



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

WRIT PETITION NO. 759 OF 2021

1. Shobha Chandrashekhar Channe,
Aged about 60 years, Occupation-Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
2. Kusum Babulal Chamare,
Aged 69 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
3. Somnath Dumaji Bhayal,
Aged 46 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
4. Chandrashekhar Gangadhar Channe,
Aged 69 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
5. Dharma Shravan Lonabale,
Aged 59 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
6. Chaitanya Chandrashekhar Channe,
Aged 44 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
7. Nishchal Chandrashekhar Channe,
Aged 42 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.
8. Jagannath Rushi Sahare,
Aged 70 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.

9. Moreshwar Gopalrao Tumram
Aged 53 years, Occ. Agriculturist,
R/o. At Post Gunjewahi, Tal. Sindhewahi,
District Chandrapur.

..... **PETITIONERS**

...VERSUS...

1. The Collector,
Chandrapur.
2. The Land Acquisition Officer and
Sub-Divisional Officer, Chimur,
District Chandrapur.
3. The Executive Engineer,
Asola Mendha Project, Renovation Department No.1.
Mul, Tal. Mul, District Chandrapur.

..... **RESPONDENTS**

Shri P. S. Kshirsagar, Advocate for petitioners.

Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 and 2.

Ms Ira P. Khisti, Advocate for respondent no.3.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

ARGUMENTS WERE HEARD ON : 27th JULY, 2023

JUDGMENT IS PRONOUNCED ON : 10th OCTOBER, 2023

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

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioners are owners of various lands that are located at Village Kanhalgaon, Taluka Sindewahi, District Chandrapur. They are aggrieved by the award dated 23.12.2019 that has been passed by the Land Acquisition Officer and Sub-Divisional Officer, Chimur, District Chandrapur

principally on the ground that the notice as required under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, the Act of 2013) has not been published in the prescribed manner.

3. Shri P. S. Kshirsagar, learned counsel for the petitioners submitted that in accordance with the provisions of Section 11(1)(b) of the Act of 2013, the preliminary notification is required to be published in two daily newspapers that are circulated in the locality of such area where the lands are located. One newspaper is required to be published in a regional language. According to him, the preliminary notification was published in an evening newspaper 'Khalsa Sandesh'. The said newspaper did not have adequate circulation in the localities where the lands were located. This resulted in non-compliance of the requirements of Section 11(1)(b) of the Act of 2013. It was further submitted that majority of the land owners whose lands were proposed to be acquired were residing at villages Kanhalgaon and Gunjewahi while only few land owners were residing at village Samada Khurd. Despite aforesaid, the notice as required to be given in the Panchayat as per Section 11(1)(c) of the Act of 2013 was given only at Panchayat Samiti, Samda Khurd and not Panchayat Samiti, Kanhalgaon. Since the lands of the petitioners were located within Panchayat Samiti, Kanhalgaon, there was no notice to them. He further submitted that no

Gram Sabha was held prior to acquiring the said lands which was also in breach of the requirements of Section 11(1) of the Act of 2013. As a result, the petitioners did not have any opportunity to raise objections to the acquisition of their lands. This resulted in depriving them of their rights under Article 300 A of the Constitution of India. Placing reliance on the decisions in *The Collector (District Magistrate), Allahabad and another vs. Raja Ram Jaiswal* [**AIR 1985 SC 1622**], *Nandkumar s/o Madhukarrao Girme vs. Union of India and others* [**1989 Mh.L.J. 833**] and *Madhya Pradesh Housing Board vs. Mohd. Shafi and others* [**(1992) 2 SCC 168**], it was submitted that since the award dated 23.12.2019 was passed without complying with the mandatory requirements prescribed by Section 11(1) of the Act of 2013, it was liable to be quashed.

4. Ms N. P. Mehta, learned Assistant Government Pleader appearing for the respondent nos. 1 and 2 relied upon the affidavits filed on record and opposed the prayers made in the writ petition. It was submitted that initially a notice for direct purchase of the said lands was issued by the Sub-Divisional Officer in daily 'Dainik Bhaskar' on 21.12.2017. This notice was also published in daily 'Lokmat'-Marathi on 23.12.2017. By giving this notice the land owners made aware of the intention to acquire the said lands for rehabilitation purposes. Thereafter on 19.10.2018 notice under Section 11(1)(b) of the Act of 2013 was published in two local newspapers, 'Dainik

Khalsa' and 'Dainik Sannata'. Both these newspapers were published in Marathi and had circulation in Sindewahi Tahsil. Referring to a communication dated 06.04.2023 that was issued by the District Information Officer, Chandrapur to the Sub-Divisional Officer, it was submitted that both these newspapers were included in the list of approved newspapers for Chandrapur District where advertisements/notices on behalf of the State Government could be published. It therefore could not be said that notice under Section 11(1)(b) was published only in one newspaper. It was further submitted that on 19.10.2018 the Land Acquisition Officer and Sub-Divisional Officer had informed the Tahsildar by issuing a communication in that regard to publish preliminary notification under Section 11(1) of the Act of 2013 in the manner prescribed. The same was accordingly published at the Office of the Tahsil, at the Office of the Talathi and on the notice board of the Gram Panchayat. The procedure prescribed was therefore duly followed. Lands from about 109 survey numbers came to be acquired and 86 land owners had accepted the amount of compensation. Out of them about 80 land owners had filed proceedings for enhancement of compensation. Moreover, the petitioner no.4 was aware of the publication of the preliminary notification under Section 11(1) of the Act of 2013 since he had moved an application before the Sub-Divisional Officer for having the name of his father corrected as recorded in the said notification. It was therefore submitted that the mandatory compliance under Section 11(1) of the Act of

2013 had been undertaken and there was no illegality in the same.

