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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2114 OF 2020

1. Sunil Mahadev Nagap)
Age 47 years Resident of Post-)
Aakhavane, Tal.- Vaibhavwadi)
District – Sindhudurg)
2. Mahadev Aatamaram Nagap)
Age 72 years Resident of Post-)
Aakhavane, Tal.- Vaibhavwadi)
District – Sindhudurg)
3. Santosh Mahadev Nagap)
Age 49 years Resident of Post-)
Aakhavane, Tal.- Vaibhavwadi)
District – Sindhudurg)

... Petitioners

Versus

1. The State of Maharashtra)
Through Government Pleader,)
(Appellate Side), High Court,)
Mumbai – 400 032)
2. The Chief Secretary)
Revenue & Forest Department)
Mantralaya, Mumbai-400 032)
3. The Divisional Commissioner)
Kokan Division, Room No. 226)
2nd Floor, Kokan Bhavan, CBD)
Belapur, Navi Mumbai – 400 614)
4. The Collector District Head)
Quarter, Oras, Tal. Sindhudurg,)
Dist. Sindhudurg)
5. The Dy. Collector)
(Land Acquisition) District Head)
Quarter, Oras Tal. Sindhudurg,)
Dist. Sindhudurg)

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|---------------------------------|---|------------------|
| 6. Executive Engineer Medium |) | |
| Irrigation Project, |) | |
| Unit Aambadpald, Tal. Kudal |) | |
| Dist. Sindhudurg |) | |
| 7. Assistant Engineer Grade I, |) | |
| Medium Irrigation Project |) | |
| DivisionUnit Aambadpald, Desk-3 |) | |
| Kankavali, Dist. Sindhudurg |) | |
| 8. M/s. Mahalaxmi Construction |) | |
| Corporation Ltd. |) | |
| 363/11, Balaji Niwas, Deep |) | |
| Bungalow Chowk Shivaji Nagar, |) | |
| Pune- 411 016 |) | Respondents |
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Mr. Ajit Jakhadi a/w. Mr. Amol Chile, for Petitioner .

Mr. R. S. Pawar, AG.P., for Respondent Nos. 1 to 7/State.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

RESERVED ON : NOVEMBER 8, 2023

PRONOUNCED ON : DECEMBER 13, 2023

JUDGMENT (Per M.M. SATHAYE, J.)

1. Rule. The learned AGP waives service on behalf of Respondent Nos. 1 to 7/State. Notice to Respondent No. 8 is dispensed with. Rule made returnable forthwith. Taken up for the final disposal with consent of the parties.

2. By this Petition, filed under Article 226 of the Constitution of India, the Petitioners are seeking various prayers which are stated in prayer clauses 28(a) to 28(e) of the petition. However, Mr. Jakhadi, the learned counsel for the Petitioners, has fairly stated that he is limiting the scope of this petition as stated below :

The Petitioners are praying for compensation payable to them with interest, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '**the 2013 Act**'), for their properties (lands, houses, & trees) at Village Nagapwadi & Akhavane, Tal. Vaibhavwadi, Dist. Sindhudurg, acquired for Aruna Medium Irrigation Project. Necessary details such as survey numbers etc. are indicated in the paragraphs below. Part of the total compensation (Rs.1,64,152/-) has already been received by Petitioner No. 2 on 8th February 2021 in respect of the acquisition of lands at Village Nagapwadi. On this part payment, Petitioner No. 2 is praying for interest payable under law.

3. Heard Mr. Jakhadi, the learned counsel appearing on behalf of the Petitioners and Mr. Pawar, learned AGP for Respondents/State.

4. With the assistance of both the counsels, who have taken us through the Petition as well as documents placed on record, the following admitted facts emerge, which are necessary to be stated for the disposal of this

Petition.

