

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13819 OF 2023

Shri. Sanjay Shankarrao Wagh ...Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Dheeraj Patil, for the Petitioner.
Ms. Pushplata N. Diwan, for the Respondent Nos.1 & 3.
Mr. Shantanu Patil i/b. Mr. Abhijit Adagule for KMC/ Respondent No.2.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 22 NOVEMBER 2024

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P.C.:

1. As a short issue involved in the present proceeding is whether the petitioner is entitled to claim benefit of the provisions of Section 41(6) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “the **2013 Act**”).
2. The case of the petitioner is that he belongs to a Scheduled Caste. He has annexed a copy of the caste certificate issued to him. He has stated that he is a person who is in requirement of fund for the education of his children, as he does not have any major source of income. The petitioner contends that he is the owner of land bearing Revision Survey No.19 and 20/3 admeasuring 8H and 0.31R respectively situated at village

Tembalaiwadi, Taluka Karveer, District Kolhapur. The land has been shown to be reserved in the sanctioned development plan for the Kolhapur City for “simble marked” as per reservation survey entry No.163. As the land was kept under reservation for a long period of time, the petitioner had served a purchase notice on the Kolhapur Municipal Corporation (“**Municipal Corporation**” for short) under Section 49 of the Maharashtra Regional Town Planning Act, 1949 (“**MRTTP Act**” for short) dated 13 July 2018.

3. It is the case of the petitioner that as the purchase notice was served by the petitioner on the State Government, it was incumbent for the State Government to pass necessary orders within six months. Accordingly, on 10 October 2018, the State Government confirmed the purchase notice and directed the Municipal Corporation to take requisite steps to acquire the petitioner’s land within a period of one year. The period of one year expired on 1 October 2019, however, the Municipal Corporation failed and neglected to take requisite steps for acquisition of the said land.

4. It is the case of the petitioner that the Municipal Corporation submitted proposal on 25 February 2020 before the Collector, Kolhapur for acquisition of the petitioner’s land. On such proposal, the District Collector passed an order on 12 June 2020 appointing the Special Land Acquisition Officer - 11 as the officer competent to take further steps. At such stage, the petitioner has approached this Court by filing Writ Petition

No.472 of 2021 seeking a declaration that the reservation under Section 49 read with Section 127(2) of the MRTP Act had lapsed. The said Writ Petition came to be disposed of by an order dated 13 September 2022 passed by the coordinate Bench of this Court which reads thus :-

“2. Mr. Patil, learned counsel for the petitioner however on instruction states that though his client has prayed for a declaration that the reservation has lapsed, his client has no objection if the respondent no.2 Corporation acquires the said land and deposits 30% amount expeditiously and complete the entire acquisition proceedings expeditiously and not later than the time prescribed under the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Statement is accepted.

3. Learned counsel for the respondent no.2 on instruction states that his client would deposit 30% of the ready reckoner price in respect of the writ land within three months with the respondent no.1. He further states that the declaration under section 126(4) of the MPRT Act would be issued within two weeks from the date of such deposit. Statements are accepted.

4. In view of the statement made by the learned counsel for the respondents, the petitioner does not press prayer clause (a) of the petition and accepts the decision of the respondent no.2 to acquire the land of the petitioner under the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. The respondent no.1 is accordingly directed to complete the acquisition proceedings expeditiously and not later than the period of one year prescribed under the said Act commencing from the date of declaration under section 126(4) of the MRTP Act.

6. The State Government to take steps as agreed in the communication dated 27th September, 2020 annexed at page 92 of the petition.

7. Writ petition is disposed of in the aforesaid terms. No order as to costs. The parties to act on the authenticated copy of this order.”

