



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

WRIT PETITION NO. 4772 OF 2017

1. Radhabai wd/o Purushottam Mallawat,
Aged about 69 years, Occu.Household
2. Ashish s/o Purushottam Mallawat,
Aged about 41 years, Occu.: Business,

Both the petitioners R/o. Ahinsa Marg,
Taluka Deulgaon Raja, District Buldhana.

..... **PETITIONERS**

...VERSUS...

1. Agricultural Produce Market Committee,
Deulgaon-Raja, through its Secretary,
District Buldhana.
2. Special Land Acquisition Officer/
Medium Project, District Buldhana.
3. The Collector,
Buldhana.
4. Municipal Council, Deulgaon-Raja,
through its Chief Officer,
Deulgaon-Raja, District Buldhana.
5. State of Maharashtra,
through its Secretary, Urban Development Department,
Mantralaya, Mumbai-400 032.

..... **RESPONDENTS**

Shri Sunil Manohar, Senior Advocate assisted by Shri Akshay Naik, Advocate
for petitioners.

Shri R. L. Khapre, Senior Advocate assisted by Shri Purushottam Patil,
Advocate with N.A.Waghmare, Advocate for respondent no.1.

Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 2, 3
and 5.

Shri D.M.Kale, Advocate for respondent no.4.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
ARGUMENTS WERE HEARD ON 13th JULY, 2023.
JUDGMENT IS PRONOUNCED ON : 19th AUGUST, 2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

By this writ petition filed under Article 226 of the Constitution of India the petitioners seek a direction to be issued to the second respondent-Special Land Acquisition Officer (for short, SLAO), Medium Project, Buldhana, to determine the compensation payable to them in view of the order dated 27.04.2006 passed in Writ Petition No.2285 of 1992 (*Krishnabai wd/o Hiralalji Mallawat and ors. vs. The Collector, Buldhana and ors.*).

2. The facts relevant for considering the prayers made in the writ petition are that in the Final Development Plan of the City of Buldhana an area admeasuring 7 H 44 R was reserved for extension of the first respondent-Agricultural Produce Market Committee(for short, APMC), Deulgaon-Raja. On 16.03.1990 Notification under Section 126(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966) came to be issued in that regard. The predecessors of the petitioners challenged the said Notification dated 16.03.1990 in Writ Petition No. 2285 of 1992. During the pendency of those proceedings, the predecessors of the petitioners and the APMC entered into a compromise. As per the terms and conditions agreed, the said petitioners agreed to sell land admeasuring 3 H 60 R equal to 9 acres to the APMC. The APMC passed Resolution on 17.02.2006 recording the aforesaid offer and it agreed to purchase the said land. The said land was to be sold by the petitioners to the APMC at the

prevailing market rate as on that date. It was further agreed that fresh valuation would be undertaken by the SLAO which would be accepted by the APMC as well as the petitioners. In case the petitioners were not satisfied of such valuation, their right to claim additional amount by approaching the Court was kept open. It was further recorded that the Director of Marketing had granted permission to enter into such compromise. It was also agreed that the award passed by the SLAO in 1992 was not to be acted upon. A request was thus made to the SLAO to re-value the land admeasuring 3 H 60 R at the current market value. It was stated that the award that would be passed by the SLAO would be binding on both parties. The possession of the said land was to be given within a period of one month on payment of Rs.Five lakhs by the APMC as earnest amount. The agreement of sale was to be registered and the amount of Rs.Five lakhs was to be deducted from the amount of compensation to be determined by the SLAO. By the order dated 27.04.2006 the aforesaid compromise was accepted by the Court. In view of aforesaid, the Notification dated 16.03.1990 came to be quashed and reliefs in terms of Clauses 3 to 11 of the compromise deed came to be granted. Writ Petition No. 2285 of 1992 was accordingly disposed of.

