

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

Writ Petition No.4448/2023

1. Digambar s/o Gapatrao Dhale (dead),
through his Legal heir's-
- 1(a). Smt. Ratna wd/o Digambar Dhale,
aged 54 yrs, occ. household work/agriculturist,
- 1(b). Gauri d/o Digambar Dhale @ Gaurai w/o Pramod Tamse,
aged 34 yrs, occu. Household work,
- 1(c). Rani d/o Digambaar Dhale, aged 29 yrs,
occu. Doctor. All R/o Near Shankar Talkies,
Digras, Tq. Digras and Dist. Yavatmal.
2. Ravindra s/o Satyanarayan Hingmire,
age 39 yrs, occu.-agriculturist,
R/o Digras, Tq. Digras, Dist Yavatmal. ... Petitioners

VERSUS

1. The State of Maharashtra through
the Collector, Yavatmal.
2. The Special Land Acquisition Officer,
Lower Pus Project, Pusad, Tq. Pusad, Dist.Yavatmal.
3. The Executive Engineer, V.I.D.C.
Lower Pus Project, Pusad, Tq. Pusad, Dist. Yavatmal. ...Respondents

Mr. G.R. Kothari, Advocate for the petitioners.
Mr. S.M. Ukey, Addl.GP for respondent 1.

CORAM : Rohit B Deo & A.L. Pansare, JJ.

DATE : 25-07-2023.

ORAL JUDGMENT (Per Rohit B. Deo, J.)

Heard.

2. The petitioners are seeking enhancement of the compensation which is awarded by the Special Land Acquisition Officer in LAC 39/47/96-97.

3. The petitioners and deceased Mr. Digambar Dhale were the owners of land survey 178/1-A of mouza Botha, taluka Mahagaon, District Yavatmal.

4. Out of the said land, land admeasuring 1.22 HR was acquired for the Jambnala Project. The Notification was issued under Section 4 of the Land Acquisition Act, 1894 (for short, "Act") on 22-05-1997 which culminated in award dated 19-06-2000. The compensation was determined at Rs.23,500/- per hectare.

5. It is averred in the petition that there were certain differences of opinion amongst the petitioners. The petitioners therefore did not seek reference under Section 18 of the Act nor did

initiate any other step to seek enhanced compensation.

6. The petitioners state that the land owners covered by the same Notification under Section 4 of the Act did prefer reference application seeking enhancement of compensation. Ultimately the matter reached the High Court and by judgment dated 26-02-2013 the High Court allowed First Appeal 1639/2008 and enhanced the compensation.

7. The petitioners are seeking enhancement of the compensation on the principle of parity, and in view of the judgment of the High Court in First Appeal 1639/2008.

8. In our considered view, the petition is absolutely without substance.

9. In the first instance, while the petitioners are apparently not aware of the statutory provisions. In sum and substance the petitioners are invoking the provisions of Section 28-A of the Act. This is clear from the averment in the petition that in view of the enhanced compensation awarded by the High Court in First Appeal

1639/2008, the petitioners whose land was acquired by the same notification, are entitled to enhanced compensation at par with the compensation awarded by the High Court.

10. Section 28-A of the Act is not triggered inasmuch as the well entrenched position of law is that an application under Section 28-A can be filed within 90 days from the judgment of the reference Court, if at all there is an enhancement by the reference Court. The claim on the principle of parity cannot be entertained on the basis of the judgment of the High Court in First Appeal. A Coordinate Bench has in Writ Petition No.7778/2022 (Shankarrao Pandoji Shendge and others vs State of Maharashtra and another, decided on 13-07-2023) (to which one of us R.B. Deo, J. was a party) has considered the catena of decisions of the Hon'ble Supreme Court, and has held that the enhancement of the compensation by the High Court does not give rise to a claim to parity.

11. The other aspect of the matter is that the award is passed in the year 2000, and the decision of the High Court which is the basis for the claim to parity is rendered in the year 2013, and this

Court is approached after a decade.