5. It is clear from the reading of the aforesaid order, that the Municipal

Corporation made a statement before this Court that it will deposit 30% of the ready reckoner price in respect of the petitioner's land with the Special Land Acquisition Officer ("SLAO") within a period of three months and that a declaration under Section 126(4) of the MRTP Act would be issued within two weeks. Such statement as made on behalf of the Municipal Corporation was accepted. In this view of the matter, the petitioner did not press prayer clause (a) of the said writ petition, which pertained to the acquisition of the land under provisions of the 2013 Act. This Court also directed the State Government to complete the acquisition proceedings expeditiously and not later than the period of one year as prescribed under the 2013 Act, commencing from the date of declaration under Section 126(4) of the MRTP Act.

6. In pursuance of the aforesaid directions of this Court, the Collector, Kolhapur issued a notification under Section 126(4) of the MRTP Act read with Section 19 of the Right to Fair Compensation and Rehabilitation and Resettlement Act ("**2013 Act**" for short). It is the petitioner's case that further in compliance of the statement made before this Court, the Municipal Corporation has deposited an amount of Rs.1,72,38,780/- with the SLAO as seen from the communication dated 9 December 2022 issued by the Municipal Corporation to the SLAO (**Exh.I** to the petition). The petitioner contends that in pursuance of the provisions of Section 41(6) of the 2013 Act read with the Government Resolution dated 20

March 2016, the petitioner had applied to the SLAO for withdrawal of the first installment or part amount of compensation as deposited by the acquiring body – Kolhapur Municipal Corporation with the SLAO. However, such application of the petitioner was rejected by the SLAO vide communication dated 7 February 2023 on the ground that Section 41 would not be applicable for acquisition in the present case, as the petitioner's land which is sought to be acquired is not part of the scheduled area as sub-section (1) of Section 41 would postulate. The said communication is noted to be recorded which reads thus :-

“GOVERNMENT OF MAHARASHTRA
Town Planning and Assessment Department.
Special Land Acquisition Office (11), Kolhapur.
1091, 'C' Ward, Bindu Chowk, Kolhapur.
Tele. No. (0231) 2642753.
E-mail :slao11kolhapur@gmail.com

Outward No. LAQ/Spl./472/Kolhapur/SLAO-11
Ko./66
Date : 07.02.2023.

To,
Shri Sanjay Shankarrao Wagh,
Residing at Plot No. 37,
Bhimvijay Housing Society,
Ruikar Colony, Kolhapur.

Subject : Land Acquisition – Kolhapur – LAQ /Spl. /472. Regarding acquiring for Timber Market, the area viz. R. No. 162-A on the land bearing Survey No. 19, 20/3 and 22-A Part (Area adm. 7050 Sq. Mtrs.), situated at Village – Tembalaiwadi, in 'E' Ward falling under the Sanctioned Kolhapur.,

Reference : 1) Your Application dated 26.12.2022.
2) Letter bearing No. LAQ /Spl./472 /Kolhapur /S.L.A.O. 11-Ko./49, dated 23.01.2023, of this Office.
3) Letter bearing No. LAQ /Spl./472/Kolhapur / S.L.A.O. 11-Ko./62, dated 02.02.2023, of this Office.
4) Your Application dated 27.01.2023.

Sir,

As regards your Application under Reference at Sr. No.1 above, whereby you have expected the payment of the consideration amount in advance in the matter under the aforesaid subject, has been referred by this Office, under its letters under Reference at Sr. Nos. 2 and 3 above, to the Land Acquisition Board of Kolhapur Municipal Corporation.

Now, by the Application under Reference at Sr. No.4 above, you have demanded payment of 30 per cent of the consideration amount as per the provisions of Section 41 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In this connection, you are informed that, on perusing the Provisions of the aforesaid Section 41, the same become applicable to the acquisition of land for the projects falling only in the Scheduled Areas. Hence, as the provisions of the aforesaid Section 41 are not applicable to the present matter, your application under the Reference at Sr. No.4 above is hereby disposed of.³ However, in connection with the Application referred to at Sr. No.1 above in the matter under the above noted subject, further appropriate steps in pursuance thereof will be taken as soon as the Kolhapur Municipal Corporation takes steps as informed to it by this Office under its Letters referred to at Sr. No.2 and 3 above.