- i.* Petitioner No. 2 is the father of Petitioner Nos. 1 and 3.
- ii.* Petitioner No.2 is claiming compensation in respect of lands bearing S. Nos. 7/13, 41/4, 77/18, 11/17, 11/20, 12/10 and 37/2 with a well & trees at Village Akhavane and Nagapwadi.
- iii.* Petitioner Nos. 1 and 3 are claiming compensation for their houses (bearing Nos. 28/1A & 28/1B) at Village Nagapwadi.
- iv.* An Award dated 31/10/2012 being LAQ No. 8 of 2006 has been passed in respect of Village Nagapwadi under the Land Acquisition Act, 1894 (**for short “the 1894 Act”**). Admittedly, the aforesaid houses were not considered while passing this award.
- v.* An Award dated 3/11/2012 being LAQ No. 9 of 2006 has been passed in respect of Village Akhavane.
- vi.* Both the subject matter awards are passed within 5 years prior to the 2013 Act coming into force on 01/01/2014.
- vii.* Since the compensation was not paid, correspondence ensued between the Petitioners and the State.
- viii.* Notice u/s. 12(2) of the 1894 Act, was issued calling upon Petitioner No. 2 to visit the tahsil office on 16/08/2018 and accept the compensation in respect of Nagapwadi properties without prejudice to his rights.

- ix.** On 24/09/2018, Petitioner No. 2 submitted the necessary documents; however, a third party (Mr. Suresh Gunaji Nagap) took an objection to disbursement of compensation in respect of several survey numbers at Village Nagapwadi & Akhavane including the subject matter properties.
- x.** On 30/04/2019, the Petitioners issued legal notice.
- xi.** On 14/06/2019, the present petition is filed, as per High Court official website record.
- xii.** The amounts for compensation in respect of the house properties of Petitioner Nos. 1 & 3 were offered on 25/06/2019.
- xiii.** During pendency of the petition, the Petitioner Nos. 1 and 3 accepted plots under the scheme for project affected persons on 16/12/2020.
- xiv.** During pendency of the petition, the objection of the third party was rejected on 15/01/2021 and part compensation amount (as awarded by the Respondent) in respect of the property of Petitioner No. 2 at Village Nagapwadi viz. Rs. 1,64,152/- was deposited in his bank account on 08/02/2021.
- xv.** On 13/10/2022, it was informed to the Court by the AGP that the State has taken a beneficial decision under which, Petitioner No. 2 will get an additional enhanced compensation.

xvi. It appears that Petitioner No. 2 is claiming 16.66% share in the compensation payable for acquisition of ancestral properties at both Village Nagapwadi & Aakhavane. During the pendency of this Petition, the co-sharers of Petitioner No. 2 (Khandu Jairam Nagap & heirs of Sambhaji Ramchandra Nagap) have filed consent affidavits in this Petition, which were fairly considered by the Respondent/State and Petitioner No.2's admitted share of 16.66% is accepted, of which valuation has been made by Respondent Authorities. The share of compensation payable to Petitioner No. 2 has been calculated at Rs.2,23,269/- and Rs. 4,96,191/- for Village Nagapwadi and Village Aakhavane respectively. Learned AGP has fairly stated that these amounts are payable over and above the amount already paid to Petitioner No. 2.

xvii. By filing Affidavit in Reply dated 15/02/2021, the Respondent / State has admitted that the houses of the Petitioner No. 1 & 3 at Village Nagapwadi were not included during joint measurement and therefore the same were not considered while passing Award in LAQ No. 8/2006. We are not going into why the houses were not included at the relevant time. Be that as it may. Now the Respondent/ State has admitted the mistake and ex-gratia compensation payable to Petitioner Nos. 1 & 3 for the

acquisition of their houses is calculated at Rs. 1,77,595.96 each.

Mr. Pawar, the learned AGP has submitted that these amounts were offered to Petitioner Nos. 1 & 3 on 25/06/2019, who have not accepted the said amount.

ABOUT CONTENTIOUS ISSUES

5. Mr. Jakhadi, the learned counsel for the Petitioners submitted that it is his specific contention in the Petition that possession of the subject matter lands was taken in the year 2005 and this averment is not denied by the Respondents and therefore, he is entitled to interest from the year 2005 on the compensation payable under the 2013 Act. The learned AGP, on the other hand submitted that the aspect of possession is a question of fact and the 'rule of non-traverse' as applicable in the civil proceedings cannot be applied in a writ petition, especially in the manner suggested by Mr. Jakhadi. He submitted that the State has produced along with its affidavit-in-reply, possession receipts demonstrating that the possession of the lands at Village Nagapwadi and Aakhavane were taken on 11/09/2018 and 19/11/2018 respectively. The learned AGP has taken us through the possession receipts dt. 11/09/2018 and 19/11/2018 (page Nos. 395 to 401 of paper-book) evidencing the aforesaid dates. We are in agreement with the learned AGP, so far as the aspect of possession is concerned. In writ jurisdiction, a finding of fact cannot be rendered in the absence of material to support a specific date, especially on an issue such as possession. In that view of matter, accepting the possession