4. It is the case of the petitioners that despite various requests made to the SLAO to determine the market value of the land by acquiring the same in accordance with the provisions of the Land Acquisition Act, 1894 (for short, the Act of 1894), no steps in that regard were taken. The APMC also made various requests in that regard. Since both the parties had accepted the fact that the land was required to be acquired and its market value ought to be determined, it was

necessary to take this aspect to its logical end. It is in this backdrop that the petitioners have filed the present writ petition seeking the aforesaid direction to be issued to the SLAO.

5. Shri Sunil Manohar, learned Senior Advocate for the petitioners submitted that despite the clear terms of compromise dated 22.02.2006, the APMC and the SLAO were not interested in initiating and thereafter completing the process of acquisition of the said land. Referring to the various communications on record issued by the APMC, it was submitted that initially request had been made by the APMC by its communications dated 17.06.2009, 11.09.2009, 18.05.2011 and 24.02.2015 to initiate the process of acquisition. The petitioners had also from time to time made such request for completion of the said process by passing an award under the Act of 1894. Referring to the terms and conditions of the compromise, it was submitted that in clear terms the parties had agreed that the SLAO would determine the market value of the land admeasuring 3 H 60 R by acquiring the same and passing an award. There was no justifiable reason for the SLAO to have not proceeded further and passed the award. It was then submitted that the Act of 1894 came to be repealed in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013) coming into force. Since the petitioners had parted with the land admeasuring 3 H 60 R in accordance with the terms and conditions of the compromise and had only received an amount of Rs.Five lakhs as earnest amount, they were being deprived of fair compensation for the said land for no justifiable reason. Inviting attention to the judgment of this

Court in *Agricultural Produce Market Committee, Nagpur vs. State of Maharashtra and others* [2022(4) Mh.L.J.503] it was submitted that with the repeal of the Act of 1894, the compensation ought to be determined by completing the process of acquisition under the Act of 2013 and compensation ought to be determined on the basis of the market value on 01.01.2014. Principles of fair and good conscience required payment of just and fair compensation to the petitioners. The petitioners were not interested in seeking a declaration that the proceedings had lapsed for failure to acquire the lands as agreed. They were however entitled to the market value in accordance with the terms of compromise. It was also submitted that the document dated 23.02.2006 was in the nature of a possession receipt and that it was not an agreement of sale. The parties had understood the terms and conditions of the compromise in the manner that required acquisition of the said land and determination of market value by passing an award. Though the APMC was called upon to deposit requisite amounts to enable the process of acquisition to be initiated, it had failed to do so. Reference was also made to the provisions of Section 126(1)(a) of the Act of 1966 to submit that the SLAO could determine the market value in accordance therewith. Reference was made to the decision in *Aligarh Development Authority vs. Megh Singh and others* [(2016) 16 SCC 504] to urge that the petitioners were entitled to benefit of the provisions of the Act of 2013. It was thus submitted that the petitioners were entitled for the reliefs prayed for in the writ petition.

6. Shri R.L.Khapre, learned Senior Advocate for the respondent no.1-APMC opposed the aforesaid submissions. According to him, as per the terms and

conditions of the compromise the market value was to be determined by the SLAO by acting as an Arbitrator. The terms and conditions of the compromise were clear which indicated that as the petitioners had agreed to sell land admeasuring 3 H 60 R to the APMC, it was only the market value to be determined. Same was directed to be determined by the SLAO and the remedy of the petitioners to challenge the market value determined was kept open. Document dated 23.02.2006 was an agreement of sale and the amount of Rs.Five lakhs had been received as earnest amount. There was no question of the Act of 2013 being applicable in this context. On the contrary, it was submitted that in view of the terms and conditions of the compromise, the petitioners were required to invoke the remedy available under the Arbitration and Conciliation Act, 1996 since an award was contemplated to be passed. The writ petition in its present form was not maintainable. In that regard, reliance was placed on the decision in *Deep Trading Company vs. Indian Oil Corporation and others [(2013) 4 SCC 35]*. The petitioners could seek appointment of an Arbitrator and have the market value determined. It was further submitted that prayer clause (i) in the writ petition was not opposed by the APMC in the matter of determination of compensation in accordance with the order passed in Writ Petition No.2285 of 1992. At the most the petitioners could be compensated by awarding interest on the amount of compensation as determined. In any event, it was submitted that inaction on the part of the SLAO in determining the market value could not act to the prejudice of the APMC. Reference in that context was made to the decision in *Chhabildas vs. State of Maharashtra and others [(2018) 2 SCC 784]*. Attention was invited to paragraph 8 of the decision in *Hanumanrao Morbaji Gudadhe and others vs. State of Maharashtra and others*