Ms I. P. Khisti, learned counsel appearing for the respondent no.3 on whose behalf the lands were acquired also opposed the writ petition. It was submitted that in terms of Section 11(1)(c) of the Act of 2013 a notice was published in the manner prescribed and similarly under Section 11(2) the Gram Sabha had been duly informed about the same. According to the learned counsel, even after the notice under Section 19 of the Act of 2013 was published in two widely circulated newspapers in Marathi, no objection had been raised by the petitioners. In absence of any such objection being raised, their grievance at this stage did not deserve consideration. The remedy for seeking enhanced compensation under Section 64 of the Act of 2013 was available. Since a majority from the 109 land owners had accepted the amount of compensation, there was no reason to interfere with the award as passed. It was thus submitted that the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties and with their assistance we have also perused the records as maintained by the Land Acquisition Officer. The challenge raised by the petitioners is principally on the ground that the provisions of Section 11(1) of the Act of 2013 have not been complied with while acquiring their lands. It may at the outset be stated that with a view to provide for rehabilitation of project affected

persons an attempt was made to negotiate and directly purchase the lands in question from 109 land owners. Accordingly, notice was published in 'Dainik Lokmat' Marathi and 'Dainik Bhaskar' on 23.12.2017 and 21.12.2017 respectively. The said notice includes the names of all the petitioners. After this notice was published, the petitioner no.4 issued a communication to the Sub-Divisional Officer pointing out that the name of his father had been wrongly mentioned against his name at serial no.101. Accordingly, the Sub-Divisional Officer on 08.01.2018 informed the Executive Engineer, Asola Mendha to verify the same in view of the objection raised by the petitioner no.4. Steps were accordingly taken to correct the name of the petitioner no.4's father in the record. It is further seen from record that on 08.01.2018 itself a meeting was held between various villagers, public representatives and the land acquisition authorities in the matter of direct purchase of the said lands from the land owners. It appears that said attempt was not fruitful and therefore the process of acquisition was initiated by having the preliminary notification dated 19.10.2018 being duly published in the manner prescribed by Section 11(1)(b) of the Act of 2013. Accordingly said notice under Section 11(1)(b) was published in 'Dainik Sannata' and 'Dainik Khalsa'. As per the communication dated 06.04.2023 issued by the District Information Officer both these newspapers are on the approved list of newspapers that are entitled to publish advertisements/notices on behalf of the State Government and other authorities. It has been asserted by the

Land Acquisition Officer and Sub-Divisional Officer that in accordance with the guidelines published on 20.12.2018 by the General Administration Department, the aforesaid notices have been duly published. It can thus be seen that there has been necessary compliance in the matter of publication of the preliminary notification under Section 11(1)(b) of the Act of 2013.

6. As per provisions of Section 11(1)(c) of the Act of 2013 notice is required to be published in the local language in the Office of the District Collector, Tahsil and also in the Panchayat, Municipality or Municipal Corporation as the case may be. It is seen from the record that on 19.10.2018 the Sub-Divisional Officer and Land Acquisition Officer, Chimur has issued communication to the Tahsildar, Sindewahi issuing directions to have the preliminary notification being placed on the notice board of the Tahsil Office. A copy of the said communication bearing Outward No.30 is also addressed to the Talathi, Village-Kanhalgaon, Taluka Sindewahi, District Chandrapur and the same bears the acknowledgment of the Office of the Talathi dated 31.10.2018. Similarly, communication dated 26.10.2018 bearing Outward No.40 was issued with regard to Mouza Samda Khurd, Taluka Sindewahi, with copy thereof to the concerned Talathi. His acknowledgment is dated 31.10.2018. Similar such copy of communication bearing Outward No.35 has been addressed to the Talathi, Village Gunjewahi Kotha, Taluka Sindewahi. This would indicate that the Sub-Divisional Officer

had taken necessary steps to have the notice displayed on the notice board at the Tahsil office as well as at the Office of the Panchayat. The communications have been duly received by the concerned Talathi of the said village. The petitioners seek to rely upon the information received by them under the provisions of the Right to Information Act, 2005 with regard to the Inward-Outward Register maintained by the Secretary, Gram Panchayat, Samda Khurd and Talathi, Pawanpar to contend that since such information with regard to notice being published at the Gram Panchayat was not available, the same could not be provided.

