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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
ANANDRAO
IDHOL

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WRIT PETITION NO.14582 OF 2022

1.	Dilip Babubhai Shah,	
2.	Mrs.Sunita Dilip Dakle Shah,	
3.	Sudeep Dilip Dakle Shah,	
4.	Mrs.Reena Preet Dadiala (Dakle),	
5.	Ms.Seema Dilip Dakle, All R/o 103/H-II, Supushp, Chanod, G.I.D.C. Colony, Opp.Aarti Garden, G.I.D.C. Vapi – 396 195.	...Petitioners
	...Versus...	
1.	Additional Resident Deputy Collector, 2 nd Floor, Parshwanath 9, Bidco Naka, District, Palghar, Also at Collector Office, Palghar, Boisar Road, Kolgaon, Palghar.	
2.	State of Maharashtra, Through the Office of the Collector And District Magistrate, Palghar, 2 nd Floor, Parshwnath 9, Bidco Naka, Palghar.	
3.	Chief Project Manager, National High Speed Rail Corporation Ltd. 2 nd Floor, Asia Bhawan, Road No.205, Sec-09, Dwarka, New Delhi – 110 077.	
4.	Pravin Maneklal Gadia, 14, Vallabh Krupa, Rambaug Colony, Pod Road, Swami Samarth Mathasmor, Ex Serviceman Colony, Kothrood, Pune.	
5.	Pradip Maneklal Gadia, MG Road, Shiroor, Pune – 412 210.	
6.	Vinay Maneklal Gadia, 104, Professor Colony, Kanchan Apartment, Chaitaniyanagar, Savedi,	

	Ahmednagar – 414 003.	
7.	Saroj Prakash Khivansara, c/o Vadara Prakashlal Dagduram Khivansara, 1229, A Ravivar Peth, Kachi Ali Marg, Near Badariya High School, Pune – 411 002.	
8.	Shashikala Madanlal Bora, 10, Saraswati Chambers, Malegaon Stand, Panchvati, Nashik – 422 003.	
9.	Jyoti Narendra Lalwani (Jain), Flat No.75, B Wing, Malhar Sky Building, Bhatia Shalemarg, Saibaba Nagar, Kandivali West, Mumbai – 400 067.	
10.	Shantiben Amritlal Shah, Opp. JK House, Nehru Street, Near Jain Mandir, Vapi, Gujarat – 396 191.	
11.	Kantiben Jayantilal Shah, JK House, Nehru Street, Near Jain Mandir, Vapi, Gujarat – 396 191.	
12.	Kalavatiben Shevantilal Nahar Shah, Vardhman Bhavan, Sneh Park, Vapi, Gujarat – 396 191.	
13.	Santoshben Dilip Sindhi, 4326, Hammer Street, Grand View, Chicago, 111, USA. POA – Ajay Jayanti Lal Shah, JK House, Nehru Street, Near Jain Mandir, Vapi, Gujarat – 396 191.	
14.	Mukesh Kantibhai Shah, Nahar Market, Main Bazar, Vapi, Gujarat – 396 191.	
15.	Mohanbhai Premraj Shah, Nahar Market, Main Bazaar, Vapi, Gujarat – 396 191.	
16.	Asha Navin Shah, Nahar Market, Main Bazaar, Vapi, Gujarat – 396 191.	
17.	Pankaj Premraj Shah, Nahar Market, Main Bazaar, Vapi, Gujarat – 396 191.	