Yours faithfully,
(Signature Illegible)
[A. P. Gawande]

In charge Special Land Acquisition Officer (11), Kolhapur.

Copy for information submitted to :

- 1) The Collector (Land Acquisition Co-ordination), Kolhapur.
- 2) The Commissioner and Administrator, Kolhapur Municipal Corporation, Kolhapur.”

7. On the aforesaid backdrop, the petitioner is before the Court praying for a direction that the SLAO be directed to make payment of the amount of compensation as deposited by the Municipal Corporation with the Special Land Acquisition Officer.

8. We have heard learned counsel for the parties. The short issue which requires decision in the present proceeding is whether the SLAO was justified in denying to the petitioner the benefit of the provisions of Section 41(6) of the 2013 Act which provide that, in case of land being acquired from members of the Scheduled Castes and Scheduled Tribes, at least 1/3rd of the compensation amount due shall be paid initially to the family members as per the first installment and rest of the amount is to be paid after taking possession of the land. To examine the issue, it would be appropriate to note the provisions of Section 41 as the controversy revolves around such provision. Section 41 reads thus :-

“41. Special provisions for Scheduled Castes and Scheduled Tribes.–

- (1) As far as possible, no acquisition of land shall be made in the Scheduled Areas:-
- (2) Where such acquisition does take place it shall be done only as a demonstrable last resort.
- (3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force:

Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

- (4) In case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled

Tribes as well as the Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition.

- (5) The Development Plan shall also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years, sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.
- (6) In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families initially as first instalment and the rest shall be paid after taking over of the possession of the land.
- (7) The affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.
- (8) The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.
- (9) Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void, and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be made available to the original tribal land owners or land owners belonging to the Scheduled Castes.
- (10) The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.
- (11) Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district, then, they shall be paid an additional twenty-five per cent. Rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.”

(Emphasis added)

9. On a plain reading of Section 41, it is clear that it is a special provision for Scheduled Castes and Scheduled Tribes as the title of the

Section indicates. On a reading of the legislative scheme of Section 41 it is seen that it takes into consideration several facets touching the Scheduled Castes and Schedule Tribes, including acquisition in regard to “scheduled areas”. Sub-section (1) provides that as far as possible, no acquisition of land shall be made in the Scheduled Areas, and where such acquisition does take place, it shall be done only as “a demonstrable last resort” as provided under sub-section (2). Sub-sections (4) and (5) of Section 41 pertain to project involving land acquisition on behalf of acquiring body which involves involuntary displacement of the Scheduled Castes or Scheduled Tribes families, for which the Development Plan shall be prepared in such form, as may be prescribed, laying down the details for procedure for settling land rights due, but not settled and resorting titles Scheduled Tribes as well as Scheduled Castes on the alienated land by undertaking a special drive together with land acquisition. Sub-section (5) provides that Development Plan shall also contain a programme for development of alternate fuel, fodder and, non-timber forest produce resources on non-forest lands within a period of five years. Sub-sections (4) and (5) is required to be read in conjunction with sub-section (6) which provides that in case of land being acquired from members of Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the families as first installment and rest shall be paid after taking over of the possession of the land. Sub-

section (7) provides that the affected families of the Scheduled Tribes shall be resettled preferably in the same “Scheduled Area”, in compact block so that they can retain their ethnic, linguistic and cultural identity and accordingly, provisions of sub-sections (8), (9), (10) and (11) are required to be read in such context. Thus sub-sections (3) to (11) of Section 41 are accordingly required to be read.

10. We may thus observe that sub-section (1) of Section 41 when refers to “**Schedule Areas**” in its application to Section 41 it is being referred in the context of the “Scheduled Areas” is defined in Section 2(zd) of the 2013 Act, which reads thus:-

“**Section 2(zd) “Scheduled Areas”** means the Scheduled Areas as defined in section 2 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).”

