

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1897 OF 2022

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Vishnu J. Bhalerao)
Age 75 years Occ: Agriculture)
Resident of Village Kalamb,)
Tal. Ambegaon, District - Pune)

... Petitioner

Versus

1. The Union of India through the)
Secretary, Ministry of Road)
Transport & Highways,)
(Land Acquisition Division),)
Transport Bhavan, 1, Parliament)
Street, New Delhi-110 001)
2. The National Highways Authority)
of India (NHAI), G-5 & 6,)
Sector 10, Dwarka,)
New Delhi-110 075)
3. The National Highways Authority)
of India, Pune, Survey No. 134/1A,)
BAIF Bhavan, Dr. Manibhai Desai)
Nagar, Warje, Pune - 411 058)
through its Project Director)
4. The Competent Authority for)
NHAI & Special Land Acquisition)
Officer No. 13 (CALA), New)
Administrative Building, 2nd Floor,)
Opp. Vidhan Bhavan,)
Pune - 411 001)

.... Respondents

**Mr. Ramdas Sabban a/w. Pravin Sabban, Shrikant Kompelli,
Arundhati Sabban, for Petitioner.**

Mr. A.I. Patel, Addl. G.P. a/w. Ms. M.S. Bane, AGP, for Respondent No.4 /State.

Mr. Ashutosh Misra, for Respondent No. 1/UOI.

Mr. Sandeep Ladda, for Respondent Nos. 2 & 3/ NHAI.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

RESERVED ON : OCTOBER 30, 2023

PRONOUNCED ON : JANUARY 09 2024

JUDGMENT (Per M.M. SATHAYE, J.)

1. Rule. Learned AGP waives service for Respondent No. 4. Learned counsel for Union of India and National Highways Authority waives service for Respondent Nos. 1 to 3. Rule made returnable forthwith. Taken up for final disposal with consent.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner is challenging the impugned Order dated 10/01/2022 passed by the Deputy Collector, Special Land Acquisition Officer No. 13 Pune (Respondent No. 4) in Petitioner's case No. 20/2021. The Petitioner is also seeking a direction to the Respondents to pass a Rehabilitation and Resettlement (R&R) Order/Award u/s. 31 of the Right to Fair Compensation and Transparency in Land

Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “**the 2013 Act**”), as per Government of India guidelines dated 28/12/2017 read with Ordinances dated 31/12/2014, 03/04/2015, 30/05/2015 & Order dated 28/08/2015 issued by the Ministry of Rural Development. The Petitioner further seeks a direction to the Respondents to actually grant a Rehabilitation & Resettlement benefit amount along with statutory benefits such as solatium under section 30 and interest under sections 72 and 80 of the 2013 Act or 12 % equitable interest from the date of Award.

3. From the nature of prayers as set out above, it can be seen that the Petitioner is seeking comprehensive reliefs in respect of his claim under section 31 of the 2013 Act on merits.

4. Few facts that are necessary to be noted, for final disposal of this Petition, are this. A Notification under section 3-A of the National Highways Act, 1956 (for short “**the NH Act**”) was published on 07/11/2014. After following the procedure under section 3 of the NH Act, an Award under section 3-G was passed on 28/03/2016 in LAQ case No. SR/25/2014 by the Special Land Acquisition Officer No. 13, Pune. The land of the Petitioner, being 7715 square meters situated at Survey No. 192 (Part), Village Kalamb, Taluka Ambegaon, District Pune

(for short “**the said land**”) jointly owned by the Petitioner along with others, and the Petitioner’s house thereon, was acquired for construction of NH-50 Pune-Nashik Highway. It is the case of the Petitioner that the Petitioner along with others, as recorded in Schedule 6 of the Award (copy annexed to the Petition) have been affected, in as much as their livelihood and that of their families which was dependent on the said land, has been taken away and therefore, they are entitled to a Rehabilitation and Resettlement Award (R & R Award) under section 31 of the 2013 Act read with Schedule II thereof, over and above the award of compensation already awarded on 28/03/2016.

5. Accordingly, the Petitioner and 17 other persons applied to Respondent Nos. 3 and 4 on 29/10/2020 for grant of rehabilitation and resettlement benefits under section 31 of the 2013 Act. It appears that the Petitioner’s said application was not being decided, and therefore, the Petitioner filed Writ Petition No. 2638 of 2021. In this writ petition, this Court, by its Order dated 16/09/2021, directed the Competent Authority (Respondent No. 4) to decide the Petitioner’s application/representation in a time bound manner.

6. Pursuant to the aforesaid direction of this Court, Respondent No. 4 (Competent Authority) heard and rejected the

Petitioner's application on 10/01/2022 on merits, and which is impugned in this Petition.

7. In this factual backdrop, we have heard the learned counsel for the Petitioner and the learned AGP for the Respondent No. 4 (Competent Authority). We have also also heard the learned counsel appearing for the National Highways Authority of India and the Union of India.

8. The learned counsel for the Petitioner assailed the impugned Order mainly on the ground that the Petitioner's application has been rejected by applying the erroneous guideline viz. paragraph 5.4 of the Government of India guidelines dated 28/12/2017, and which is referred to in the impugned Order. He submitted that the said guideline No. 5.4 is primarily applicable to applications for grant of compensation under Schedule I with reference to sections 26 to 30 of the 2013 Act and not in respect of Petitioner's case which is essentially under section 31 of the 2013 Act. He submitted that the impugned Order has been passed on irrelevant considerations and suffered from a complete non application of mind. He submitted that a bare reading of the impugned Order shows that it is passed in a casual and a mechanical manner. He therefore submitted that this impugned order deserves to

be set aside and the Petitioner be granted reliefs as more particularly set out by us earlier.