18.	Prakash Bhagvandas Bafna, Dahanu Village, Near Jain Mandir, Dahanu, Palghar – 401 601.	
19.	Suresh Bhagwandas Bafna, A-301,Nightigale Building, Raheja Woods, Kalyani Nagar, Pune – 411 006.	
20.	Jaykumar Bhagwandas Bafna, Mangal Apartment Flat No.2, 2 nd Floor, Swami Narayan Nagar, Near Apollo Hospital, Panchvati, Nashik – 400 003.	
21.	Maganbhai Sardarmal Shah, Avadh Heliconia House, Plot No.141, Bungalow No.C-371,Tukvada, Near Thighra Toll Plaza, Vapi, Gujarat – 396 185.	
22.	Surekha Ramesh Chopra, Chopra Villa, Near Manohar Hospital, Old Pandit Colony, Gangapur Road, Nashik – 422 001.	
23.	Vilopna Nirmal, Gadia, G-401, 3 rd Floor, Shyamal Vihar, Coparly Road, Near Evergreen Party Plot, Vapi, Gujarat – 396 195.	
24.	Pralopna Nitin Kothari, 6/A, Motibaug, Bungalow No.2, Satara Road, Pune -411 037.	
25.	Kalpana Kushal Lodha, 631/T-5, Soham Park, Hariom Nagar, Mulund (E), Mumbai – 400 081.	
26.	Pravina Ashokbhai Shah (Dakle), Dakle Street, Aamgaon Road, Near Railway Fatak, Sanjan, Gujarat – 396 150.	
27.	Sapna Himanshu Shah, Dakle Street, Aamgaon Road, Near Railway Fatak, Sanjan, Gujarat – 396 150.	
28.	Sh.Harish Uttamchandji Nahar, 1018, Netaji Road, Bordi,	

	Taluka Dahanu, Palghar, Maharashtra – 401 701.	
29.	Anand Maganlal Shah, Avadh Heliconia House, Plot No.141, Bungalow No.C-371, Tukvada, Near Thighra Toll Plaza, Vapi, Gujarat – 396 185.	
30.	Suraj Santosh Verkhande, Collector Office, Palghar, Boisar Road, Kolgaon, Palghar.	
31.	Surendra Navale, Competent Authority And Resident Deputy Collector, Collector's Office, Palghar, Boisar Road, Kolgaon, Palghar.	
32.	Dr.Manik Gurasal, Ex District Collector Collector Office, Palghar, Bhoisar Road Kolgaon, Palghar.	...Respondents

Mr.Amrut Joshi i/b Jerome Merchant & Partners for the Petitioners.

Ms.K.N. Solunke, AGP for the State – Respondent Nos.1 to 3.

Mr.G.S. Godbole with Mr.Devashish Godbole for the Respondent No.4.

Mr.Nitin V. Gangal for the Respondent Nos.21, 23, 24 and 26 to 29.

**CORAM : R.D. DHANUKA &
M.M. SATHAYE , JJ.**

RESERVED ON : 6TH JANUARY, 2023.

DATE OF PRONOUNCEMENT : 24TH FEBRUARY, 2023.

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

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioners have prayed for a writ of certiorari for quashing and setting aside the proceedings under Section 23-A of the

The Right to Fair Compensation in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the said “Fair Compensation Act, 2013”) and in particular the Consent Agreements dated 9th March, 2022 executed by the Respondent Nos.4 to 27.

2. The Petitioners also seek a writ of mandamus against the Respondent Nos.4 to 29 to return the amount received by them from the Respondent No.1 and deposit to the credit of the Special Civil Suit No.41 of 2010 pending before the Court of Civil Judge, Senior Judge, Palghar, subject to adjudication and final outcome of the aforesaid Special Civil Suit.

3. The Petitioners have also prayed for a writ of mandamus against the Respondent Nos.1 and 2 to recover the amount received from the Respondent Nos.4 to 29 as arrears of land revenue by initiating appropriate proceedings in accordance with law and to credit the same to Special Civil Suit No.41 of 2010, in the event of the Respondent Nos.4 to 32 fail and neglect to credit such amount to Special Civil Suit No.41 of 2010. Some of the relevant facts for the purpose of deciding this petition are as under :

4. The Petitioner Nos.1 and 2 are the husband and wife respectively. The Petitioner No.3 is the son of the Petitioner Nos.1 and 2. The Petitioner Nos.4 and 5 are the daughters of the Petitioner Nos.1 and 2. The Petitioners claim to be “persons interested” under

the provisions of the said Fair Compensation Act, 2013 in respect of the lands bearing Survey / Hissa Nos.183/1/A and 184/2/A at Village Varvada, Taluka Talasari, District Palghar, Maharashtra.

5. It is the case of the Petitioners that the Respondent Nos.4 to 32 are individuals, who along with the Respondent No.1, have illegally submitted the writ lands to acquisition under Section 23-A of the Fair Compensation Act, 2013 behind the back of the Petitioners.

