



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No. 3993 of 2020

Chabu s/o. Dagdu Gaikwad

Age : 55 yrs, Occup.Agri,

R/o. Muthe Wadgaon,Tq. Shrirampur,

Dist. Ahmednagar.

...Petitioner

Versus

1. State of Maharashtra
Through its Secretary
Agriculture Department,
Mantralaya Mumbai.
2. The District Collector,
Aurangabad.
3. The Land Acquisition Officer,
Jayakwadi project,No.01,
Aurangabad.
4. The Land Acquisition Officer,
Vaijapur Tq. and Dist. Aurangabad.
5. The Executive Engineer,
Nandur Madhyameshwar
Canal Tq.Vaijpur,Dist. Aurangabad.

...Respondents

* Mr. Pramod A. Kulkarni,Advocate for the petitioner.

* Mr.D.R.Korde, A.G.P for Respondent Nos.1 to 4.

* Mr. S.P. Sonpawale, Advocate for Respondent No.5.

**CORAM : S.G.MEHARE &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 24th FEBRUARY 2025.

PRONOUNCED ON : 11th MARCH 2025

JUDGMENT : *(Per : Shailesh P. Brahme,J)*

1. Rule. Rule is made returnable forthwith with the consent of the parties.
2. The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India for direction to pass fresh award under the new Act to pay the compensation and also seeking declaration that earlier award passed on 20.09.2012 stands lapsed.
3. Petitioner is the owner of land Gat No.67 situated at Fazalpur Tq.Gangapur,Dist. Chhatrapati Sambhajinagar. His land to the extent of 0 H 23R was acquired for Nandur Madhyameshwar Canal. The possession of land was handed over to the respondent No.3/Acquiring body on 01.10.2004. An award bearing A.R No. 34 of 2007 was passed on 20.09.2012. In the award, the petitioner was held entitled to amount of Rs.30544/-. It was not disbursed to him. Therefore, the representations were made by him from time to time

seeking payment of compensation. In the meantime, the Right to Fair Compensation And Transparency in Land Acquisition Rehabilitation and Resettlement Act of 2013 (hereinafter referred to as 'New Act of 2013') came into force from 01.01.2014 . The letter addressed by respondent No.3 on 11.09.2017 shows that an amount of Rs.5,41,323/- was credited to Sub-Divisional Officer, Paithan-Fulmbri and the transfer of amount was solicited. This letter was replied by the respondent No.4 disclosing that in respect of award bearing A.R No. 34 of 2007 amount of Rs.2,23,688/- was earmarked and it was credited to the office. As the petitioner did not receive compensation and by the time New Act,2013 came into force, present petition is filed.

4. Learned counsel Mr.Kulkarni appearing for the petitioner submits that his client did not receive amount of Rs.30544/-. Despite correspondence, no action was taken by the respondents to pay the compensation. As the respondents/Acquiring body failed to pay the compensation and New Act came into force 01.01.2014, the award passed on 20.09.2012 bearing A.R No.34 of 2007 stands lapsed. It is vehemently submitted that petitioner is entitled to fresh award in

terms of New Act of 2013. He would vehemently submit that petitioner was not intimated under Section 12(2) of the The Land Acquisition Act, 1894 (hereinafter referred to as 'Old Act,1894') for collecting amount of compensation. In view of Section 24(1) sub-section (a) petitioner is entitled to receive compensation by fresh award as per the New Act of 2013.

5. *Per contra*, learned counsel Mr.Sonpawale appearing for the respondents repels the submissions of the petitioner by referring to affidavit-in-reply. It is contended that the possession of the land was taken on 01.10.2004 and the award was passed on 20.09.2012. The petitioner did not show any interest for receiving the compensation. Letter was issued by the respondent No.5 on 21.08.2018 disclosing that amount of Rs.7,66,018/- was lying with respondent No.3/acquiring body and respondent No.4/L.A.O. On 24.12.2020, office of the respondent No.3 was abolished and amount was lying with the said office. It was transferred to Sub-Divisional Officer,Paithan-Phulambri. The said amount was to be transferred to the respondent No.4. The respondents are ready to pay the compensation as determined by the Special Land Acquisition Officer

(S.L.A.O.). It is further submitted that award passed under old Act, 1894 does not lapse and petitioner is not entitled to fresh award in terms of New Act of 2013. Reliance is placed on judgment of Supreme Court in the matter of **The State Of Haryana And Others Vs. Chander Bhan And Others** in Special Leave Petition (Civil) No. 24835 of 2019.

6. We have considered rival submissions of the parties. There is no dispute that the possession of the land was taken from the petitioner on 01.10.2004. Thereafter, award was declared on 20.09.2012. The quantum to the extent of petitioner was determined to be Rs.30,544/-. There is no material placed by the respondents to indicate that amount of compensation was ever paid to the petitioner.

7. Both the parties referred to correspondence which is placed on record. There is no material to show that amount of Rs.30,544/- was ever paid to the petitioner. Although there is reference in the award that advance was paid to the claimant. However, it is not made clear by the respondents that any such advance was ever paid to the

petitioner. The award under question is composite one and the compensation of other claimants is also calculated. Therefore, possibility of payment of advance amount to other claimants can not be ruled out. But that fact remains that petitioner did not receive any amount of compensation.

8. It is relevant to reproduce Section 24 of New Act, 2013 which is as follows :

24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,——

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

9. Learned AGP has referred to Constitutional Bench Judgment

of Supreme Court in the matter of **Indore Development Authority Vs. Manoharlal And Ors. Etc.** reported in (2020) 8

SCC 129. In paragraph No.366 Supreme Court observed as follows :

"366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

366.4. The expression 'paid' in the main part of Section 24 (2) of the 2013 Act does not include a deposit of compensation in court. The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay on to pay is complete by tendering the amount under Section 31(1). The landowners who had to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2)

of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/ memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

10. In view of Section 24 of New Act,2013 and law laid down by Supreme Court we are of the considered view that the award passed in the present matter does not lapse. The compensation has not been paid to the petitioner though possession of the land was taken from him. By implication of proviso in Section 24(2) petitioner is entitled to receive compensation in accordance with provisions of New Act,2013. We therefore pass following order :

ORDER

- a) The Petitioner is entitled to receive compensation of Rs.30,544/- (Rupees Thirty Thousand Five Hundred Fourty Four only) along-with accrued interest.
- b) The compensation with interest shall be paid to the petitioner within six months from today.
- c) Rule is partly made absolute in above terms.

[SHAILESH P. BRAHME, J.]**[S.G.MEHARE, J.]**