[2015(6) Mh.L.J.127]. It was thus submitted that the relief as prayed for by the petitioners was not liable to be granted. The amount of compensation was liable to be determined as per the terms and conditions of the compromise.

7. We have heard the learned Senior Advocates for the parties at length and with their assistance we have perused the documents on record. We have thereafter given due consideration to the rival submissions. The dispute between the parties lies in a narrow compass inasmuch as it revolves upon the interpretation of the terms and conditions of the compromise dated 22.02.2006 between the predecessors of the petitioners and the APMC. The factual aspects preceding the filing of Writ Petition No.2285 of 1992 are not very relevant except for stating that the Notification dated 16.03.1990 under Section 126(2) of the Act of 1966 with regard to land reserved for extension of the APMC was under challenge. The said writ petition was pending since 1992 and there was an interim order passed by virtue of which the extension of the APMC had been stalled. In the said backdrop, the APMC on 17.02.2006 passed a Resolution and decided to put an end to the dispute in the light of various terms and conditions of the compromise. Since the dispute revolves around the terms and conditions of the said compromise, it would be necessary to refer to certain relevant terms and conditions thereof. Clauses 3 and 7 to 11 are material and same are reproduced hereunder:

“3. The respondent no.3-Agriculture Produce Market Committee has passed a resolution on 17.2.2006 stating therein that the petitioners agree to sale the half piece of land approximately (9 acres) i.e. 3.60 R. The total land in dispute in this petition and under acquisition is about 18 acres which is reserved under Town Planning Act. The APMC has no objection to delete the remaining land of 9 acres from the reservation

under Town Planning Act. A copy of resolution dated 17.2.2006 is filed as Document No.1.

7. It is agreed that the area of 3.60 R (9 acres) will be sold by petitioner to respondent no.3. The fresh valuation of the land to be given to petitioners which is approximately 3.60 R will be decided by Land Acquisition Officer, Buldhana and that will be accepted by A.P.M.C. and also the petitioners. In case, the petitioners are not satisfied by such valuation, they have kept their right intact to claim the additional amount by going to the Court of Law. The decision of the Court will be binding on both the parties.

8. That the Director of Marketing, Maharashtra State, Pune has considered the issue of compromise and permission is granted to the matter in the best interest of A. P. M.C. and also considering the factor that the Scheme Technology Mission on Cotton (T.M.C.) and for this project the amount of Rs.90 Lakhs as subsidy is sanctioned. The A. P. M.C. will be deprived of it in case the matter is not settled. Considering all such aspects of matter, the Director of A. P. M.C. Maharashtra State, Pune and on behalf of him it is informed by the Dy. Engineer, Establishment. It is also stated in the permission letter that it is by sanction and approval of Director of Marketing. A true copy of this permission letter dated 13.2.2006 is annexed for ready reference in the matter as Document No. II.

9. In view of this position and permission granted by the Director of Marketing, Pune by letter dated 13.2.2006 parties have entered into compromise which they have properly followed as stated in the letter of permission.