We find that this aspect to be a disputed question since the record of the Sub-Divisional Officer and Land Acquisition Officer, Chimur indicates issuance of such communications to the Tahsildar with copy to the Talathi and said communications bear the acknowledgment of the Office of the Talathi. The material on record is insufficient to hold that there has been non-compliance of the provision of Section 11(1)(c) of the Act of 2013.

7. Coming to the aspect of failure to convene a Gram Sabha and inform the villagers in the locality of the proposed acquisition in terms of Section 11(2) of the Act of 2013 is concerned, we find that the averments made in this regard in the writ petition of absence of informing the Gram Sabha of the contents of the notification issued under Section 11(1) of the Act of 2013 has not been specifically traversed or denied by the respondents.

We have also perused the record of the acquisition proceedings that has been maintained by the Sub-Divisional Officer, Chimur. The said record does not indicate that the contents of the preliminary notification issued under Section 11(1) of the Act of 2013 were conveyed to the Gram Sabha. The question to be thus considered is whether failure on the part of the Sub-Divisional Officer in informing the Gram Sabha of the preliminary notification would vitiate the acquisition itself.

It is to be noted that prior to publication of the preliminary notification under Section 11(1) of the Act of 2013, an attempt was made to acquire the lands through private negotiations. A public notice in this regard was published in two local newspapers on 21.12.2017 and 23.12.2017. By giving such notice the villagers were made aware of the intention on the part of the Land Acquisition Officer that the said lands were proposed to be acquired through negotiations. Despite such attempts, the efforts to acquire the said lands through direct purchase were not successful. The deliberations that took place between the villagers of village Gunjewahi, Taluka Sindewahi in that regard on 08.01.2018 are placed on record. Since this attempt was not successful, the Sub-Divisional Officer was required to publish preliminary notification under Section 11(1) of the Act of 2013 on 19.10.2018. By the said notification, the lands were proposed to be acquired under the Act of 2013. It is thus clear that by the initial public notice dated 21.12.2017 and 23.12.2017 the villagers were made aware of the intention to acquire the

aforesaid lands. Due publicity has thereafter been given to the preliminary notification dated 19.10.2018 when the same was published in the manner as prescribed by Section 11(1)(b) of the Act of 2013. It can therefore be said that there was substantial compliance of due notice to the land owners whose lands were proposed to be acquired under the preliminary notification. It is to be noted that the provisions of Section 11(2) of the Act of 2013 merely require information of the contents of the preliminary notification to be given to the concerned Gram Sabha at the village level. Section 11(2) does not prescribe the consequence of failure to give any such intimation of the preliminary notification to the Gram Sabha. It would therefore appear that the requirements as prescribed under Section 11(2) of the Act of 2013 are directory in nature and not mandatory in the absence of any consequence being provided for failure to give such information. The object behind informing the Gram Sabha is to bring to the notice of the land owners of the concerned village of the intention to acquire their lands. In the facts of the present case, when initial public notice was given with a view to directly purchase the lands in question which was thereafter followed by issuance of a preliminary notification under Section 11(1) of the Act of 2013 coupled with the fact that the said notification was duly placed on the notice board of the Tahsil Office, there is substantial compliance of the provisions of Section 11(1) of the Act of 2013 and the object of giving wide publicity to such acquisition stands achieved. We therefore find that mere failure on

the part of the Sub-Divisional Officer to indicate that the contents of the notification were informed to the Gram Sabha would not result in vitiating the acquisition proceedings.

8. Another material aspect which requires reference is the delay on the part of the petitioners in seeking to raise a challenge to the award dated 23.12.2019. The present writ petition has been filed on 14.12.2020 which is almost after a year of the final award being passed on 23.12.2019. There is no explanation furnished for the time taken for raising such challenge after a period of almost one year. By that time most of the land owners received the amount of compensation by accepting the award. It has been stated in the affidavit filed by the Sub-Divisional Officer that lands from 109 survey numbers were acquired by passing the award and 86 land owners had accepted the amount of compensation. Further, about 80 land owners had also filed proceedings for enhancement in the amount of compensation. This would indicate that during the time taken to challenge the award, more than 85% of the land owners had accepted the award and had received benefit thereon. It is pertinent to note that reference proceedings under Section 64 of the Act of 2013 are required to be filed within the extended period of six months from the date of Collector's award and as stated hereinabove 80 land owners have already filed proceedings under Section 64 of the Act of 2013.

We may refer to the law as laid down by the Hon'ble Supreme Court *Ramniklal N. Bhutta and others vs. State of Maharashtra and others* [AIR 1997 SC 1236] wherein it has been held that when larger public interest over-weighs private interest, the Court should be slow in exercising jurisdiction under Article 226 of the Constitution of India. The private interest of the petitioners who can always seek enhancement in the amount of compensation is required to give way to larger public interest as the acquisition of the aforesaid lands is in public interest.

9. For aforesaid reasons, we do not find that there is any case made out to grant the prayers made in the writ petition. It is accordingly dismissed. By clarifying that the petitioners are free to seek enhancement of the amount of compensation awarded by taking recourse to Section 64 of the Act of 2013, the Rule stands discharged with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..