6. Some time in the year 2010, the Petitioners filed Special Civil Suit No.41 of 2010 against the Respondent Nos.4 to 29 under Order 39, Rule 1 and 2 of the Code of Civil Procedure before the Civil Judge, Senior Division Palghar for partition, separate possession, cancellation of certain sale deeds and for permanent injunction regarding the property situated in Gujarat, Gandhinagar and Dahanu. The Petitioners also registered the *lis pendense* covering all the said properties and got it registered with the Sub-Registrar, Talasari.

7. On 17th January, 2013, the Civil Court passed an order restraining the Respondent Nos.4 to 29 from creating third party interest or exchanging or conveying or leasing out or mortgaging the lands forming part of Schedule "A", "B" and "C" of the Plaint which included the writ lands specifically. The Civil Court also restrained the

other Respondents in the said suit from carrying out construction in respect of some of the lands which were the subject matter of the aforesaid suit.

8. On 6th February, 2014, father of the Petitioner No.1 expired. It is the case of the Petitioners that some time in the month of March, 2022, they learnt from certain sources that the lands bearing Survey / Hissa Nos.183/1/A and 184/2/A at Village Varvada, Taluka Talasari, District Palghar, Maharashtra came to be acquired for the purpose of a Bullet Train Project being undertaken by National High Speed Rail Corporation Limited. The Petitioner No.1 obtained the information by visiting the office of the Competent Authority on 21st March, 2022 regarding acquisition of the writ lands.

9. On 22nd March, 2022, this Court in an Appeal From Order No.444 of 2013, which was filed by some of the Respondents, confirmed the interim order passed by the Civil Court.

10. It is the case of the Petitioners that the Petitioners obtained certain documents by applying under the provisions of the Right to Information Act in respect of the acquisition proceedings pertaining to the writ lands and states that the Respondent Nos.4 to 29 had executed the consent agreements, affidavits and other documents, including Indemnity Bond and possession receipts on

various dates i.e. 10th March, 2022, 21st March, 2022 and 25th March, 2022 before the Competent Authority. On 25th March, 2022, the compensation amounts in respect of the said lands were disbursed to the Respondent Nos.4 to 29 immediately. The Petitioners filed this Petition on 17th October, 2022.

11. Mr.Amrut Joshi, learned counsel for the Petitioners submitted that disbursement of the compensation made to the Respondent Nos.4 to 29 was in pursuance of the consent agreements executed by them before the Competent Authority. He submitted that those consent agreements would also clearly reflect along with Respondent Nos. 4 to 29, the Petitioners are also the “interested persons”. The consent of the Petitioners was however not obtained. No notice under Section 21 of the Fair Compensation Act, 2013 was issued/served upon the Petitioners. The entire disbursement of compensation by the Competent Authority in favour of the Respondent Nos.4 to 29 is thus vitiated under Section 23-A of the Fair Compensation Act, 2013.

12. It is submitted by the learned Counsel for the Petitioners that though the Collector was empowered to make an award without making any further enquiry, such award could be made under the said provisions only if the Collector was satisfied that all the “persons interested” in the lands, who appeared before him, had agreed in

writing on the matters to be included in the award of the Collector in the form prescribed by Rules made by the State Government. He submitted that since the Petitioners being “persons interested” in the writ lands, had not been issued any notice nor had appeared before the Competent Authority, the Competent Authority could not have made an award under the provisions of Section 23-A of the Fair Compensation Act, 2013. He submitted that the purported award thus made by the Collector, is no award at all in the absence of the agreements from all “the interested persons”.

13. It is submitted by the learned Counsel for the Petitioners that the statements made by the Respondent Nos.4 to 29 before the Competent Authority, were totally false to their knowledge. The Respondent Nos.4 to 29 had made a false statement that there was no order of the Civil Court in force in respect of the lands in question. The disbursement made by the Competent Authority in favour of the Respondent Nos.4 to 29 is thus in complete violation of the order dated 17th January, 2013 passed by the Civil Court.

14. Learned counsel for the Petitioners placed reliance on the Indemnity Bonds submitted by the Respondent Nos.4 to 29 stating that if any statement made by them is found to be false, they shall be liable for prosecution under Sections 193 (2), 198, 199 and 200 of the Indian Penal Code, 1860. He submitted that the

Respondent Nos.4 to 29 have illegally obtained compensation behind the back of the Petitioners and abused the process of law.