As Section 2(zd) of the 2013 Act refers to Section 2 of the “Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996” (for short ‘**the 1996 Act**’), we may also note the definition of “Scheduled Areas” under Section 2 of the 1996 Act which reads thus:

“**2 Definition** – In this Act, unless the context otherwise requires, “Scheduled Areas” means the Scheduled Areas as referred to in clause (1) of Article 244 of the Constitution.”

Further as Section 2 of the 1996 Act, in turn refers to the provisions

of Clause (1) of Article 244 of the Constitution, we also note Clause (1) of Article 244 of the Constitution which reads thus:

“244. Administration of Scheduled Areas and Tribal Areas – (1)
The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.”

(emphasis supplied)

As Clause (1) of Article 244 of the Constitution refers to the Fifth Schedule, we note as to how “Scheduled Areas” as defined in the Fifth Schedule of the Constitution. ‘Part C’ of the Fifth Schedule provides for Scheduled Areas’ wherein paragraph 6 thereof ordains that in the Constitution, the expression “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas. Part C of the Fifth Schedule of the Constitution reads thus:

**“PART C
SCHEDULED AREAS**

6. Scheduled Areas – (1) In this Constitution, the expression “Scheduled Areas” means such areas as the President may by order declare to be Scheduled Areas,

(2) The President may at any time by order -

(a) direct that the whole or any specified part of a scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or

to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the area which are to be Scheduled Areas,

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.”

11. If the aforesaid legal position as borne out by Section 41(1) in its applicability to Section 41 in its entirety, which in turn explicitly takes within its purview Section 2 of 1996 Act (supra), Article 244(1) of the Constitution read with the Fifth Schedule to the Constitution, as noted by us hereinabove, and it is in such context the applicability of Section 41 is to be seen to the ‘Scheduled areas’, we are at a loss to understand as to how in the absence of any Presidential notification issued as per the provisions of Part C of the Fifth Schedule to the Constitution, the petitioner can merely referring to the provisions of sub-section (6) of Section 41 of the 2013 Act, claim any benefit of payment of one third of the compensation.

12. We are, therefore, not persuaded to accept the petitioner’s contention that Section 41(6) stands isolated or needs to be read in vacuum from the other companion sub-sections and/or the other provisions as noted hereinabove are required and / or could be read

independently and devoid of the scheme of other sub-sections as falling under Section 41. Thus, the petitioner asserting rights purely on the basis of sub-section (6) of Section 41 is quite misconceived as no right would accrue to the petitioner to claim withdrawal of one-third of the compensation amount as a first installment. We therefore, find no fault in the communication as issued to the petitioner dated 7 February 2023 and which has been accepted by the petitioner and not assailed.

13. In so far as the petitioner's contention, relying on the Government Resolution ("**GR**" for short) dated 20 March 2010 is concerned and more particularly, paragraph 1 thereof, we find that the SLAO has not applied his mind to the provisions of the said GR and therefore, he would be required to take an independent decision considering the said GR. The relevant paragraph of the GR as relied by the petitioner reads thus :-

"1) While publishing the Notification under section 11 of the Land Acquisition Act, 2013, the Collectors shall provide information in writing to the Land holders separately that if they want the consideration amount in lieu of their lands which would be acquired, in advance and if they submit an application in writing to that effect to the concerned Land Acquisition Officer then, they will be paid an advance payment of 50% of the estimated consideration of their land to be acquired. However, for that purpose, the Land holders must make a request in writing to that effect."

14. We accordingly, direct the SLAO to consider the petitioner's application purely on the GR dated 30 March 2016 and take a decision on

the same within period of two weeks from the day on which a copy of this order is presented before them.

15. In the light of the above discussion and except for the directions as made above, we dismiss the petition.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]