

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

WRIT PETITION (WP) 1218/2022

Shri. Annaji S/o. Raybhan Dabrase
(Dead), Through Sons

1. Shri. Dnyaneshwar S/o Annaji Dabarase,
Aged 50 years, Occ: Agriculturist,
2. Shri. Kishor S/o Annaji Dabarase,
Aged 45 years, Occ: Agriculturist,

Both R/o Donager Yawali,
Tq. Morshi, Dist: Amravati.

..... PETITIONER(S)

// VERSUS //

1. The State of Maharashtra,
Through its Secretary,
Department of Irrigation,
Mantralaya, Mumbai – 32.
2. The Collector,
District Amravati, Amravati
3. Deputy Collector, (Land Acquisition),
Minor Irrigation Works, Amravati.
4. District Water Conservation Officer,
Soil and Water Conservation
Department, Amravati
**(Amended as per Court's
order dated 26.09.2022)**

.... RESPONDENT(S)

Mr. S.S. Shingane, Advocate for the petitioners
Mr. N.S. Rao, AGP for the respondents

CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.

DATED : 07/02/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

3. By the present petition under Article 226 of the Constitution of India, the petitioners pray for quash and set aside the Award dated 26.03.2021 passed by respondent 3 – Deputy Collector (Land Acquisition), Minor Irrigation Works, Amravati. The petitioners further pray for issuance of direction against respondent 3 – Deputy Collector to disburse an amount of Rs.28,69,883/- as per Award dated 28.06.2019 passed by respondent 3 – Deputy Collector with interest at the rate of 15% per annum till its realization.

4. Mr. S.S. Shingne, learned Counsel appearing for the petitioners, submitted that the petitioners are the owners of agricultural field Survey No. 23/2 alongwith 541 orange trees which the respondent 3 – Deputy Collector acquired for Ghoddeo Minor Irrigation Project vide Notification dated 09.02.2001 issued under Section 4 of the Land Acquisition Act, 1894 (for short the “Act of 1894”). Accordingly, on 08.08.2003, the Land Acquisition Officer passed an Award in LAC 18/47/1997-98. The lands of the other owners including Mr. Manohar

Purnuji Dabarase were also acquired and Reference vide Land Acquisition Case (LAC) 167/2006 was filed before the learned Civil Judge Senior Division, Amravati and on 18.06.2010, the learned Civil Judge Senior Division, Amravati passed an Award and enhanced the amount of compensation to the tune of Rs.2565/- per orange tree to the tune of Rs.20,82,599/-. Therefore, the petitioners filed an application on 01.10.2010 under Section 28-A of the Act of 1894 and prayed for compensation at the rate of Rs.2565/- per orange tree. On 28.06.2019, respondent 3 – Deputy Collector granted the application under Section 28-A of the Act of 1894 and granted compensation of Rs.26,32,389/- alongwith statutory interest. The petitioners have not received the said compensation. Therefore, on 05.01.2021, the petitioner 1 submitted a representation with respondent 2 with a prayer to release the amount as per Award dated 28.06.2019, but in vain. However, on 26.03.2021, respondent 3 – Deputy Collector modified the earlier Award dated 28.06.2019 under Section 28-A of the Act of 1894 on premise of arithmetical errors in Award dated 26.06.2019 and reduced the compensation to the tune of Rs.20,61,598/- from Rs.26,32,381.

5. The learned Counsel appearing for the petitioners submitted that the Award passed under Section 28-A of the Act of 1894 can only be corrected to the extent of correction of clerical or arithmetical error,

but said correction is required to be made within a period of six months from the date of Award or the Collector is required to make reference under Section 18 of the Act of 1894 to the Court in that regard. Respondent 3 – Deputy Collector has no authority or power to redetermine and reduce the amount of compensation which is already ascertained. Moreover, respondent 3 – Deputy Collector passed the Award dated 26.03.2021 without providing any opportunity to the petitioner and reduced the amount of compensation already passed on 28.06.2019. Therefore, the impugned Award dated 26.03.2021 is illegal and bad in law.

6. Mr. N.S. Rao, learned Assistant Government Pleader, submitted that respondent 3 – Deputy Collector passed the Award under Section 28-A of the Act of 1894 in LAC 18/47/1997-98 of Mauza Ghoddeo, Tq. Morshi, Dist. Amravati and re-determined the compensation to the tune of Rs.20,61,598/- on the basis of Award passed by the Civil Court, which is as per Chart E of the Award. Accordingly, on 26.03.2021, respondent 2 issued a letter to the Acquiring Body – respondent 4 and demanded fund of Rs.20,61,598/-, but said amount has not been received and as soon as it is received, it will be payable to the petitioners.

