



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4975 OF 2023

Shiva S/o Sitaram Ghangare .Vs. The State of Mah. through its Secretary, Department
of Irrigation, Mantralaya, Mumbai 32 and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.H. Sharma, Advocate for the petitioner.

Shri D.P. Thakare, A.G.P. for the respondent Nos.1 and 2/State.

CORAM : ANIL S. KILOR, J.

DATED : 22/08/2023

1. Heard.

2. In this writ petition, the application filed under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act of 1894") is rejected. The only ground raised in the petition is that without issuing notice and granting opportunity of hearing to the petitioner, the application was rejected.

3. I have perused the impugned order. It is clear that without issuing notice or without granting any hearing to the petitioner the application under Section 28-A of the Act of 1894 came to be rejected.

4. The Division Bench of this Court in the case of *Zama ..vs.. State of Mah.*, reported in **2015(3) Mh.L.J. 256** has held thus:

“2. We are inclined to dispose of present writ petition, as after hearing and after going through the documents and the material place on record, we have also noticed that no opportunity of hearing and or personal hearing, as contemplated under Section 28-A of the Land Acquisition Act, 1894, was given to the petitioners to determine the enhanced amount of compensation on the basis of the Award passed. Section 28-A contemplates and entitles the owner or person concerned to apply for an enhancement of compensation. The concerned authority is, therefore, required to consider the same in accordance with law which includes fair and equal opportunity to all the persons affected. Otherwise also, it is necessary as for effective determination/inquiry means fair opportunity, so that the concerned person/s can place all relevant materials in support their claim of enhancement of compensation.

3. The issue with regard to the enhanced claim of compensation, just cannot be decided in such a fashion without giving fair opportunity to the petitioners-owners. Therefore, without expressing anything on merit, at this stage, as no opportunity was given to the petitioner which is a mandate of Section 28-A of the Land Acquisition Act, 1894, we are inclined to quash and set aside the impugned order by keeping all points open and direct the concerned respondents to reconsider the case/application filed by the petitioners by giving all opportunities as contemplated and pass the order as early as possible preferably within three months.”

5. Thus, it is evident that without granting an opportunity of hearing and by following the principles of natural justice, the application under Section 28-A of the Act of 1894 cannot be decided. As such, the impugned order suffers from non-compliance of the principles of natural justice.

6. Even on merit the reason given by the respondent No.2 for rejection of the application that while

accepting the compensation amount the land owner gave an affidavit that he/she will not claim enhanced compensation, the said ground is not tenable in the eyes of law in view of the Full Bench judgment in the case of *Baliram ..vs.. State of Mah.*, reported in **2010(5) Mh.L.J. 465** and the judgment of the Co-ordinate Bench of this Court in the case of *Motiram ..vs.. State of Mah.*, reported in **2017(4) Mh.L.J. 627**.

7. The Co-ordinate Bench of this Court in the case of *Motiram* (supra) has held thus :

“7. In the judgment of the Full Bench in Baliram Ramaji Ghate [supra], certain lands that were covered under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 were subsequently acquired under the provisions of the said Act. While making payment of compensation under the Award, an undertaking was obtained from the erstwhile owner that he would not seek enhanced compensation under the said Act. On account of disagreement on the question as to the binding effect of such undertaking, it was held in paragraph 12 of the said judgment as under:-

*"12.
.....the Government having chosen to acquire the land under the provisions of Land Acquisition Act and having applied the said law for the said purpose, it is not open for them to immunize themselves from a claim for enhanced compensation by imposing a condition on the expropriated land-holder that he will not seek enhancement of the compensation. The compensation has been awarded to the expropriated land-holder in respect of his lands under the provisions of the Land Acquisition Act by passing an award thereunder. Notwithstanding the fact that the award describes payment of such compensation as ex-gratia, the land-holder has a right to seek its enhancement by following the procedure under Section 18 of the Land Acquisition*

Act. By Section 18, the Parliament has conferred a right on an expropriated land-holder to seek an enhancement of compensation. It is not within the power of the Government to defeat or attempt to defeat the exercise of such right conferred on the land- holder by that section, by demanding an undertaking that he will not seek such enhancement."

Though aforesaid observations were made with regard to lands earlier covered under the Urban Land (Ceiling & Regulation) Act, 1976 and subsequently acquired under the said Act, the law laid down by the Full Bench would be equally applicable to the facts of the present case. Thus, the statutory right of a land holder to seek enhancement in the amount of compensation cannot be defeated by obtaining an affidavit/undertaking from the land holder that he would not seek enhancement in the amount of compensation by filing reference under Section 18 of the said Act.

8. *In so far as the plea of estoppel is concerned, suffice it to say that estoppel cannot operate against a statute as held in Commissioner of Income Tax (Central), Calcutta Vs. B.N. Bhattacharjee [AIR 1979 SC 1725]. It was observed that estoppel against statute is not permissible as public policy animating a statutory provision would then become the casualty.*

Once it is found that the statutory right of the applicants to seek enhancement in the amount of compensation by making reference under Section 18 of the said Act cannot be defeated in such manner, the entire basis of the action of the Additional Collector in treating the proceedings as closed without making reference to the Civil Court falls to the ground. The other reason mentioned that the court fee stamps on the reference application cannot be permitted to be deposited also cannot be upheld in view of the law laid down by the Division Bench in Shyam Dharam Dagle & others [supra] and learned Single Judge in Lalbahadur Ram Yadav [supra]. As held by the Division Bench, the Collector can grant time to pay court fees and by passing a conditional order in that regard, forward the proceedings it to the Civil Court."

8. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the Collector. Accordingly, I pass the following order:

- i) The Writ Petition is partly **allowed**.
- ii) The impugned order dated 02/06/2018 passed by Deputy Collector (Land Acquisition Officer No.1), Vidarbha Irrigation Development Corporation, Nagpur is hereby quashed and set aside.
- iii) The proceeding is restored back to its file.
- iv) The respondent-Deputy Collector is directed to decide the application of the petitioner afresh, in accordance with law, as expeditiously as possible and in any case before **31st December, 2023**.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE