not survive and were disposed off by this Court by an order dated 19th February, 1996.

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.

15. Insofar as the submission of the learned counsel for the Petitioners that his clients are also entitled to rental compensation is concerned, he placed reliance on the judgment of Division Bench of this Court in case of ***Ichalkaranji Co-operative Spinning Mills Ltd. vs. State of Maharashtra & Ors.*** 2019 (3) ***Mh.L.J.*** 472. We have perused the said judgment. In the facts of that matter it was clear that the possession of the land has been taken on or before initiation of the

proceedings under the Land Acquisition Act, 1894. Considering those facts, this Court held that the owner would be entitled to rental compensation from the date of actual possession of the property under acquisition.

16. However, in the facts of this case though the acquisition award was made on 24th February, 1989 in respect of the original land, which was exchanged by offering other two lands, possession of the land is taken much after the date of making an award and much after the date of initiation of the acquisition proceedings under the provisions of the Land Acquisition Act, 1894. Hence, the judgment in case of ***Ichalkaranji Co-operative Spinning Mills Ltd.***(supra) thus would not advance the case of the Petitioners. Therefore, the Petitioners' request for order and directions against the Respondents to award rental compensation is thus rejected.

17. 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 the writ property.

(b) The concerned authority to compute the amount of compensation payable to the Petitioners under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within eight weeks from today and shall release the amount of compensation along with all other benefits permissible under this Act within eight weeks thereafter.

18. Writ petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No order as to costs.

19. The parties to act on the authenticated copy of this order.

[M. M. SATHAYE, J.]

[R. D. DHANUKA, J.]