



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO. 25 OF 2024

Savita Vijaykumar Golhar @
Savita Bhaurao Kawale

.. Petitioner

versus

The Union of India & others

.. Respondents

Mr. P. R. Katneshwarkar, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for the State.
Mr. A. G. Talhar, DSGI for Union of India.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

RESERVED ON : 21st MARCH, 2024.
PRONOUNCED ON : 29th APRIL, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. This Public Interest Litigation seeks to draw attention of the Court to the alleged illegalities committed by the individuals as well as the Government authorities in respect of the lands acquired under the National Highways Act, 1956.

2. The Petitioner claims herself to be a teacher and a social worker. She is seeking to ventilate the grievance of the tax payers as the Petitioner claims to have known about the illegalities committed

by the various persons such as purchasing land and creating bogus record of trees, wells, godown etc. in the land proposed to be acquired for National Highway from Ahmednagar-Solapur-Akkalkot green field in the stretch of the land from 306.600 km to 344.400 km vide Notification dated 26th September, 2022. According to the Petitioner, a Notification under Section 3-A came to be published on 26th September, 2022 and thereafter various individuals have executed sale-deeds with an intention to defraud the Government and public money. It is alleged that the sale-deeds post Notification dated 26th September, 2022, are executed with hands in gloves with the revenue officials. It is claimed that the provisions of Section 11(4) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 prohibit any transaction post notification. It is also alleged that a false record has been created in respect of existence of number of wells and trees in the concerned land in order to seek higher rate of compensation. It is claimed by Petitioner that the Petitioner has drawn attention of this fact to the concerned authority and that the Project Director, Aurangabad vide letter dated 6th April, 2023 has apprised the concerned officer to instruct the land owners and also the concerned Deputy SLR and all Government agencies not to consider the assets

mentioned and not to submit valuation in order to avoid future dispute. With these averments, the Petitioner is seeking following reliefs :-

C) Issue writ of Mandamus or any other appropriate writ, orders or directions directing the respondent authorities not to consider changes in revenue record by way of sale deed or any other means post notification dated 26.09.2022.

D) Issue writ of Mandamus or any other appropriate writ, order or direction directing the respondent No. 1, 2 and 5 to conducted independent enquiry against Land Acquisition Scam in respect of National Highway from Ahmednagar-Solapur-Akkalkot green field in the stretch of the land from 306.600 KM to 344.400 KM under supervision of this Hon'ble Court and to take necessary actions accordingly.

E) Issue Writ of Prohibition or any other appropriate writ, orders or directions in the nature of writ of prohibition prohibiting the respondent authorities from disbursing compensation to the individuals who have manipulated the revenue record in order to gain excess compensation by way of putting loss to the public exchequer until enquiry is conducted.

3. The Petitioner, in support of her contention, has placed reliance on documents such as Notification dated 26th September, 2022 issued under Section 3-A(1) of National Highways Act, sale-deeds dated 9th January, 2023, 1st November, 2022, 24th November, 2022, 7th November, 2022, 5th January, 2023 (mortgage deed), 29th December, 2022, 3rd October, 2022 and 24th November, 2022. She also placed reliance on Government Resolution dated 24th January, 2023 and Notification dated 23rd August, 2023 passed under Section 3-D(2) of the National Highways Act, Notification dated 10th January, 2024, letter dated 12th January, 2024 issued by the SDPO in respect of non-availability of joint measurement report, communication made by the Petitioner to various authorities and communication dated 6th April, 2023 by Project Director. During the course of the hearing, further documents are relied upon.

4. We have heard learned Advocates for the Petitioner and Respondents and carefully considered the documentary evidence placed on record coupled with the relevant provisions of the National Highways Act.

5. In order to appreciate the submissions of the rival parties, it would be relevant to take into consideration the relevant provisions of the Act in respect of the acquisition of land for the purpose of National Highways as under :-

“3. Definitions – In this Act, unless the context otherwise requires-

(a) **“competent authority”** means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification :

(b) **“land”** includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

3-A Power to acquire land, etc. - (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3-B Power to enter for survey, etc. - On the issue of a notification under sub-section (1) of Section 3-A, it shall be lawful for any person, authorised by the Central Government in this behalf, to -

- (a) make any inspection, survey, measurement, valuation or enquiry;
- (b) take levels;
- (c) dig or bore into subsoil;
- (d) set out boundaries and intended lines of work;
- (e) mark such levels, boundaries and lines placing marks and cutting trenches; or
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

3-C Hearing of objections – (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of Section 3-A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority

shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation – For the purpose of this sub-section, “legal practitioner” has the same meaning as in clause (I) of sub-section (1) of Section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

3-D. Declaration of acquisition – (1) Where no objection under sub-section (1) of Section 3-C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of Section 3-A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of Section 3-A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect :

Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of Section 3-A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

3-E Power to take possession – (1) Where any land has vested in the Central Government under sub-section (2) of Section 3-D, and the amount determined by the competent authority under Section 3-G with respect to such land has been deposited under sub-section (1) of Section 3-H, with the competent authority by the Central Government, the competent authority may by notice in

writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply -

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3-F Right to enter into the land where land has vested in the Central Government – Where the land has vested in the Central Government under Section 3-D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3-G Determination of amount payable as

compensation- (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of Section 3-C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration -

- (a) the market value of the land on the date of publication of the notification under Section 3-A;
- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his

residence or place of business, the reasonable expenses, if any, incidental to such change.

3-H Deposit and payment of amount – (1) The amount determined under Section 3-G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under Section 3-G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date of taking possession under Section 3-D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-section (2) to (4) shall apply to such deposit.