15. It is submitted by the learned counsel for the Petitioners that the Competent Authority could not have made an award under Section 23-A of the Fair Compensation Act, 2013 without issuing the notice to the Petitioners and in absence of the Petitioners being “persons interested”. He submitted that when the statute provides for a thing to be done in a particular manner, then, it has to be done in that manner and in no other manner. In support of this submission, he placed reliance on the judgment of the Hon’ble Supreme Court in case of **Nazir Ahmed vs. King Emperor and Nareshbhai Bhagubhai & Ors. vs. Union of India & Ors. (2019) 15 SCC 1.**

16. It is submitted that the said provisions i.e. Section 23-A of the Fair Compensation Act, 2013 being an expropriatory legislation, which compulsorily deprives a person of his right to property without his consent, must be construed strictly. In support of this submission, learned counsel placed reliance on the judgment of the Hon’ble Supreme Court in case of **Nareshbhai Bhagubhai & Ors.** (supra).

17. It is submitted by the learned counsel that in the present case, there is no other alternative efficacious remedy. He submitted that in any event the case of the Petitioners falls under the exceptions

to the doctrine of statutory exhaustion of remedies i.e. (i) order / proceedings are wholly without jurisdiction and (ii) principles of natural justice have been breached in as much as no notice was given to the Petitioners. In support of this submission, he placed reliance on the judgment of the Supreme Court in case of **Whirlpool Corporation vs. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1** and **Radha Krishna Industries vs. State of Himachal Pradesh, (2021) 6 SCC 771**.

18. It is submitted by the learned counsel for the Petitioners that in this case there are no disputed questions of facts as sought to be contended by the Respondent No.1 in its affidavit. He submitted that the Respondents have not disputed that the Petitioners are “persons interested” since their names appeared on the purported consent agreement itself. He submitted that even if there are disputed questions of fact as sought to be canvassed by the Respondents, even then, in a given case, the Writ Court has jurisdiction to entertain a Writ Petition involving disputed questions of fact. There is no absolute bar for entertaining a Writ Petition even if the same is arising out of a contractual obligation and/or involves some disputed questions of fact. In support of this submission, he placed reliance on the judgment of the Supreme Court in case of **Vinobha Bhav Nagar Godavari Adhyapak CHSL vs. Central Railway, 2020 SC Online**

Bom. 3502.

19. It is submitted by the learned counsel that the Writ Petition is maintainable against a private persons also, who have benefited from the failure of a public authority. In support of this submission, he placed reliance on the judgment of this Court in case of **Rustam Phiroze Mehta vs. State of Maharashtra, 2021 SCC Online Bom. 1090.** He submits that in this case, constitutional rights of the Petitioners under Article 300-A have been abrogated by the Respondents. Learned counsel for the Petitioners also tendered a compilation of judgments in support of his submissions comprising of ten judgments, including already referring to aforesaid.

20. Mr.Godbole, learned counsel for the Respondent No.4 on the other hand submitted that the award made under Section 23-A of the Fair Compensation Act, 2013 is only an offer. He relied upon Section 23-A of the Fair Compensation Act, 2013 and submitted that the Competent Authority rightly made an award under the said provision only in respect of “persons interested”, who appeared before him and agreed in writing on the matters to be included in the award. The Petitioners did not appear before the Competent Authority under Section 23-A of the Fair Compensation Act, 2013. He invited our attention to the consent agreement filed by the Respondent Nos.4 to 29, including his clients. He submitted that the said agreement was

only in respect of 14 H 83 R out of the total lands. He submitted that the consent agreement was only in respect of 11 R out of the total land acquired admeasuring 24 H 83 R and 16 H and not the entire land.

21. Learned counsel invited our attention to the averments made by the Petitioners in the plaint before the learned Civil Judge, Senior Division, Palghar and submitted that the Petitioners had claimed share only to the extent of 12.5% in the entire property. All branches are of the brother of the Petitioner No.1. He submitted that insofar as the Petitioner No.1 is concerned, his share is only to the extent of 7.75%. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Dr. G.H. Grant vs. The State of Bihar, AIR 1966 SC 237** in support of his submission that it is not the award of the Collector, which is the source of right of compensation.

