IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15001 OF 2023

Sopan Genu Gaikwad and Others … Petitioners

versus

State of Maharashtra and Others … Respondents

…….

Mr. Gaurav Potnis i/b. Ms. P.H. Potnis for the Petitioners.
Mr.B.V. Samant, Addl.GP with Mr.S.B.Kalel, AGP for Respondent Nos. 1 to 3- State.
Mr.Vijay D. Patil for Respondent No.4.

……..

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

DATE : 1 FEBRUARY 2024

PC

Heard the learned Counsel for the parties.

2. The Petitioners possess the lands which are situated at Village Kuruli, Taluka Khed, District – Pune. The Petitioners have given details of their respective Gat numbers in this petition. The Petitioners are aggrieved by initiation of acquisition proceedings by the Respondents -Authorities for the purpose of construction of a State Highway implementing by Respondent No.4- Maharashtra State Road Development Corporation. The Petitioners have prayed for setting aside the notices issued under Section 19-B of the

Maharashtra Highways Act, 1955 (the Act of 1955) to the extent that multiplication factor of 1 has been specified and rest of the prayers are ancillary to this main grievance and the prayers.

3. Notifications dated 19 March 2014 and 13 August 2014, fixing the value were earlier issued by the Deputy Secretary to the Government of Maharashtra, Revenue and Forest Department. Since the controversy centers around Section 19-B of the Act of 1955 it will be fruitful to reproduce the entire provision. It reads thus :

> *"19-B. Determination of amount payable as compensation - (1) Where any land is acquired by the State Government under this chapter there shall be paid an amount of compensation which shall be determined in accordance with the provisions of this section.*
>
> *(2) Where the amount of compensation has been determined by agreement between the State Government and the person to be compensated, it shall be determined in accordance with such agreement.*
>
> *(3) Where no such agreement can be reached, the State Government shall refer the case to the Land Acquisition Officer for determination of the amount of compensation to be paid for such acquisition and also the person or persons to whom such compensation shall be paid :*
>
> *Provided that, no compensation exceeding such amount as the State Government may by general order specify, shall be determined by the Land*

Acquisition Officer without the previous approval of the State Government or such Officer as the State Government may appoint in this behalf.

[Provided further that, the State Government while issuing the general order under the preceding proviso shall adhere to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), relating to the determination of amount of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families.]

(4) Notwithstanding anything contained in sub-section (3), if, after the case is referred to the Land Acquisition Officer under the said sub-section (3) but before he finally determined the amount of compensation, such amount is determined by agreement between the State Government and the person to be compensated, the compensation shall be determined by the Land Acquisition Officer in accordance with such agreement.

(5) Where the right of user of any right in the nature of an easement on any land is acquired under this Act, there shall be paid, 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 (2) or sub-section (3), as the case may be, for that land.

(6) Before proceeding to determine the amount under sub-section (3) or sub-section (5), the Land Acquisition Officer shall give a public notice

published in two local newspapers, one of which shall be in a vernacular language, inviting claims from all persons interested in the land to be acquired.

(7) 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 17 before the Land Acquisition Officer, at a time and place, and to state the nature of their respective interest in such land.

(8) If the amount determined by the Land Acquisition Officer under sub-section (3) or sub-section (5) 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 State Government.

(9) 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.

(10) The Land Acquisition Officer or the arbitrator while determining the amount under sub-section (3) or sub-section (8), 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 15 ;*
>
> *(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.*
>
> *[Provided that, the Land Acquisition Officer or the arbitrator shall consider the general order of the State Government issued under the first proviso to sub-section (3) relating to the determination of amount of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).]"*

4. Section 19-B as reproduced above lays down a complete methodology regarding determination of the amount payable as compensation at the first stage. Under Section 19-B (2), the amount of compensation can be determined by agreement between the State Government and the person to be compensated. Under Section 19-B (3), when there is no such agreement, the State Government shall refer the case to the Land Acquisition Officer for determination of the amount of compensation to be paid for such acquisition. The State Government, while issuing any order in respect of the compensation, will adhere to the provisions of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013) relating to the determination of amount of compensation in accordance with the First Schedule. Thereafter, if the Claimant is not satisfied with the amount determined by the Land Acquisition Officer, then under Section 19-B (8) the amount of compensation is to be determined by the Arbitrator to be appointed by the State Government and thereafter further challenges are provided.