10. There is no legal impediment or any other hitch in accepting the compromise which is perfectly legal and valid both the parties agreed that the award declared by the Land Acquisition Officer in the year 1992, is not to be acted upon and compensation granted before 15 years by Land Acquisition Officer; is not binding on both the parties. Hence they have decided to approach the Land Acquisition Officer with a request to revalue the part of (9 acres) 3.60 R of land as per present market value. The award which will be passed by the Land Acquisition Officer will be binding on both the parties.

11. In case the petitioners are not satisfied by such award their rights under the Land Acquisition Act will be exercised by them if they desired so. It is further agreed between the parties that after acceptance of compromise by the Hon'ble High Court, the petitioner will give the possession of 9 acres of land within a period of one month and that too on payment of Rs.5 lakh as earnest amount and the agreement to sale will be registered before the Registrar of Documents and this amount of advance or earnest amount will be deducted from the total compensation which will be decided by the Land Acquisition Officer. The possession will be delivered immediately on payment of Rs.5 lakh on the same day and this possession will be protected under Section 53 A of Transfer of Property Act.”

8. A plain reading of the terms and conditions on the basis of which compromise was entered into by the parties indicates that the petitioners had agreed to sell land admeasuring 3 H 60 R to the APMC and rest of the land admeasuring 3 H 60 R was to be deleted from the reservation under the Act of 1966. The land in question was to be sold by the petitioners to the APMC at the market value as on 22.02.2006. Clauses 3 and 7 of the terms and conditions used the expressions ‘agree to sell’ and ‘sold’. It is further stated that the valuation of the land to be given to the petitioners would be decided by the SLAO and it would be binding on the APMC and the petitioners. However, the right of the petitioners to seek additional amount was reserved. It was also agreed that the award of the year 1992 passed by the SLAO was not to be acted upon and the amount of compensation as granted prior to fifteen years was not binding on the parties. The award to be passed by the SLAO in the matter of determination of the market value was to be binding on both parties. In Clause 11 there is a reference to the words “agreement to sale” that was to be registered and amount of Rs.Five lakhs as

earnest amount was to be paid. In addition, the possession of the APMC was to stand protected under Section 53 A of the Transfer of Property Act, 1882 (for short, the Act of 1882).

In our view these terms and conditions when read as a whole are clear and unambiguous. They indicate that (a) the petitioners agreed to sell 3 H 60 R land to the APMC at the market value as prevailing on 22.02.2006. (b) The market value of the said land was to be determined by the SLAO which was to be accepted by the parties. (c) The possession of the said land was to be given to the APMC within a period of one month and the petitioners were to receive the amount of Rs.Five lakhs as earnest amount. (d) The agreement of sale was to be registered with the Registrar of Documents and the possession received by the APMC pursuant to the agreement was to be protected under Section 53 A of the Act of 1882.

9. It will thus have to be held that the terms and conditions dated 22.02.2006 contemplate sale of land admeasuring 3 H 60 R by the petitioners to the APMC at the market value prevailing on that date. We do not find that by requiring the SLAO to determine the market value as on 22.02.2006, it was intended that the said exercise be undertaken by following the modalities prescribed under the Act of 1894.

10. It was strenuously urged on behalf of the petitioners that since the APMC did not take timely steps to comply with the statutory requirements and pre-requisites to enable an award to be passed by the SLAO, compensation ought to be determined by invoking the provisions of the Act of 2013 on the basis of the market

value as on 01.01.2014. We however do not find the said contention to be acceptable. There being a clear stipulation in the terms and conditions agreed between the parties that the petitioners would be entitled for the market value as on 22.02.2006, those terms and conditions would be binding on both parties. The effect of not being paid the compensation in terms of the market value as prevailing on 22.02.2006 is a different matter and same can be taken care of by awarding the petitioners suitable interest on the said market value. Failure to determine the market value by the SLAO would not mean that the provisions of the Act of 2013 would stand attracted in the matter of compensating the petitioners in the light of the clear terms and conditions agreed between the parties. The Act of 2013 cannot be applied while determining the market value of the land as on 22.02.2006. In these facts therefore the ratio of the decision in *Agricultural Produce Market Committee* (supra) cannot be made applicable to the case in hand. Similarly, the decision in *Aligarh Development Authority* (supra) also does not support the case of the petitioners.