9. On the other hand, the learned counsel for the Respondents, relying on the affidavit-in-reply filed by the concerned Project Director of the National Highways Authority of India, contended that the guidelines dated 28/12/2017 do not apply in a blanket manner to all the cases of acquisitions under the National Highways Act. It is contended that the provisions of Schedules II and III of the 2013 Act are made applicable only to the affected families and not all who are granted compensation under the NH Act read with the 2013 Act. It is contended that the Petitioner or other Applicants do not fall under the category of displaced or affected families and hence, they cannot seek any benefits under Schedules II and III of the 2013 Act. It is further contended that the Arbitrator is empowered to Award relocation amount to the displaced families under section 3-G (7) and the Petitioner has a remedy to approach the learned Arbitrator. It is further contended that the Petitioner has already been awarded the amount of compensation under Schedule I of the 2013 Act which is compensation towards the land and the structure standing thereon. It is submitted that the provisions of Schedule II are not applicable as the Petitioner has been sufficiently compensated under Schedule I. It is further contended

that the guidelines are applicable based on facts and circumstances of each case and in the present case, the Petitioner does not fall under the displaced persons category. Consequently, there is no merit in the Petition, is the submission.

10. We have carefully considered the impugned Order. The only reason given in the impugned Order can be found at paragraph nos. 4(i) to 4(iii). It states that the guidelines in paragraph 5.4 specifically mention only sections 26, 29 and 30 of the 2013 Act, while calculating the impugned compensation, and therefore, the prayer of the Petitioner for compensation under section 31 of the 2013 Act is not applicable as per the guidelines. The other reason given is that under the 2013 Act, the Competent Authority cannot review its own Award and the party aggrieved by the Award can approach the Arbitrator.

11. On going through the impugned order, it is clear that the Competent Authority has not at all considered whether the Petitioner and other Applicants are factually entitled to the benefits under section 31 of the 2013 Act. Guideline No. 4.4 indeed refers to the Order dated 28/08/2015 issued by Ministry of Rural Development called *'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015'*

(for short 'Removal of Difficulties Order of 2015') and shows that Rehabilitation and Resettlement benefits under Schedule II can be considered w.e.f. 01/01/2015.

12. The Competent Authority has obviously not understood the basic difference between a claim under Schedule I of the 2013 Act which is compensation for land and structure under sections 26 to 30 of the 2013 Act AND a claim under Schedule II read with section 31 of the 2013 Act which is basically a rehabilitation and resettlement award, over and above the compensation payable under Schedule I.

13. Perusal of the provisions of sections 26 to 30 of the 2013 Act shows that it falls under Chapter IV which deals with Notification and acquisition procedure whereas the provisions regarding Rehabilitation and Resettlement under section 31, as claimed by the Petitioner, fall under a different chapter, namely, Chapter V. This Chapter is *inter alia* for the purpose of rehabilitation and resettlement of such families which are affected and whose livelihood is primarily dependent on the land that is acquired. The benefits under section 31 and which refers to Schedule II, is in addition to the compensation payable for the acquired land and the structure standing thereon determined under sections 26 to 30 read with Schedule I. The Competent Authority has failed to

understand that the Petitioner is not claiming any benefit or compensation again, but is claiming an independent rehabilitation and resettlement compensation.

14. Perusal of the Removal of Difficulties Order of 2015 shows that indeed the provisions of the 2013 Act relating to rehabilitation and resettlement benefit in accordance with Schedule II is made applicable to all cases of land acquisition under enactments specified in Schedule IV of the 2013 Act, including the National Highways Act, 1956, which is entry No. 7 in the said Schedule. Therefore, there is merit in the contention of the Petitioner that the impugned order requires interference under Article 226 of the Constitution of India.

15. In view of the aforesaid circumstances, in the considered opinion of this Court, the impugned Order, qua the Petitioner only, deserves to be quashed and set aside and the Competent Authority needs to be directed to reconsider the Petitioner's case on merits and pass an Award, if entitled, as contemplated under section 31 read with Schedule II of the 2013 Act.

16. The claim of the Petitioner for actual grant of rehabilitation and resettlement benefit at this stage, cannot be entertained for the first time in writ jurisdiction under Article 226 of the Constitution of India

because the same is required to be decided on merits under section 31 by the Collector or the Competent Authority appointed for the said purpose. Even claim of the Petitioner about payment under section 30 and claim of interest under sections 72 & 80 of the 2013 Act shall be decided by the Competent Authority in accordance with law and grant the same if Petitioner is found entitled.

17. In view of the forgoing discussion, the following Order is passed.

- (a) The Petition is partly allowed and the impugned Order dated 10/01/2022 passed by Respondent No. 4 is quashed and set aside.
- (b) Respondent No. 4 is directed to re-consider the Petitioner's claim on merits and arrive at a conclusion whether the Petitioner is entitled to any compensation as an affected person as contemplated under section 31 read with Schedule II of the 2013 Act or otherwise and pass necessary orders within a period of 3 months from today.
- (c) This Court has not expressed any opinion on the merits of the matter and the application dated 29/10/2020 filed by the Petitioner shall be decided on its own merits and in

accordance with law.

18. Rule is made absolute and writ petition is disposed of in above terms. No order as to costs.

19. All concerned to act on authenticated or digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]