receipts, as per guideline in para 366.7 by the Hon'ble Supreme Court in the case of ***Indore Development Authority V. Manoharlal (2020) 8 SCC 129***, we hold that the possession of properties at Nagapwadi and Aakhavane were taken by the Respondent Authorities 11/09/2018 and 19/11/2018 respectively.

6. Mr. Jakhadi, the learned counsel for the Petitioners next submitted that he is entitled to statutory benefits under 2013 Act including solatium and other benefits as per Schedule I thereof. He submitted that the Petitioners are also entitled to the interest from the date of possession under the 2013 Act. He submitted that he is covered by proviso to Section 24(2) of the 2013 Act. He submitted that the Awards passed in the present matter are dated 31/10/2012 and 03/11/2012 and they being passed before the 2013 Act coming into force (01/01/2014), since the Petitioners / majority landholders as contemplated in the said proviso, have not been paid the compensation, the Petitioners are entitled to all the benefits under the 2013 Act including 100% solatium.

7. *Per contra*, Mr. Pawar, the learned AGP invited our attention to paragraph Nos. 190 and 191 of the ***Indore Development Authority Judgment (Supra)***. He submitted that in the said paragraphs, the Hon'ble Supreme Court has clearly held that the proviso in Section 24 of the 2013 Act is applicable to only Section 24(2). Stressing on the 'colon mark' at the end of Section 24(2), the learned AGP contended that the placement of the proviso and its apparent continuation with Section 24(2) has been interpreted by the Hon'ble Supreme

Court in the above case, to mean that the proviso is only applicable to the cases covered under sub-section (2) of Section 24. Mr. Jakhadi in rejoinder attempted to rely upon a letter dated 30th December 2014 issued by Commissioner Konkan Division to the Chief Secretary of Revenue and Forest Department, Mantralaya, Mumbai issued in respect of land acquisition at Village Nagapwadi for the said dam project. He invited our attention to paragraph 19 of the said letter which makes reference to a Government Circular No. LQN 12/2013/*pra. kra.* 190/A2 dated 09/05/2014 (**for short “the said 2014 Circular”**) to contend that since the Award is passed prior to 31/12/2013, but the compensation is not paid in the bank accounts of the interested persons, they are entitled to all the benefits under the 2013 Act including solatium.

8. We are unable to agree with Mr. Jakhadi. We say so because apparently the said 2014 Circular was issued when the 5 judges judgment of the Hon'ble Supreme Court in the case of *Indore Development Authority (supra)* was not holding the field. In the teeth of paragraph Nos. 190 & 191 of the said judgment, in our considered opinion, the said 2014 Circular will not help the Petitioners' case. This is simply because now it is clarified that the proviso to Section 24(2) applies only to such cases where the Award is passed more than 5 years before the cut off date of 01/01/2014 (when the 2013 Act came into force). Admittedly in the present case, the Awards are passed on 31/10/2012 and 03/11/2012. Therefore, the subject matter Awards are within

the range of 5 years prior to cut off date. Therefore, the proviso to Section 24(2) will not apply to the facts and circumstances of the present case. In that view of the matter, we hold that the present case is squarely covered by Section 24(1)(b) of the 2013 Act where the Awards under the 1894 Act are made within a span of 5 years prior to 01/01/2014 and therefore, the proceedings shall continue under the 1894 Act as if the 1894 Act has not been repealed. In that view of the matter the prayer of 100% solatium and other benefits under the 2013 Act as per Schedule I thereof, cannot be granted to the Petitioners. It is not disputed that the subject matter Awards in the present case are made including 30% solatium as contemplated under the 1894 Act.