5. Serial No.2 of the First Schedule relied upon by the Petitioners reads thus :

Serial No.	*Component of compensation package in respect of land acquired under the Act*	*Manner of determination of value*	*Date of determination of value*
(1)	*(2)*	*(3)*	*(4)*
1.	….	…	…
2.	*Factor by which the market value is to be multiplied in the case of rural areas*	*1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.*	

Notifications dated 19 March 2014 and 13 August 2014, fixing the value were earlier issued by the Deputy Secretary to the Government of Maharashtra, Revenue and Forest Department,. They were the subject matter of challenge before the Division Bench (Aurangabad Bench) of this Court in the case of *Panjabrao Vs. The State of Maharashtra and Ors.*[1] The Division Bench, while setting aside the notifications, primarily held that when the Schedule is appended to the statute, the same cannot be modified by executive instructions and that determination will have to be as per the statute, that is, First Schedule. This decision was rendered on 9 March 2015.

6. The State has thereafter exercised the power under Section 30 (2) of the Act of 2013 by notification dated 26 May 2015. The said notification needs to be reproduced entirely and it is as under :

"REVENUE AND FORESTS DEPARTMENT
Madam Kama Marg, Hutatma Rajguru Chowk,
Mantralaya,
Mumbai 400 032, dated the 26th May 2015.
NOTIFICATION
RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.

> *No. LQN. 12/2013/C.R.-190/ A-2 Whereas, in the First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the component of compensation package in respect of land acquired under the said' Act as well as the manner of determination of value thereof are specified;*
>
> *And whereas, in entry 2 and 3 of the said First Schedule the factor by which the market value is to be multiplied in*

1 Writ Petition No. 4274 of 2014 dated 9 Marc 2015

the case of rural areas is specified as 1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government and in the case of urban areas is specified as l (One), respectively;

Now, therefore, in exercise of the powers conferred by entry 2 of the First Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) and of all other powers enabling it in that behalf, and in supersession of all other Government Notifications issued in this behalf, the Government of Maharashtra, being the appropriate Government, hereby notifies the factor by which the market value is to be multiplied in column (3) of the Schedule appended herewith in respect of the areas specified in column (2) thereof, as follows :-

Schedule

Sr. No. (1)	*Area (2)*	*Factor (3)*
1	*(a) Areas of Municipal Corporations established in accordance with the Mumbai Municipal Corporation Act (III of 1888) or the Maharashtra Municipal Corporations Act (LIX of 1949).* *(b) Areas of Class "A", "B" and "C" Municipal Councils established as per section 4 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Mah. XLI of 1965).* *(c) Industrial Townships established as per section 341-G of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965*	*1.00*

	(Mah. XLI of 1965). *(d) Special Planning Authorities, Area Development Authorities, New Town Development Authorities, such as City Industrial Development Corporation (CIDCO), Mumbai Metropolitan Region Development Authority (MMRDA), Pune Metropolitan Region Development Authority (PMRDA), Pimpari-Chinchwad New Town Development Authority (PCNDTA), Nagpur Improvement Trust (NIT), as well as Pilgrim Development Authorities such as Pandharpur, Shirdi etc., for which Development plans area prepared in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966.*	
2	*Areas covered by Regional Plans for Districts, as well as Development Plan prepared in accordance with the provisions of the Maharashtra Regional and Town Planning Act, 1966 for non-Municipal Council areas, excluding the areas mentioned in clauses (a) to (d) above.* *Rural area, excluding the areas mentioned in entries 1 and 2 above.*	*1.50* *2.00*

By order and in the name of the Governor of Maharashtra

Deputy Secretary to Government".

