

Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SAYALI
DEEPAK
UPASANI

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SAYALI DEEPAK
UPASANI
Date: 2025.03.07
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WRIT PETITION NO. 11299 OF 2024
WITH
WRIT PETITION NO.11278 OF 2024

1. Shree Nasik Panchavati Panjrapole,
Panchavati, Nashik-422003.
Registered under the provisions of
Bombay Public Trusts Act, 1950,
Through its Managing Trustee
Shri Hitesh Ramji Javeri
having its registered office
at 1104, Raheja Centre,
Nariman Point, Free Press
Journal Marg, Mumbai 400021
having following Trustees :-
2. Mr. Hitesh Ramji Javeri,
(MANAGING TRUSTEE)
Age: 60 Yrs, Occu.:
Investor, Address:- C. 2001,
Lodha Bellissimo, Co-operative
Housing Society, N. M. Joshi Marg,
Apollo Mill Compound, Mahalaxmi,
Mumbai 400 011. 31
3. Mr. Vipul Jairaj Kapadia,
(TRUSTEE) Age:- 49 Yrs,
Occu.: Business, Address:-701,
702 Sterling Tower, H Gorankar
Marg, Opposite Gramdevi Mandir,
Mumbai – 400007.
4. Mr. Kaushik Gokaldas Laijawala,
(TRUSTEE) Age:- 60 Yrs,
Occu:- Business, Address:- 121,

Vallabh Apartment 87, Bhulabhai
Desai Road, Mumbai 400026.

5. Mr Jaidev Tulsidas Gokulgandi,
(TRUSTEE) Age :- 72 Yrs,
Occu.: Business, Address:-Gokul
Niwas 5, Third Floor, Chowpaty
Sea Face, Grant Road,
Mumbai 400007.
6. Mrs. Harsha Hitesh Javeri,
(TRUSTEE) Age :- 56 Yrs, Occu.: Business,
Address:- C. 2001, Lodha Bellissimo,
Co-operative Housing Society,
N. M. Joshi Marg, Apollo Mill
Compound, Mahalaxmi, Mumbai 400011.
7. Mr. Sanjay Hansraj Gajaria,
(TRUSTEE) Age:- 53 Yrs,
Occu.: Business, Address:- A-1302,
Adarsh Regal, Marve Road, Malad
(West) Mumbai 400 064. W81
8. Mrs. Devanshi Jay Bhatia
(TRUSTEE) Age:- 46 Yrs,
Occu.: Business, Address:- Anand
Poddar Road, Santacruz (West),
Mumbai 400054.PETITIONERS

Versus

1. The District Collector,
Nashik Collector office,
Old Agra Road, Nashik 422002.
2. The Special Land Acquisition Officer,
Irrigation No. 1, Nashik, Collector
office campus, Old Agra Road,
Nashik 422002.

3. The Nashik Municipal Corporation
& Planning Authority, through
its Commissioner / Asst. Director
of Town Planning, Rajiv Gandhi
Bhavan, Sharanpur Road, Nashik 422002.
4. The Divisional Commissioner,
Revenue Department, Commissioners
Office, Nashik Road, Nashik 422101.
5. The State of Maharashtra,
Through its Secretary, Urban
Development Department, Mantralaya,
Mumbai 4000032.
6. Joint Director of Town Planning
& Valuation, Maharashtra
State, Pune.

....RESPONDENTS

Mr Anil Ahuja a/w Ms. Bhavna Khemani, Ms. Komal Ahuja ,
for the Petitioners.

Mr Kedar Dogje. Addl GP a/w Ms M. S. Bane, AGP, for the
Respondents.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 07 March 2025

ORAL JUDGMENT:-

1. Heard learned Counsel for the parties.
2. The learned Counsel for the parties state that substantially the same issues of law and facts are involved in both these Petitions. Only the date of the notices and the notifications might be slightly different. Accordingly, they agree that a common Judgment and Order can dispose of both

Petitions. The learned counsel for the parties agree that Writ Petition No11299 of 2024 may be treated as the lead Petition.

3. Rule in both petitions. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.

4. The Petitioners challenge the impugned Award dated 23 November 2023 in Land Acquisition Case No.05 of 2022 by which Petitioners land admeasuring 17955.00 sq.mtrs, Survey No.288/3, Nashik was acquired.

5. Mr. Ahuja, the learned Counsel for the Petitioners, submits that Notice dated 16 June 2023 under Section 21(2) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (“the Act of 2013”) did not give the Petitioners minimum prescribed 30-day time to object to the acquisition and appear for a personal hearing before the Collector. He submitted that the procedure prescribed under Sections 21 and 23 of the said Act had been flagrantly and flouted, thereby vitiating the impugned Award. Mr. Ahuja relied on **M/s.Tirupati Deveopers Vs. The Union of Territory of Dadra and Nagar Haveli & ors.**¹ in support of his contentions.