22. It is submitted that the award is strictly speaking an offer made to the "persons interested" in the land notified for acquisition. The "persons interested" is entitled to accept the offer but is not bound to accept it. He may ask for a reference to the Court for adjudication of his claim for adequate compensation or may accept compensation under protest. Learned counsel for the Respondent No.4 distinguished the judgments cited by the learned counsel for

the Petitioners.

23. Ms.Solunke, learned AGP for the State invited our attention to the averments made in the affidavit in reply filed by the Respondent No.1 and submitted that the Competent Authority is not empowered to decide the question of title / ownership of land acquired, but the same could be decided only by the Civil Court. She submitted that after carrying out the survey and inspection of the revenue records of the writ lands, the Collector found that the said land had names of originally 18 persons, who have expired and their legal heirs have come on record. After due process was followed, the consent terms were entered into by all the parties, who were title owners on the said land except that of the Petitioners.

24. It is submitted that as per the information provided to the office of the Deputy Collector, the Petitioner No.1 is the owner of the 1.85% share in the said land and is entitled to receive an amount of Rs.3,70,904/- towards his share in the property by consent. If the Petitioner No.1 is aggrieved by the said valuation, the Petitioner No.1 is always entitled to initiate appropriate proceedings by way of an appeal to dispute the compensation provided qua his share / ownership in the concerned property is proved.

25. It is submitted that if the Petitioners are aggrieved by the impugned order and the order of distribution of compensation amount

to the Respondent Nos.4 to 29, the Petitioners are free to initiate appropriate proceedings before the Civil Court against private Respondents and to seek an order of deposit of their share with the Civil Court. It is submitted that the process of acquiring the said land was initiated. All the interested persons were given notice. The consent terms were filed by most of the interested persons and accordingly the said land was acquired. The Petitioners can apply for enhancement of the claim by filing appropriate proceedings before the Appellate Authority or by filing appropriate proceedings against the co-owners of the said lands.

26. Mr. Amrut Joshi, learned counsel for the Petitioners in his rejoinder arguments submitted that since the impugned award is passed under Section 23-A of the Fair Compensation Act, 2013, such award cannot be construed as an offer. He distinguished the judgment in case of **Dr. G.H. Grant** (supra) cited by the learned counsel for the Respondent No.4.

REASONS AND CONCLUSION :

27. It is not the case of the Petitioners that the Petitioners are the only owners of the entire property under acquisition. The Petitioners claimed a small portion thereof. In the Special Civil Suit filed by the Petitioners against the Respondent Nos.4 to 29, it was clearly admitted that the contesting Respondents were the relatives of

the Petitioners and claiming through late Sardarmal Gulabchand. The total share in the writ property claimed by all the Petitioners was only to the extent of 7.75%. It is the case of the Competent Authority that the notices were given to all the parties by the Competent Authority. However, the Petitioners did not appear before the Competent Authority. The Respondent Nos.4 to 29 appeared and gave their consent for acquisition of writ lands by entering into a writing and accepted the agreed compensation. The share of the Petitioner No.1 is 1.55% and the compensation is accordingly derived at Rs. 3,11,560/-. The share of the Petitioner Nos.2, 3, 4 and 5 also is at 1.55% each.

28. A perusal of Section 23-A(1) of the Fair Compensation Act, 2013 reads thus :

"23- A. Award of Collector without enquiry in case of agreement of interested persons

(1) Notwithstanding anything contained in section 23, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement."

29. A perusal of Section 23-A (1) of the Fair Compensation Act, 2013 indicates that the Collector is empowered to make an award in accordance with the terms of the agreement with all persons interested in the land, who appeared before him and agreed in writing on the matters to be included in the award in the form prescribed by rules made by the State Government. The Petitioners admittedly did not appear before the Competent Authority and did not enter into any agreement in writing by including their terms in the award.

