IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

1 WRIT PETITION NO. 6092 OF 2024

KISHAN HARIBA SALUNKE, DIED, THROUGH LRS ANUSAYABAI KISHAN SALUNKE

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR, LATUR AND OTHERS

….

Mrs P. G. Sontakke, Advocate h/f Mr G. K. Sontakke, Advocate for Petitioner
Ms Neha Kamble, A.G.P. for Respondents/State

CORAM : RAVINDRA V. GHUGE AND Y. G. KHOBRAGADE, JJ.

DATE : 5th August, 2024

PER COURT:

1. By this Petition, the Petitioner has put forth prayer clauses (B), (C) and (D), which read as under :-

> *"B) By issuing writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus thereby directing the respondent Nos.1 and 2 to release part payment as awarded to the petitioner vide Award dated 28.08.2017 under the provisions of Section 28-A of Land Acquisition Act in proceeding No.1995/LA/CR-38 and for that purpose issue necessary orders.*

C) Hold and declare that, the communication dated 19.02.2024 issued by the respondent No.2 is illegal, arbitrary and liable to be quashed and set aside and for that purpose issue necessary orders.

D) Pending, hearing and final disposal of this Writ Petition grant an injunction, thereby directing the respondent Nos.1 and 2 to release part payment as awarded to the petitioner vide Award dated 28.08.2017 under the provisions of Section 28-A of Land Acquisition Act in proceeding No. 1995/LA/CR-38 and for that purpose issue necessary orders."

2. The undisputed facts are set out herein below :-

(a) The land belonging to the Petitioner in Survey No.39, admeasuring 0H.22R was acquired by the Respondents/Authority for the purpose of construction of the Ring Road connecting Latur to Ausa and Latur to Barshi.

(b) A Notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the 1894 Act'), was published in the Maharashtra Government Gazette on 22/02/1996.

(c) Thereafter, the Special Land Acquisition Officer (S.L.A.O.) issued a Notification under Section 9(1) of the 1894 Act.

(d) The S.L.A.O. declared the Award, on 05/11/1999.

(e) Similarly situated claimants preferred Application (Reference Petition) under Section 18 of the 1894 Act, before the learned Civil Judge Senior Division, Latur for seeking enhancement in compensation.

(f) The First L.A.R. judgment is dated 02/05/2009.

(g) By a judgment dated 17/12/2014, passed in L.A.R. case No.213/2003, by the learned Civil Judge Senior Division, Latur, the Claimants were granted enhancement in compensation.

(h) First Appeal (St.) No.25683/2010 was filed by the State Government, on 04/09/2010.

(i) It is informed that the First Appellate Court has not stayed the Award delivered by the L.A.R. Court.

(j) All the Respondents in the First Appeals, who were Applicants under Section 18 L.A.R. Proceedings, have been paid entire enhanced amount with the solitary condition of tendering indemnity undertakings.

(k) Since the Petitioner did not availe of the proceedings under Section 18 of the 1894 Act, she moved proceedings under Section 28-A of the 1894 Act.

(l) By the judgment and Award, the proceedings under Section 28-A were allowed and identical enhancement was granted to this Petitioner. In short, this Petitioner and the Applicants under Section 18 proceedings, were placed at par.

(m) The Petitioner moved Respondent No.2/Authority for grant of the enhancement amounts vide the Application dated 02/02/2024. By the impugned order dated 19/02/2024, the concerned Authority/Sub Divisional Officer and S.L.A.O., Latur informed the Petitioners that, the First appeal was pending before the High Court and, hence, the Petitioner should tender a Bank Guarantee and receive the enhancement amount.

3. The learned Advocate for the Petitioner submits that, if identically placed Claimants under Section 18 of the 1894 Act have been granted entire enhanced amounts on the condition of tendering indemnity bonds, the Petitioner who has acquired the same relief under Section 28-A of the 1894 Act, should not be put to different conditions. By the impugned communication, the Petitioner is directed to tender a Bank Guarantee if she desires to receive the enhanced amounts.