6. Mr. Dighe learned Addl. GP, for the Respondents, after referring the affidavit filed on behalf of the Respondents, points out that the Petitioners, without complaining about the

¹ 2023 LiveLaw (SC) 632

short notice, filed objections dated **03 July 2023**. The Petitioner's advocate drafted these objections. Though neither the Petitioner's representative nor their advocate appeared for the personal hearing on **27 June 2023**, which was the date appointed by Section 21(2) notice dated 16 June 2023, Still the Collector considered the Petitioner's objections and after dealing with the same made the impugned Award dated 23 November 2023. He points out that before that, a draft Award was also prepared, and approval for the same was opted from the Town Planning Authority. He, therefore, submits that there was more than substantive compliance with the requirements of Sections 21 and 23 of the said Act, and no prejudice whatsoever could be said to have occasioned the Petitioners.

7. He submitted that the Petitioners have already applied for a reference under Section 64 of the said Act seeking enhancement of compensation. Having availed such alternate remedies, these petitions may not be entertained.

8. Mr. Dighe submits that upon cumulative consideration of all these facts, no relief is due to the petitioners in either of the Petitions. He, therefore, urged for the dismissal of both these Petitions.

9. The rival contentions now fall for our determination.

10. The Petitioners were served a notice dated 16 June 2023 under Section 21(2) of the said Act. This notice is at pg. 307 of the paper book. This allows the Petitioners to object to the

acquisition and, further, requires them to attend the personal hearing through its representative or Advocate on 27 June 2023 at 3 pm before the Deputy Collector (Land Acquisition).

11. Section 21 of the said Act read as follows:-

“21. Notice to persons interested- 1) The Collector shall publish the public notice on his website and cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.

(2) The public notice referred to in sub-section (1) shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days and not more than six months after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20.

(3) The Collector may in any case require such statement referred to in sub-section (2) to be made in writing and signed by the party or his agent.

(4) The Collector shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein, be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situated.

(5) In case any person so interested resides elsewhere, and has no such agent, the Collector shall ensure that the notice shall be sent to him by post in letter

addressed to him at his last known residence, address of place or business and also publish the same in at least two national daily newspapers and also on his website.”

12. Section 23 is also relevant and therefore transcribed below for convenience of reference :-

23. Enquiry and land acquisition award by Collector. - On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 21, to the measurements made under section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of-

(a) the true area of the land;

(b) the compensation as determined under section 27 along with Rehabilitation and Resettlement award as determined under section 31 and which in his opinion should be allowed for the land; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

13. In this case, we are concerned with Section 21(2) because the notice dated 16 June 2023 was issued under Section 21(2) of the said Act. This provision, in terms, provides that public notice referred to in Section 21(1) must state the particulars of the land so needed and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice **not being less than thirty days and not more than six months after the date of publication of**

the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20.

14. Thus, it is clear that notice under Section 21(2) must give the persons interested liberty to object by filing appropriate written objections and also appear personally or through Advocate before the Collector at the place and time mentioned in such notice. Section 21(2) explicitly provides that such a date must not be less than 30 days from the notice's publication date. In the present case, the notice was published on 16 June 2023, but the date and time fixed were only 27 June 2023, much less than the minimum 30-day period provided under Section 21(2) of the said Act.

15. Be that as it may, the Petitioners, through its Advocate, filed the objections on 3 July 2023 i.e. within 30 days of the publication of Section 21(2) notice dated 16 June 2023. The impugned Award was on 23 November 2023. Thus, on 3 July 2023 and 23 November 2023, the Land Acquisition Collector had ample time to comply with the requirements of Sections 21 and 23 of the said Act and hear the representative of the Petitioner or the Petitioner's Advocate before the impugned Award could be made and published. Still, neither the representative of the Petitioner nor the advocates were heard before the impugned Award was made on 23 November 2023.

16. In **Tirupati Developers** (supra), Section 21 notice was issued on 04 March 2020. On 20 March 2020, the Petitioners requested the Collector additional time to file objections and appear before the Collector due to the COVID-19 pandemic and lockdown in Mumbai. Without considering such a request, the Collector made an award on 04 May 2020. This Court dismissed the Petition to challenge the Award by granting the Petitioner liberty to seek enhanced compensation through the process of Section 64 of the 2013 Act.

17. However, the Hon'ble Supreme Court reversed this Court by observing that under Section 22, interested persons are entitled to make a statement before the Collector, whereupon the Collector is obligated to hold an inquiry on the objections submitted by the interested persons and pass an Award. The Court held that the right to pursue the objections by seeking a reference under Section 64 is a later stage, i.e. **“after the Collector has followed the procedure prescribed under Chapter IV of the 2013 Act, and culminating into determination of compensation and passing of the award.”**

18. The Hon'ble Supreme Court noted that the Petitioners had not been accorded a hearing in terms of Section 21 of the 2013 Act. In the absence of objections, which the Petitioners could not file for reasons beyond its control, no inquiry as per Section 23 of the 2013 Act could be held. The Hon'ble Supreme Court, crucially observed that **for a fair and just determination of compensation within the statutory scheme of**

the 2013 Act, it is imperative that a fair opportunity of hearing is given to the persons whose rights are affected. This requires that the interested person is given an effective opportunity to put forth his or her claim. Any deviation to the prescribed procedure, especially when it has seemingly affected the interested person, would militate with the very object of legislative mandate.