7. According to the Petitioners, Section 19-B itself states that the Court can examine whether the amount sought to be arrived at by the State is as per the First Schedule appended to the Act of 2013. It is the case of the Petitioners that the District Level Committee was constituted, which has applied a multiplier of 1.0 to the Petitioners' land, which is in complete breach of the First Schedule. According to the Petitioners, the Petitioners' lands fall in a rural area, and the adjoining land should be treated as rural area as the Petitioners are entitled to the multiplication at 2.0. It is the case of the Petitioners that the District Level Committee cannot go beyond the statute, and the only criteria by which the State can be guided is as per the First Schedule, which only refers to the distance of the project from urban areas. The Petitioners have sought to question the notification dated 26 May 2015 on the ground that unless this notification is set aside, the Petitioners will not be able to claim enhancement of compensation even in arbitral proceedings.

8. The learned Addl. GP and the learned Counsel for Respondent No.4 contended that if the matter is at the stage of Section 19-B(2) and if the agreement fails, the Petitioners are not rendered remediless as further proceedings would follow including that of Arbitrator where the Petitioners can argue such contention that is available in respect of quantum payable and therefore, it is not necessary to interfere at this stage.

9. The position is that no agreement as envisaged under 19-B(2) has taken place. It is not debated before us that in this case, the Arbitrator will now fix the rate of compensation, where the Petitioners can argue such contention that is available in respect of the quantum payable. The main contention of the Petitioner is that unless the notification dated 26 May 2015 is set aside, the Petitioners will not be able to claim enhancement of compensation even in arbitral proceedings. That is because the Arbitrator has to consider the general order issued by the State Government regarding compensation determination and rehabilitation and resettlement specified under the 2013 Act. However a bare reading of the 26 May 2015 notification would show that this contention is misplaced in the Petitioners case. Serial No. 3 of the Schedule of the notification dated 26 May 2015 states that rural areas would have a multiplier of 2.00, however, excluding the areas which are mentioned in Serial Nos. 1 and 2 of the said notification. Therefore, if the Petitioners fall in the rural area, then they would get a multiplier of 2.00. The aspect of the distance of the project from an urban area, which is a requirement under the First Schedule, is applicable to the rural area. This aspect is not modified by the Notification. Therefore, the contention of the Petitioners that unless the notification dated 26 May 2015 is set aside, the Petitioners would not be able to claim compensation with a multiplier of 2.00 is entirely misplaced. There there is no need to set aside the Notification even assuming that the legal challenge has merit as the question only is whether the

Petitioners' lands fall in the rural area. This is not a legal issue but a but of fact. Once it falls in Rural area under the Notification itself Petitioners are entitled to the multiplier of 2.00.

10. The Respondents have filed their reply affidavits and sought to distinguish the instances regarding the adjacent land to which reference is being made by the Petitioners. Thus, the Petitioners' contention that the lands are in the rural area and therefore, a multiplier of 2.00 should have been applied to the Petitioners as per the notification dated 26 May 2015, can be urged by the Petitioners before the Arbitrator in case they are not satisfied with the compensation amount offered by the Land Acquisition Officer. Nothing has been shown to us as to why this argument cannot be advanced except for contending that the Arbitrator is a Government Servant. As for the arguments that the learned Counsel for the Petitioners has advanced as above, the same need to be agitated before the Arbitrator in case the Petitioners are not satisfied with the amount determined by the Land Acquisition Officer.

11. All that remains is a situation where the acquisition proceedings are not being determined by way of an agreement. Thus, further stages under Section 19-B will have to commence. Accordingly, we dispose of the writ petition, directing that if the Petitioners do not give their consent within a period of two weeks from today, then the State will proceed further as per Section 19-B of the Act of 1955.

12. The Petitioners are directed to the pay deficit court fees within one week from today.

(M.M.SATHAYE, J.) **(NITIN JAMDAR, J.)**