

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6386 OF 2018

1. Shri. Nilesh Prabhakar Nagawade)
Age: Major, Occ. Service and Agriculture,)
R/o. Village Kolgaon-Dolas,)
Taluka:Shirur, District: Pune) ... Petitioner

Versus

1. The State of Maharashtra)
Through the Department of Forest and)
Revenue, Having office at Mantralaya,)
Mumbai – 32)
2. The Collector (Land Acquisition) Pune)
Having office at New Administrative Building,)
2nd Floor, Opposite Legislative Assembly,)
Pune-1)
3. The Deputy Collector and The Special Land)
Acquisition Officer No. 11, Pune)
Having office at New Administrative Building,)
1st Floor, Opposite Legislative Assembly,)
Pune-1)
4. The Sub-Divisional Officer)
Shirur, Division Pune, Yashwantrao Chavhan)
Building, Old Administrative Office, 3rd Floor,)
Office of Sub-Divisional Office,)

3rd Floor, Office of Sub-Divisional Officer,)
Shirur)

5. The Executive Engineer)
(Department of Lift Irrigation Management))
Division No. 1 (Near Mutha Canal), Swargate,)
Pune - 37) ...Respondents

Mr. Prajakt M. Arjunwadkar for the Petitioner.
Ms P. M. Joshi - Deshpande, AGP for Respondent Nos. 1 to 4-State.
Ms. Chaitrali Deshmukh for Respondent No. 5

**CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.**

DATED : 7 MAY 2024

JUDGMENT (PER M. M. SATHAYE J) :

1. Rule. Learned AGP waives service for the Respondent Nos. 1 to 4. Learned counsel for Respondent No. 5 also waives service. Rule made returnable forthwith. Taken up for final disposal by consent.

2. By this Petition under Articles 226 and 227 of the Constitution of India the Petitioner is challenging the communication dated 15 December 2017 and also seeking a declaration that there is no award passed in respect of subject matter land and therefore, the Petitioner is

entitled to the compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the 2013 Act").

3. Part of agricultural land admeasuring 8H and 33R out of Gat No. 130 situated at Village Kolgaon-Dolas, Taluka-Shirur, District-Pune belonging to the Petitioner and his family is the subject matter property of this Petition and the same is hereinafter referred to as "the said land".

4. This is a rather peculiar case. It is not a case claiming lapsing of acquisition u/s. 24(2) of the 2013 Act. It is a case u/s. 24(1)(a) of the 2013 Act.

5. It is the case of the Petitioner that notification under section 4 of the Land Acquisition Act, 1894 (for short "the 1894 Act") was issued on 15 March 1979 for various lands, including the said land to be acquired for Minor Irrigation Tank at Kolgaon-Dolas. The declaration under section 6 of the 1894 Act was issued on 28 June 1979 and the Special Land Acquisition Officer (for short "SLAO") was pleased to pass an award on 3 September 1980. The work of construction started and possession of the various lands including the said land was taken. It is the case of the Petitioner that though the possession was taken and though the said land has already been utilized for construction of minor tank and is already submerged, the Petitioner has not been paid the entire amount of compensation till date.

6. It is the specific case of the petitioner that though the said land was included in both notification and declaration under the 1894 Act and has been taken in possession (already submerged), the said land was not included in the award and the award in fact specifically excludes the said land.

7. It is contended that the Petitioner agitated the issue before the Lokayukta in March 2017 and the report in respect of the Petitioner's land was called. It is contended that after approaching various departments of the Respondent State, finally, the Assistant Legal Adviser and Under Secretary to the State Government by the report dated 3 October 2017 recommended that the Applicant is not entitled to claim any benefit under section 24 of the 2013 Act.

8. It is contended that the Sub-Divisional Officer, Pune Division informed the concerned Deputy Collector/SLAO that the Petitioner/his family members have already been paid 60% compensation and the balance 40% is deposited with SLAO. It is contended that by the impugned communication dated 15 December 2017, the Petitioner was informed about the report of Law and Judiciary Department opining that the case of the Petitioner does not fall under section 24 of the 2013 Act. It is in these circumstances that the Petitioner has approached this Court with prayers as already set out hereinabove.

9. The concerned SLAO has filed reply-affidavit dated 17 September

2018 contending *inter alia* that the Petitioner has received 60% amount of compensation as advance payment but since valuation of the trees were not received, the SLAO did not include the Petitioner's land in the final award on 3 September 1980. It is contended that the compensation has been paid to the other land owners. It is contended that since 60% amount is already paid as advanced payment, remaining 40% amount including solatium and other benefits works out to Rs.10,43,444/-. It is contended that the opinion was sought from the Law and Judiciary Department, who has given opinion that the case of the Petitioner does not fall within Section 24 of the 2013 Act and therefore cannot claim benefit thereunder. Copy of letter dated 3 October 2017 is placed on record by which the acquiring body is informed about amount requesting that necessary procedure for payment to Petitioner be immediately carried out. It is admitted in this reply-affidavit that possession of the said land was taken way back in November 1980 under 1894 Act but it is further admitted that the said land was not included in the final award dated 3 September 1980. It is contended that since the award has been passed more than 5 years prior to commencement of the 2013 Act and since the possession is also taken, the case does not fall under section 24(2) of the said Act and the acquisition cannot be said to have been lapsed.