12. The learned Counsel for the petitioners is relying on the decision of the Coordinate Bench dated 08-06-2018 in Writ Petition No.4722/2015 (Sau. Sunitabai Bhaurao Chikankar vs Western Coalfields Limited and others). Presumably, the learned Counsel has not read the judgment carefully. The said decision is rendered in the context of the fact that more than 200 hectares of land belonging to several land holders was acquired by the Central Government vide Notification issued under Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1967. Certain land owners approached the Tribunal. However, even the land owners who approached the Tribunal were not satisfied with the determination by the Tribunal and did not collect the amount of compensation. Ultimately the State Government issued Government Resolution (GR) dated 22-08-2012 fixing the compensation at certain rate. The Western Coalfields Limited did not apply the GR with uniformity. While some land owners were given the benefits of GR dated 22-08-2012, the petitioners were denied the said benefit and the reason given for the discriminatory treatment was that the petitioners had withdrawn the

compensation which was deposited in the Tribunal. It is in these glaring facts that the High Court held that the fact that certain petitioners which drew the compensation cannot be the reason for not extending the benefits of the GR dated 22-08-2012.

13. The other decision which is cited by the learned Counsel for the petitioners is the decision of the Hon'ble Supreme Court in Sukh Dutt Ratra and others vs State of Himachal Pradesh and others, reported in [2022]2 SCR 1041.

14. We may note the factual matrix in Sukh Dutt Ratra and others (supra).

15. The appellants before the Hon'ble Supreme Court were the owners of certain land situated at Mauzal Sarol Basach in the State of Himachal Pradesh (hereinafter 'subject land') which was utilized by the State of Himachal Pradesh, along with the other land for construction of the Narag Fagla Road in 1972-73. The State of Himachal Pradesh utilized the land without initiating land acquisition proceedings and no compensation was paid to any of the land owners.

16. The Himachal Pradesh High Court directed the State to initiate the land acquisition proceeding. The State initiated the land acquisition proceeding which culminated in an award. Certain owners sought reference under Section 18 of the Act. The reference Court held in favour of the land owners and by award dated 04-10-2005 enhanced the compensation. However, the land owners approached the High Court since they were aggrieved by the quantum and rate of solatium and interest. The petition was dismissed. However, similarly situated land owners who filed writ petitions before the High Court were granted relief by the High Court and direction was issued to acquire the land of the writ petitioners with consequential benefits. The appellants approached the High Court seeking a direction that land acquisition proceedings be initiated. The High Court dismissed the petition on the ground that the matter involved disputed questions of law and fact as regards the starting point of limitation. Writ Petition was dismissed with liberty to file a civil suit. It is this judgment of the High Court which was challenged before the Hon'ble Supreme Court.

17. The Hon'ble Supreme Court observed that the State of

Himachal Pradesh has in a clandestine and arbitrary manner actively tried to limit disbursal of compensation as required by law. The Hon'ble Supreme Court considered the issue on the touchstone of the right to property and while noting that the right to property was not a fundamental right in view of the deletion of Article 19(1)(f), observed that the right is nonetheless a constitutional right under Article 300-A of the Constitution of India.

18. The Hon'ble Supreme Court found that the State did not produce any material whatsoever to show that the land of the appellant was taken over after initiating the proceedings under the Act. Para 21 of the decision of the Hon'ble Supreme Court reads thus :-

"21. Having considered the pleadings filed, this Court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the Appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence indicating that the land of the Appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings."

19. We further note that the Hon'ble Supreme Court found that the appellants had repeatedly asked for grant of compensation and despite that the State did not comply with the procedure laid down for acquisition.

20. It is in this backdrop that the Hon'ble Supreme Court exercised plenary power under Article 142 of the Constitution of India and directed that the subject land be deemed to have been acquired and appropriate compensation be paid.

21. We fail to appreciate how the decision *supra* is of any relevance.

22. Painful as the duty is, we must observe, that in matters after matters, decisions are cited which have no relevance, even remotely, to the factual or legal issues involved. While we do appreciate that every lawyer is entitled to rely on 'n' number of decisions, the least which we expect is that that the Counsel must read the decisions before relying on the decisions and at least make an attempt to understand the ratio thereof. Since this minimum care is not exercised, we are noticing in matters after matters

precious judicial time is being wasted.

23. We dismiss the petition with costs of Rs. 5,000/- which shall be deposited with the High Court Legal Aid Committee, Bench at Nagpur, within the next four weeks, failing which coercive action shall be initiated.

Judge

Judge

Deshmukh