19. The Hon'ble Supreme Court quashed the impugned Award and directed the Collector to give the Petitioners an opportunity to submit objections, if any, followed by a personal hearing to the authorised representative and then pass an appropriate Award after holding an inquiry under Section 23 of the said Act.

20. Mr. Dighe emphasised a stray line in paragraph 8, which reads, **"The interested person is given an effective opportunity to put forth his or his claim"**. Based upon this, he submitted that the Petitioner in the present matter was given such opportunity because the objections filed by the Petitioner's advocate were duly considered in the impugned Award.

21. The sentence relied upon by Mr. Dighe must be read in the context. Before this sentence, the Hon'ble Supreme Court, in no uncertain terms, observed that for a fair and just determination of compensation within the statutory scheme of the 2013 Act, it is imperative that a fair opportunity of hearing is given to the persons whose rights are affected. Besides, after the statement relied upon by Mr. Dighe, the

Hon'ble Supreme Court observed, “Any deviation to the prescribed procedure, especially when it has seemingly affected the interested person, would militate with the very object of legislative mandate”.

22. Thus, the mere consideration of the objections filed by the Petitioner through its lawyer would not be a substitute for the fair opportunity of hearing either to the Petitioner's representatives or the Petitioner's advocate in terms of the statutory scheme of the said Act. The impugned Award thus warrants interference on the short ground that no opportunity of hearing was granted to the Petitioner or its advocate before it was made.

23. In **Kolkata Municipal Corporation and another Vs. Bimal Kumar Shah and others**² the Hon'ble Supreme Court has held that while the right to property drifted from Part II to Part XII of the Constitution, there continues to be a potent safety net against arbitrary acquisitions, hasty decision-making and unfair redressal mechanisms. Despite its spatial placement, Article 300-A which declares that “*no person shall be deprived of his property save by authority of law*” has been characterised both as a constitutional and also a human right. To assume that constitutional protection gets constricted to the mandate of a fair compensation would be a disingenuous reading of the text and, shall we say, offensive to the egalitarian spirit of the Constitution.

² (2024) 10 SCC 533

24. The Hon'ble Supreme Court further held that the State action or the legislation that results in the deprivation of private property must be measured against the sub-rights or strands illustrated in paragraph 29, not just one or many of its strands. In paragraph 30, the Hon'ble Supreme Court observed that one of the sub-rights or strands of this Swadeshi constitutional fabric constituting the property right was the State's duty to hear objections to the acquisitions – *the right to be heard*. The second was the duty of the State to inform the person of its decision to acquire – *the right to a reasoned decision*. The Court held that the seven sub-rights are the foundational components of a law that is in tune with Article 300-A, and the absence of one of these or some of them would render the law susceptible to challenge.

25. The argument that there was no prejudice as such to the Petitioner for want of compliance with statutory provisions embodying the principles of natural justice is not readily entertained. Non-compliance with natural justice can itself, in some situations, amount to prejudice. There is a considerable difference between filing written objections prepared by an advocate and an oral hearing where the party or his advocate can persuade the decision maker of the merits of its version. In any event, if the legislature has provided a personal hearing or hearing through an advocate, then such procedure cannot be lightly deviated from without any strong reasons.

26. Here, Section 21(2) notice itself, did not give the persons interested the minimum prescribed time to lodge objections. Though such a contention may no longer hold good now, the impugned Award deserves to be set aside, because no personal hearing was granted to the Petitioner or its advocate before the impugned Award was made.

27. For all the above reasons we allow both these Petitions, and quash and set aside the impugned Awards.

28. Mr. Ahuja clarified that the Petitioner was not challenging the Declaration under Section 19 or even notice under Section 21. Accordingly, the Petitioner should now appear before the Deputy Collector (Land Acquisition) on 21 March 2025 at 3.00 pm. On this date the Deputy Collector (Land Acquisition) must hear the Petitioner's representative or advocate on the objections already filed by the Petitioner/their advocate on 03 July 2023. The Deputy Collector (Land Acquisition) must make a fresh Award by 30 April 2025. We direct accordingly.

29. Mr. Ahuja stated that the reference already initiated by the Petitioner under Section 64 of the Act of 2013 based upon the impugned Award, which is now set aside, will not be pursued and will be withdrawn. This statement is accepted. The Petitioner must also do the needful in this regard within 15 days of uploading this judgment and order.

30. The rule is made absolute in the above terms without any cost orders. Both the Petitions are disposed of in the above terms. All concerned to act upon an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)