30. We are not inclined to accept the submission made by Mr. Joshi, learned counsel for the Petitioners that even if one or more persons interested claiming certain share in the property under acquisition are absent, no award can be made under Section 23-A of the Fair Compensation Act, 2013 in favour of other persons interested having certain share in the property under acquisition to the extent of their share. The said award under Section 23-A of the Fair Compensation Act, 2013 made by the Competent Authority quantifying the compensation for the Petitioners is not final and binding on the Petitioners. The said award was made after making enquiry as contemplated under Section 23-A of the Fair Compensation Act, 2013. The Petitioners have a remedy to apply for enhancement of the said claims under Section 64 of the Fair Compensation Act, 2013. The Civil Suit filed by the Petitioners *inter-*

alia praying for partition, separate possession and injunction in respect of various properties situated at different places is pending. The *lis pendens* executed on behalf of the Petitioners is already registered in the Sub-Registrar, Talasari.

31. Insofar as injunction order passed by the Civil Court below Exhibit 5 in Special Civil Suit No.41 of 2010 on 17th January, 2013 is concerned, by the said order, the Defendant Nos.1 to 32 in the said suit or anybody claiming on their behalf were temporarily restrained from creating third party rights, title and interest or exchange or convey or lease out or mortgage the said properties to any third persons. If according to the Petitioners, the Respondent Nos.4 to 29 could not have transferred their share to the acquiring body in the teeth of an injunction order passed by the Civil Suit, the Petitioners can adopt appropriate proceedings against the Respondent Nos.4 to 29 before the Civil Court. The award made under Section 23-A of the Fair Compensation Act, 2013 by the Competent Authority cannot be set aside by this Court in this Writ Petition in view of there being the disputed questions of fact and the issue of title of the Petitioners being sub-judice before the Civil Court . The question as to whether the Petitioners have any rights over the writ property or not is pending before the Civil Court.

32. In so far as the judgment of this Court in case of

Pandurang vs. State of Maharashtra & Ors. (supra), relied upon by the learned counsel for the petitioners, it is held by this Court that an award made by the Collector under Section 11 of the Act is an offer of price. A person is entitled to accept the compensation offered under protest and then apply for making of a reference to the District Court for determination of the compensation. When a person enters into an agreement under Section 11(2), the award cannot be regarded as an offer which may or may not be accepted by the person whose land is acquired because he has entered into an agreement regarding the amount of compensation. In our view, the said judgment would not advance the case of the petitioners. The respondent nos.4 to 27 have admittedly given their consent and have accepted amount of compensation. If the petitioners are aggrieved by the quantification of compensation, the remedy of the petitioners is to apply for enhancement under Section 64 of the Fair Compensation Act, 2013. The said judgment in case of **Pandurang vs. State of Maharashtra & Ors.** (supra) is clearly distinguishable on facts.

33. In so far as the judgment of the Supreme Court in case of **Nareshbhai Bhagubhai & Ors. vs. Union of India & Ors.** (supra) with other connected matters relied upon by the learned counsel for the petitioners in support of the submission that where a statute

provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner is concerned, there is no dispute about this proposition of law. In our view, since under Section 23A of the Fair Compensation Act, 2013, the competent authority is empowered to make an award if all the persons interested to appear before the competent authority and agreed for acquisition of their respective shares and accepted the compensation, the competent authority is empowered to make an award under the said provision. No steps are taken by the competent authority contrary to the mode and manner of making an award prescribed under Section 23A. The said judgment of the Supreme Court in case of **Nareshbhai Bhagubhai & Ors. vs. Union of India & Ors.** (supra) thus would not advance the case of the petitioner and is clearly distinguishable on facts.

34. In so far as the judgment of the Supreme Court in case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.** (supra) relied upon by the learned counsel for the petitioners is concerned, Supreme Court in the said judgment has held that the Court has discretion to entertain or not to entertain the petition under Article 226 of the Constitution of India. It is held that where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural

justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged, an alternate remedy would not operate as an absolute bar in these circumstances. The petitioners in this case have not demonstrated as to how their case falls under the exceptions carved out. The said judgment of the Supreme Court in the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.** (supra) would not apply to the facts of the case of the petitioners.

35. Insofar as the judgment of the Supreme Court in case of **Radha Krishan Industries vs. State of Himachal Pradesh & Ors.** (supra) relied upon by the petitioners is concerned, the Supreme Court has taken a similar view that was taken in case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.** (supra). For the reasons recorded by this Court while dealing with the judgment of the Supreme Court in case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.** (supra), this judgment would also not apply to the case of the petitioners.