10. Respondent No. 5–Acquiring Body has opposed the Petition by filing reply-affidavit dated 4 April 2024. It is *inter alia* contended that

the said land was included in both notification and declaration under section 4 & 6 of the 1894 Act. Award is passed in 1980, possession was taken and 60% advance compensation was received by the Petitioner's predecessor. It is however admitted that said land is excluded from the award. Name of Respondent No. 5 was mutated under M. E. No. 97 of the year 1981 which included the said land. In September 1986, petitioner's predecessor applied for amending area of said land in M.E.No. 97 which was allowed vide M.E. No. 238 in September 1986 itself. Petitioner's predecessors were aware of the acquisition proceedings. After 26 years thereafter the Petitioner's predecessor raised grievance about the name of Respondent No. 5 in revenue record about the said land and M.E.No. 238 was set aside in February 2015 without notice to Respondent No. 5. In 2024, when 7x12 extract was taken out Respondent no. 5 came to know that its name was deleted in 2015. Remaining 40% amount of compensation of Rs. 10,43,444/- is deposited by Respondent No. 5 with the concerned office of the Collector in October 2017 itself. Hence it is contended that the Petitioner is not entitled to any prayers.

11. We have carefully considered the rival submissions advanced before us by Mr. Arjunwadkar for the Petitioner, learned AGP for the State and Ms. Deshmukh for the acquiring body – Respondent No. 5. Perused the record.

12. Perusal of the award copy shows that, in the initial part itself, where

inclusion of lands is tabulated, it is specifically mentioned that 5 lands including the said land (Gat No. 130 – 8H, 33R) are not included in the award since the valuation of trees were not received so far from the concerned department. Thus it is clear that there is no award in respect of the subject matter land Gat No. 130. As narrated above, it is an admitted position emerging from the affidavit-in-reply of the Respondent-State and Respondent No. 5 that possession of the said land was taken way back in November 1980 and the said land is not included in the award and only 60% of the amount (calculated by the State but not included in the award) has been paid to the Petitioner's predecessors as an advance payment. With these admitted facts, this is a clear case where no award under section 11 of the 1894 Act is made and therefore, all provisions of 2013 Act relating to determination of compensation shall apply under section 24(1)(a) thereof.

13. It is material to note that in the fact situation narrated above, this is not a case where the award is ever made. It is nobody's case that there was ever any award in respect of the said land. Therefore, the touch stone as laid down by the Hon'ble Supreme Court in case of *Indore Development Authority vs. Manoharlal & Ors.*¹ where either possession is taken or compensation is paid, cannot be applied at all. This is because Section 24(2) starts with non obstante clause providing that, it will apply 'in case of land acquisition proceedings under the 1894 Act, wherein the award under section 11 has been made'. In that view of the matter, payment of

¹ (2020) 8 SCC 129

60% of some calculation whether under the head of advance payment or otherwise will not make any difference. There is no award. There is nothing to tie down the said land to alleged 60% advance compensation. 60% of what, is a question. Land is already taken, submerged in water, ever since 1980. In that view of the matter, specific prayer of the Petitioner that he is entitled to the compensation as determined u/s. 24(1)(a) under 2013 Act has to be allowed. This is not a case of some misguided assertion of law but a specific assertion coupled with a specific prayer made under section 24(1)(a) of the 2013 Act. Learned Counsel for the Petitioner has fairly submitted that whatever amount was received by his predecessor can be adjusted from the final amount payable to him under the 2013 Act.

14. It is also clear from the State's reply-affidavit that the sole basis for refusing the Petitioner's demand was the opinion / report received from the Law and Judiciary Department, which is referred in the affidavit-in-reply. The said report though accepts that the said land was not included in the award, proceeds on the basis to hold that since the said land was included in the notifications and since 60% of the amount is paid as advance, the Petitioner must accept remaining 40% amount as calculated by the State. We do not agree with the said opinion / report which cannot be sustained in the teeth of section 24(1)(a) of the 2013 Act. Mere inclusion of a land under notification/declaration issued under sections 4 & 6 of the 1894 Act will not suffice, if it is not followed by an award

made within time prescribed. Such a situation cannot be countenanced in the teeth of section 11 A of the 1894 Act.

15. So far as argument of the Respondent No. 5 - acquiring body that Petitioner's predecessors were aware of M.E.No. 97 and 238 whereunder the said land was included and area was corrected / amended and therefore they were aware of the acquisition is concerned, two material things must be noted. First is, in the year 2015, vide order dt. 16 February 2015, M.E.No. 238 has been set aside and said land has been deleted from M.E.No. 97. There is no merit in the stand of Respondent No. 5 that this is done without notice to it and it came to know about it in the year 2024. Respondent No. 5 is an acquiring body (government entity being Department of Lift Irrigation Management), not an individual and therefore such a stand cannot be entertained. The order dated 16 February 2015 has not been challenged, varied, modified or set aside. At least nothing is brought to our notice in that regard. Also said mutation entries are not subject matter of this petition. And secondly, mutation entry in a revenue record is for fiscal purposes and mere inclusion or exclusion of a land in mutation entry, when the land is not part of award, will neither divest a citizen from its ownership nor take away his rights to claim based thereon. Therefore, there is no merit in the contention of the Respondent No. 5.

16. In the net result, we find this to be a fit case to exercise our extraordinary writ jurisdiction and we allow the Petition by passing the

following order:

(A) The Petitioner is entitled to compensation as worked out under section 24(1)(a) of the 2013 Act.

(B) The Respondent Nos. 2 to 4 are directed to calculate and approve the amount of compensation payable to the Petitioner under section 24(1)(a) of the 2013 Act and communicate the same to Respondent No. 5 within a period of 12 weeks from today. The amount already paid to the Petitioner's predecessors, be adjusted.

(C) The Respondent No. 5 is directed to pay to the Petitioner, the amount so communicated, within a period of 12 weeks from date of communication.

(D) The amount of Rs.10,43,444/-, if already deposited with any of the Respondent authorities, can be withdrawn and utilized by Respondents in accordance with law.

(E) Rule is made absolute in above terms. No order as to the costs.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)