4. The learned A.G.P. has vehemently opposed this Writ Petition on the basis of the affidavit-in-reply filed by the concerned Authority, which has passed the impugned order. It is brought to our notice that 50% of the enhanced amount has already been paid to the Petitioner, without any conditions. Since the First Appeal is pending, the condition of Bank Guarantee has

been imposed on the Petitioner. Such stand has been taken in view of the Government Resolution dated 29/08/2015, which provides that the Collector should direct for tendering of Bank Guarantee, if the amount of enhancement compensation is to be paid when the Appeal challenging the judgment under Section 18 of the 1894 Act, is pending before the High Court.

5. The learned A.G.P. has placed reliance upon the following judgments :-

I) Babua Ram and others Vs. State of U.P. and Another, [(1995) 2 SCC 689] : [1995 AIR SCW 65];

II) Kendriya Karamchari S.G.N. Samiti Ltd., Noida Vs. State of U.P. and Anr, [AIR 2009 SC 1677];

III) Bharatsing s/o Gulabsingh Jakhad and others Vs. State of Maharashtra and others, [(2018) 11 SCC 92];

IV) Ramsingbhai (Ramsangbhai) Jerambhai Vs. the State of Gujarat and Anr. [AIR 2018 SC 2629] : [2018 (16) SCC 445];

V) Union of India (UOI) Vs. Munshi Ram (Dead) by Lr. And others, [AIR 2006 SC 1716];

VI) State of Maharashtra Vs. Manakchand Pyarmal and others, [(1996) 1 SCC 297];

VII) Sanjay and others Vs. State of Maharashtra, through Collector and others, [2022 SCC OnLine Bom. 11920]

6. In view of the above cited reports, the law is settled that, if the Applicants, who did not avail of the remedy under Section 18 of the 1894 Act, has preferred a remedy under Section 28-A of the 1894 Act, and if, in the interregnum, the State challenges the enhancement granted under Section 18 of the 1894 Act, by filing First Appeal, the Authority dealing with the proceedings under Section 28-A of the 1894 Act, should keep the proceedings in abeyance and should not take a decision until the First Appeal is decided.

7. However, in the instant case, not only have the Claimants been granted the enhanced compensation amounts under Section 18 of the 1894 Act, but the Competent Authority has already adjudicated upon the proceedings under Section 28-A of the 1894 Act, after the First Appeal was filed. So also, the

learned Single Judge has not granted any relief to the State Authorities in the First Appeal, and the Claimants, who were successful in getting enhancement under Section 18 of the 1894 Act, have already been paid enhanced amounts on the condition of tendering indemnity bond.

8. The learned A.G.P. submits that, though the facts of this case are peculiar, and since the proceedings under Section 28-A have already been adjudicated upon, the clock cannot be turned back. However, it is an onerous task for the State to recover amounts, which are paid on the orders passed under Section 18 and under Section 28-A of the 1894 Act, if the State succeeds in the First Appeal before the High Court. Such ~~onus~~ onerous burden would be increased if this Court would permit the Petitioner to withdraw even the remaining of the 50% amounts granted under Section 28-A. There is no dispute that, 50% of the amount granted under Section 28-A has been withdrawn by the Petitioner without any undertaking/without any conditions.

9. In view of the above, to ensure that the Petitioner is placed at par with those identically placed Claimants, who have

succeeded under Section 18, and who have withdrawn their amounts on indemnity bonds, and to balance the equities, we deem it appropriate to pass the following order :-

(a) **This Writ Petition is partly allowed.**

(b) Out of the remaining 50% amount, which is said to be Rs.10,99,913/- as in 2017, plus the accrued interest till July 2024, we would permit the Petitioner, who is an 88 years old widow, to withdraw 50% of this amount by tendering an indemnity bond.

(c) The remaining amount be invested in any Nationalized Bank in Fixed Deposit Receipt (F.D.R.) by the District Collector, initially for a period of two years.

(d) Needless to state, subject to the result in the First Appeal, further remedies are available to the Petitioner.

(e) Needless to state, we have passed the above order in the peculiar facts and circumstances of this case.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

sjk