9. Mr. Jakhadi next submitted that the Respondent/State have discriminated between the Petitioners and other similarly situated persons in paying compensation for lands at the same villages. He submitted that many others from the same village, have been paid as per the said 2014 Circular who received full benefit of the 2013 Act. Learned AGP has strenuously disputed this submission. Some villagers might have taken their call to accept what was offered to them at the relevant time. The Petitioners have chosen to file this petition and invite an Order. Be that as it may. In any case, after going through the records and after hearing the Petitioners as well as the learned AGP for the State, in our considered opinion, there is no concrete material to positively indicate any discrimination. This consideration is squarely within the realm of a disputed question of fact, which we do not propose to enter. In

that view of the matter, this argument of Mr. Jakhadi is rejected.

10. Now therefore, we are left with only the aspect of interest claimed by the Petitioners. Since the present case is governed by the 1894 Act [u/s. 24(1)(b) of the 2013 Act], as held by us above, the statutory interest regime of 9% for first year and 15% for the second year onwards u/s. 34 of the 1894 Act will have to be held as applicable and payable. It is not disputed that although part of the compensation amount was offered by the Respondent/State after passing of the Award, the Petitioners did not accept it. In such a situation, the Respondent Authorities ought to have deposited the compensation amount with the Reference Court, as contemplated u/s. 31(2) of the 1894 Act. This has not been done. This must be held to apply to the ex-gratia amounts too. We say so because it is clear from the notices offering ex-gratia amounts dated 25/06/2019 (page nos. 250 to 252) that it was offered based on error report (त्रुटी अहवाल) and in the Affidavit in Reply dated 15/02/2021, the Respondent / State has clearly admitted that the houses of the Petitioner No. 1 & 3 were not included during joint measurement and therefore the same were not considered while passing Award in LAQ No. 8/2006. Therefore the same interest regime will apply to the ex-gratia amounts too.

11. The dates of taking possession have already been explained above viz. 11/09/2018 for lands at Nagapwadi, 19/11/2018 for lands at Akhavane. The amounts for houses of Petitioner No. 1 and 3 were offered on

25/06/2019 and admittedly the Petitioner Nos. 1 & 3 have claimed interest only from 25/06/2019.

12. In view of the aforesaid facts and circumstances, we find this to be a fit case to exercise our extra ordinary writ jurisdiction which we hereby do to the following extent, and dispose of this Petition by passing the following order :

- A.** Respondent No. 4/Collector (District Sindhudurg) or his duly authorized officer is directed to pay Rs. 1,77,595.96 to Petitioner Nos. 1 & 3 each, along with interest @ 9% p.a. from 25/06/2019 to 24/06/2020 (i.e. Rs. 15,983.63) and with interest @ 15% p.a. from 25/06/2020 till actual payment. This compensation is towards ex-gratia amounts for houses of Petitioner Nos. 1 & 3 each.
- B.** Respondent No. 4/Collector (District Sindhudurg) or his duly authorized officer is further directed to pay to Petitioner No. 2 interest @ 9% p.a. from 11/09/2018 to 10/09/2019 and @ 15% from 11/09/2019 till 07/02/2021 on amount of Rs. 1,64,152/- which is admittedly already paid to the Petitioner No. 2 on 08/02/2021 as part payment for lands at Village Nagapwadi.
- C.** Respondent No. 4/Collector (District Sindhudurg) or his duly authorized officer is further directed to pay further amount of

Rs. 2,23,269/- to Petitioner No. 2 along with interest @ 9% p.a. from 11/09/2018 till 10/09/2019 and @ 15% p.a. from 11/09/2019 till actual payment towards compensation of acquisition of lands at Village Nagapwadi.

D. Respondent No. 4/Collector (District Sindhudurg) or his duly authorized officer is further directed to pay further amount of Rs. 4,96,191/- to Petitioner No. 2 along with interest @ 9% p.a. from 19/11/2018 till 18/11/2019 and @ 15% p.a. from 19/11/2019 till actual payment towards compensation of acquisition of lands at Village Akhavane.

E. All the aforesaid payments shall be made within a period of four weeks from today.

13. Rule is made absolute and the writ petition is also disposed of in the aforesaid terms. No order as to costs.

14. Place the above Petition for reporting compliance on 24th January, 2024.

15. All concerned to act on authenticated or digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]