11. A contention was raised on behalf of the APMC that what was contemplated by the terms and conditions agreed was the passing of an award by the SLAO who was appointed by the parties to determine the market value. In other words, it was urged that the SLAO was to act as Arbitrator. It does appear on reading the terms and conditions dated 22.02.2006 in its entirety that the SLAO was assigned the task of determining the market value and the right of the petitioners to seek additional amount by approaching the Court was kept open.

It may be stated that the petitioners sought to contend that the parties had understood the terms and conditions of the compromise as requiring the SLAO to pass an award under the Act of 1894 and hence it was not permissible for the APMC to now contend otherwise. It is no doubt true that the communication dated 02.09.2006 issued by the APMC to the Collector refers to steps for acquiring the land in question. By communication dated 25.05.2007 the Collector, Buldhana had directed the SLAO to act in accordance with the judgment of this Court in Writ Petition No.2285 of 1992. This has been followed by communication dated 21.12.2015 in that regard. We however do not find that the terms and conditions of the compromise admit of any doubt about the manner in which the market value of the said land was to be determined. The conduct of parties to the compromise would assume significance if there was some ambiguity in the terms and conditions agreed. We however do not find any such ambiguity therein. Reference in this context can be made to the decision in *Bank of India and another vs. K. Mohandas and others* [(2009) 5 SCC 313] In paragraphs 28 to 31 it has been observed as under:

“28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.

29. In Ottoman Bank of Nicosia vs. Ohanes Chakarian [AIR 1938 PC 26] Lord Wright made these weighty observations:

“... that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct

adopted by the parties in acting under it.”.

30. *In Ganga Saran v. Firm Ram Charan Ram Gopal [AIR 1952 SC 9] a four-Judge Bench of this Court stated:*

“6..... Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say after wards, it is unnecessary to refer to what the parties have said about it.”

31. *It is also a well-recognised principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. (North Eastern Railway Co. v. Lord Hastings [1900 AC 260])”*

12. Use of the word “award” therein would not change the complexion of the terms and conditions as agreed. This position has been reiterated in the document executed by the parties on 23.02.2006 when the possession was handed over by the petitioners to the APMC. What was clearly intended was determination of market value of the land by the SLAO. In that view of the matter, we do not find that the market value of the land is required to be determined in accordance with the Act of 2013.

13. For aforesaid reasons, the writ petition is allowed in terms of prayer clause (i) which reads as under:

(i) issue writ in the nature of mandamus or any other appropriate writ, order or direction to direct respondent no.2 Special Land Acquisition Officer to determine the compensation payable to the petitioners in view of the order dated 27.04.2006 passed by this Hon’ble Court in Writ Petition No.2285/1992 in a time bound manner.

14. The market value of land admeasuring 3 H 60 R shall be determined in accordance with terms and conditions of the compromise dated 22.02.2006. The SLAO shall take all necessary steps to determine the market value of the said land as on 22.02.2006 as agreed by the petitioners and the APMC. The parties are free to decide the modalities on the basis of which the SLAO is required to act in accordance with the terms and conditions of the compromise dated 22.02.2006 as accepted by the Court in its order dated 27.04.2006 in Writ Petition No.2285 of 1992. The entire exercise be completed within a period of four months from today. Since it was urged by the APMC that the petitioners could be compensated in the matter by awarding interest on the amount of compensation for the delay caused in determining the market value of the land, the SLAO shall award appropriate amount of interest while determining the amount of compensation.

Rule is disposed of in aforesaid terms with no order as to costs.

Pending civil application is also disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.