7. Mr. N.S. Rao, learned Assistant Government Pleader, further canvassed that on 25.10.2021 the State Government sought the copy of opinion of the Law and Judiciary Department in respect of LAC 167/2006 on which basis Award under the provisions of Section 28-A of the Act of 1894 has been passed. Accordingly, the Land Acquisition Officer determined the amount of compensation of Rs.20,61,598/- after noticing clerical or arithmetical mistake while passing Award dated 28.06.2019 passed under Section 28-A of the Act of 1894. Therefore, the petitioner has not made out substantial ground to disturb the Award dated 26.03.2021.

8. It is not in dispute that the petitioners are owners of land bearing Survey 23/02 and 541 Orange Trees were standing on the said field. The land of the petitioners including 541 orange trees have been acquired for Ghoddeo Minor Irrigation Project as per Notification dated 09.02.2001 issued under Section 4 of the Act of 1894. It is an admitted position that on 08.08.2003, the Land Acquisition Officer passed Award in Land Acquisition Case 18/47/1997-98. Another land owner Mr. Manohar Parnuji Dabarase whose land was also acquired made reference vide LAC 167/2006 before the learned Civil Judge Senior Division, Amravati and on 18.06.2010, the learned Civil Judge Senior Division enhanced the amount of compensation at the rate of Rs.2565/- per

mango tree. Therefore, the petitioners made reference under Section 28-A of the Act of 1894 on 01.10.2010 and prayed for enhancement of the amount of compensation at the rate of Rs.2565/- (per orange tree) x 541 = Rs.26,32,389/-, however, till date no compensation paid to the petitioners. None the less, after receiving an opinion from the Law and Judiciary Department, respondent 3 – Deputy Collector initiated proceeding under Section 28-A of the Act of 1894 and reduced the compensation to the tune of Rs.20,61,598/- from Rs.26,32,381/- under the guise of correction of clerical or arithmetical error.

9. It is submitted that Section 28-A of the Act of 1894 provides for re-determination of the amount of compensation of Award of the Court, however, said provisions can not be invoked for reducing/decreasing the amount of compensation which is already ascertained by the Land Acquisition Officer. No doubt, recourse of Section 13-A of the Act of 1894 can be invoked only for correction of clerical or arithmetical mistakes committed while passing the Award, but said power can be invoked after providing reasonable opportunity of making representation in the matter.

10. In the case in hand, it is not the case of respondents that while passing the Award dated 28.06.2019 the Land Acquisition Officer committed any arithmetical mistake. On perusal of impugned Award

dated 26.03.2021, it appears that respondent 3 – Deputy Collector reduced the amount of compensation to the tune of Rs.20,61,598/- from Rs.26,32,389/- only on the ground that the present petitioners did not file Reference under Section 18 of the Act of 1894 before the Civil Court. However, the fact that petitioners did not file Reference under Section 18 of the Act of 1894 before the Civil Court, does not prevent the Land Acquisition Officer from awarding the compensation at par with other similar situated beneficiaries. In the case in hand, the claim of the petitioners for enhancement of compensation was granted on the basis of the Award which was passed in favour of the land owner Mr. Manohar Parnuji Dabarase in LAC 167/2006. Therefore, respondent 3 – Deputy Collector had no power to reduce the amount of compensation by invoking Section 13-A of the Act of 1894. Therefore, in our considered view, the impugned Award dated 26.03.2021 passed by respondent 3 – Deputy Collector is contrary to the provisions of Sections 13-A and 28-A of the Act of 1894, which is not sustainable in the eyes of law. Therefore, it is liable to be quashed and set aside. In view of the above discussion, the present petition deserves to be allowed. Accordingly, we proceed to pass the following order:-

Order

- i. The petition is allowed.

ii. The impugned Award dated 26.03.2021 (**Annexure 3A**) passed by respondent 3 – Deputy Collector (Land Acquisition Officer), Minor Irrigation Works, Amravati is quashed and set aside.

iii. The respondents are hereby directed to pay the amount of compensation under Award dated 28.06.2019 to the petitioners alongwith interest at the rate of 9% per annum without insisting for bank guarantee.

iv. No order as to costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)

SANDIP
MAHADEV
GATE

Personal Assistant to the
Hon'ble Judge
Digitally signed by
SANDIP MAHADEV GATE
Date: 2023.04.24
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