36. In so far as the judgment of this Court in case of **Vinobha Bhav Nagar Godavari Adhyapak Cooperative Housing Society Ltd. vs. Central Railway** (supra) relied upon by the learned counsel for the petitioners is concerned, this Court in the said judgment recorded a finding that there were no disputed questions of

fact in the petition and accordingly held that the writ petition was maintainable. In this case, the suit filed by the petitioners for adjudication of their rights, title and interest in respect of the writ property is still pending. Thus the said judgment of this Court in case of **Vinobha Bhave Nagar Godavari Adhyapak Cooperative Housing Society Ltd. vs. Central Railway** (supra) does not assist the case of the petitioners.

37. In so far as the judgment of this Court in case of **Rustam Phiroze Mehta vs. State of Maharashtra & Ors.** (supra) relied upon by the learned counsel for the petitioners is concerned, in prayer clause (c) of this petition, the petitioners have prayed for mandatory injunction against private parties to deposit, the amount received by them from the competent authority. A civil suit filed by the petitioners against these respondents is pending. The said Judgment would not apply to the facts of this case.

38. In so far as the judgment in case of **Nazir Ahmad vs. The King-Emperor** (supra) relied upon by the learned counsel for the petitioners is concerned, the said judgment would not even apply remotely to the facts of this case. In the said judgment, the Court has dealt with the confession recorded by the Magistrate.

39. In so far as the judgment of the Supreme Court in the case of **State of Karnataka & Anr. vs. Sangappa Dyavappa**

Biradar & Ors. (supra) is concerned, the Supreme Court has held that where the consent award was passed by the LAO with an undertaking from the respondent landowners that they would not seek enhancement of compensation so awarded from any Court, the High Court could not have substituted the award passed by the LAO. In our view, the judgment of the Supreme Court in case of **State of Karnataka & Anr. vs. Sangappa Dyavappa Biradar & Ors.** (supra) would not apply to the facts of this case even remotely.

40. In so far as the judgment of the Supreme Court in case of **State of Gujarat & Ors. vs. Daya Shamji Bhai & Ors.** (supra) relied upon by the learned counsel for the petitioners is concerned, Supreme Court in the said judgment held that the claimants had agreed to receive compensation and 25 per cent more in addition thereto and agreed not to seek any reference under Section 18. They had also agreed to forgo their right to seek reference under Section 18 of the Act. In view of the specific contract made by the respondents in terms of Section 11(2), they were not held entitled to seek a reference from civil Court. In our view, this judgment would not advance the case of the petitioners. It is not the case of the respondents that the petitioners not having appeared before the competent authority and not having agreed to accept the compensation by consent cannot be allowed to apply for

enhancement of claim under Section 64 of the said Fair Compensation Act, 2013. The judgment of the Supreme Court in case of **State of Gujarat & Ors. vs. Daya Shamji Bhai & Ors.** (supra) thus would not apply to the facts of this case and is clearly distinguishable on facts.

41. In so far as the judgment of the Supreme Court in case of **Dr.G.H. Grant vs. The State of Bihar** (supra) relied upon by Mr.Godbole, learned counsel for the respondent No.4 is concerned, it is held that an award by the Collector is strictly speaking an offer made to the person interested in the land notified for acquisition. The latter may accept the offer, but is not bound to accept it. He may ask for a reference to the Court for adjudication of his claim for adequate compensation. The person interested may even accept the compensation under protest as to the sufficiency of the amount and ask for a reference. It is the case of the respondents that the petitioners had given their consent for making an award under Section 23A of the Fair Compensation Act, 2013, and based on such consent, the impugned award has been made by the competent authority under Section 23A of the Fair Compensation Act, 2013. The right of the petitioners under the provisions of the Fair Compensation Act, 2013 are not taken away by virtue of the said impugned award made by the competent authority under Section 23A

of the Fair Compensation Act, 2013 in so far as the alleged claim of the petitioners in the writ property is concerned. In our view, the writ petition is totally devoid of merit.

42. We accordingly pass the following order :-

(i). The Writ petition is dismissed. No order as to costs.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)