3-I Competent authority to have certain powers of civil court – The competent shall have, for the purpose of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;

(e) issuing commission for examination of witnesses.

3-J Land Acquisition Act 1 of 1894 not to apply –

Nothing in the Land Acquisition Act, 1894 shall apply to any acquisition under this Act.”

6. Section 11(4) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as under :-

11. Publication of preliminary notification and power of officers.

4) No person shall make any transaction or cause any transaction of land specified in the preliminary notification or create any encumbrances on such land from the date of publication of such notification till such time as the proceedings under this Chapter are completed:

Provided that the Collector may, on the application made by the owner of the land so notified, exempt in special circumstances to be recorded in writing, such owner from the operation of this sub-section:

Provided further that any loss or injury suffered by

any person due to his wilful violation of this provision shall not be made up by the Collector.

7. The National Highways Act, 1956 being a complete code in itself in respect of the acquisition of the land required for the purpose of creation of National Highways, it provides separate procedure for acquisition including issuance of notification, computation of compensation and disbursement thereof. It also provides separate and independent remedy for the purpose of challenge to the award passed in respect of payment of compensation to the land owners. Pertinently, not only the provisions of Land Acquisition Act, 1894 are kept out of consideration from the proceedings under the National Highways Act, but even in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, there is no provision indicating application of the same to the proceedings under this Act. Even for the purpose of acquisition of land, separate and distinct procedure has been laid down under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. So also compensation is also different than the one done under the National Highways Act. Not only this, the remedy provided for the challenge to the compensation so paid under

the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is different than the National Highways Act. In such circumstances, we do not find even by analogy provisions of Section 11(4) could be made applicable to the present case.

8. It is pertinent to note that even amendment has been made to the MRTP Act for the purpose of acquisition and payment of compensation wherein the applicability of Land Acquisition Act, 1894 has been replaced by Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. There is no such amendment carried to the National Highways Act in order to read the said provision therein.

9. Section 3-D of the Act provides for declaration of acquisition after no objection under Section 3-C has been made to the competent authority or the competent authority has disallowed such objection. On the receipt of such report, the Central Government shall declare by Notification in the official gazette that the land should be acquired for the purpose mentioned in sub-section 1 of Section 3-A of the Act. Sub-Section 2 of Section 3-D of

the Act provides that on publication of the declaration under subsection 1, the land shall vest absolutely in Central Government. It is thus clear that only after issuance of Notification under Section 3-D(2) of the Act, the land vests absolutely in the Central Government and thereby after publication of the Notification the erstwhile owners of the land would not retain title to transfer the same to subsequent purchaser but only would be entitled to claim compensation. Thus, the prohibition for transfer of land would be applicable only after issuance/publication of Notification under Section 3-D(2) of the Act. In the instant case, the Notifications under Section 3-D(2) of the Act has been issued on 23rd August, 2023 and 10th January, 2024. Therefore, in order to make any grievance in respect of any transaction after such notification, the Petitioner ought to have placed on record some material indicating the entries into the transactions of sale in respect of the land acquired after these dates. Pertinently, the documents placed on record by the Petitioner indicate that last of such sale-deed is said to have been executed on 9th January, 2023 i.e. prior to Notification under Section 3-D(2) of the Act. It is thus clear that there is no material on record to show that any transaction of sale in respect of the land acquired has been done after publication of the Notification under Section 3D(2) of the Act.

Considering the provisions of the Act with regard to the acquisition of lands, we are not in agreement with the learned Advocate for the Petitioner that bar under Section 11(4) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is created.

10. In order to maintain a Public Interest Litigation, the Bombay High Court Public Interest Litigation Rules 2010 make it mandatory that the Petitioner shall conduct a thorough research in respect of the subject matter sought to be brought to the notice of the Court under the Public Interest Litigation. Needless to say that such Public Interest Litigation cannot be allowed to be filed casually or for vested interest of the parties.

11. The Petitioner, though has claimed in the Petition that she is a teacher and a social worker, but the documents placed on record indicate that she is a political person i.e. Ex-Chairman and Group Leader of Zilla Parishad, Beed. The Petition, therefore, can be said to be politically motivated. Be that as it may, the perusal of the record does not indicate any sale-deed being executed after issuance of Notification under Section 3-D(2) of the Act. We do not find any

record indicating registration of such sale-deed by the Registering authority or any entries being taken by the Revenue authorities in the revenue record on the basis of such transaction.

12. As far as the contention of the Petitioner about the record being created by the land owner by showing more wells than really in existence in the land or the trees being planted for the purpose of enhancement of the compensation, the letter dated 6th April, 2023 issued by the Project Director to the concerned authorities clearly indicates that a cognizance has been taken of such grievance. It is the duty and responsibility of the concerned authority to verify from the lands and evaluate the amount of compensation on the basis of survey and assessment of land. There is nothing on record to indicate that the authorities concerned have ignored the said aspect or they are not likely to take the same into consideration. From the documents on record, it is clear that the acquisition has not reached the stage of computation of the amount of compensation and as such, we do not wish to accept the contention of the Petitioner that the concerned authorities would not abide the law while implementing provisions of the Act. We,

therefore, find that the present Petition is frivolous, mischievous and hence the same deserves to be dismissed with exemplary cost.

13. This PIL Petition is dismissed. The cost is determined at Rs. 25,000/-, to be deposited in this Court by the Petitioner, in 30 days. The registry of this Court shall transfer the said amount to the Government Cancer Hospital, Aurangabad.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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