

(2025) 04 BOM CK 0235
In the Bombay High Court
Case No : Writ Petition No. 890 Of 2025

Manekben Rama Tandel

APPELLANT

Vs

Collector Daman and Ors

RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 23

Citation : (2025) 04 BOM CK 0235

Hon'ble Judges : A.S. Chandurkar, J; M.M. Sathaye, J

Bench : Division Bench

Advocate : Manoj Badgujar, Hiten S. Venegavkar, Harsh Dedhia

Final Decision : Dismissed

Judgement

M.M. Sathaye, J

1. Rule. Learned counsel for the Respondents waive service. Rule made returnable forthwith. Heard finally by consent.

2. By this petition under Article 226 of the Constitution of India, the Petitioner is seeking to quash and set aside the Award dated 05.03.2025 passed in respect of Petitioner's land under Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('the said Act', for short). The Petitioner is also challenging the preceding declaration dated 29.11.2024 and notice dated 05.12.2024 issued under the said Act. The acquisition is for the purpose of constructing Government College of Nursing, Nursing Hostel and Staff Quarters at Daman.

3. The case of the Petitioner is as under.

3.1. The Petitioner is owner of the subject matter land which is survey Nos.8, 10/1, 11/2, 11/3 and 11/4 situated at Village Kathiria, Daman, which is a Union Territory ('the subject-property' or 'the subject-land' for short). The subject land

was part of sea facing land wherein the Petitioner was running a resort with all the requisite permissions. The said resort got affected by the proposed coastal road and therefore eviction order was issued against the Petitioner. The Petitioner challenged the said eviction order before this Court by filing first Writ Petition No.3886 of 2019 and interim stay was granted. Consent terms were filed on 04.05.2021 in this writ petition, wherein it was agreed that the Petitioner would be permitted to shift the resort/hotel in the remaining part of the land and no compensation will be paid to the Petitioner.

3.2 Since the Respondents were thereafter attempting to acquire the Petitioner's land without following due process of law, the Petitioner filed second Writ Petition No.2727 of 2022 challenging the land acquisition process. On 04.05.2023, this Court allowed this writ petition, thereby quashing and setting aside the land acquisition proceedings. However, the Respondents were granted liberty to adopt appropriate proceedings by following due process of law under the said Act.

3.3 On 02.08.2023 the Respondents issued a fresh notification for acquisition of the Petitioner's land. On 07.03.2024, the Petitioner filed her objections under Section 15 of the said Act. On 05.08.2024, the Petitioner filed additional objections. Since a notification was issued on 05.08.2024, the Petitioner addressed a letter to the Respondents requesting copies of the decision taken by them on the Petitioner's objections under Section 15. This letter was issued on 06.08.2024. Incidentally, on the same day, another notification under Section 21 was issued stating that the Respondents intend to take possession on 18.09.2024. The Petitioner filed the third Writ Petition No.12243 of 2024 again challenging the acquisition proceedings. This Court by order dated 10.10.2024, disposed of the said writ petition accepting the statement made on behalf of the Respondents that the Petitioner's objections dated 07.03.2024 will be heard and fresh report under Section 15(2) of the said Act will be issued and the land acquisition will be proceeded.

3.4 On 29.11.2024, Respondents issued impugned declaration under Section 19 of the said Act and thereafter, issued notice under Section 21 on 05.12.2024.

3.5 In these circumstances, this petition was filed. During pendency of the petition, the impugned Award was passed on 05.03.2025 and therefore, the petition has been amended suitably to challenge the same.

4. Learned counsel for the Petitioner, Mr. Badgujar with all the persuasion at his command, submitted as under :-

4.1 That the objections raised by the Petitioner under Section 10 of the said Act has been brushed aside by the Respondent - Collector giving untenable reasons. He submitted that the subject-land in question has a well and there are more than 300 fruit bearing trees in the land including trees of coconut, mango, neem, tamarind and guava. He submitted that under Section 10 of the said Act, special provisions are made to safeguard food security. He submitted that the subject-land being irrigated multi-cropped land can be acquired subject to the condition

that it is done under exceptional circumstances, as a demonstrable last resort, as provided under Section 10(2). He further submitted that under proviso to Section 10(4) of the said Act, the only exception carved out is in the case of projects that are linear in nature, such as railways, highways, major district roads, irrigation canals, power lines and the like. He submitted that the purpose for the present acquisition is for the proposed nursing hostel and staff quarter which is not a linear project.

4.2 He submitted that the reasons for rejecting the Petitioner's objections are two-fold. Firstly, the land on the eastern side of the existing hospital has residential housing of several local families. It is submitted that protection granted to them by the Collector is not contemplated under the said Act and it is contrary to principles laid down under Section 10. The second reason given is that on the southern side of the existing hospital, there is a ban on transactions under the order of the Apex Court. It is submitted that the said ban on transactions would only apply to voluntary transfers and not to involuntary transfers, such as land acquisition. It is further submitted that certain lands mentioned by the Official Liquidator have been actually acquired in the past in contravention of the ban imposed by the Apex Court. The Petitioner relies upon the list of properties on page nos. 209 and 211 in support of this case.

4.3 It is further submitted that the land which is available for acquisition, as pointed out by the Petitioner, belongs to a powerful politician and therefore it is not being touched.

4.4 That the present action of land acquisition is in violation of the legitimate expectation, in as much as, under consent terms entered into between the Petitioner and Respondents in the first writ petition, the Petitioner was permitted to shift its 3309.69 square meters of resort towards the landwards side, which is the present subject-property under acquisition. Even during earlier writ petitions, the present subject-property was proposed to be acquired and therefore since on the basis of assurance given under consent terms, the Petitioner has altered her position and permitted demolition of the then-existing resort without any compensation, it is her legitimate expectation that the present subject-land where she was permitted to shift the resort, will not be acquired.

4.5 It is lastly submitted that when the Petitioner is showing either vacant barren land or other alternative lands, the impugned acquisition and Award acquiring subject-land, needs interference.

5. On the other hand, Mr. Venegavkar, learned counsel for the Respondents (Union Territory and its authorities) opposed the petition with all vehemence and submitted as under :-

5.1 He submitted that this is the fourth round of litigation that the Petitioner has filed, in effect stalling acquisition proceedings which are for the public purpose of building nursing college, hostel and staff quarters near existing hospital. Referring to an affidavit-in-reply dated 21.02.2025 filed by Respondent No.1 -

Collector, following submissions are made.

5.2 That pursuant to the notification dated 02.08.2023 under Section 4 of the said Act public hearing was conducted on 26.09.2023 where relatives of the Petitioner had raised objections which were considered under final Social Impact Assessment (SIA) report published on 06.11.2023. Under the report dated 17.11.2023, the Expert Group Committee was constituted under Section 7 of the said Act. After notification under Section 11 of the said Act dated 12.01.2024, an objection was received from the Petitioner on 07.03.2024 and hearing was conducted on 27.03.2024 where the Petitioner's relatives were present, the Petitioner's objection was forwarded to the concerned department for necessary inputs and comments. The objections were opposed by the requiring body (Health Department) under a reply dated 30.04.2024. Considering the reply, a report under Section 15 was prepared which was approved by the government. Draft Rehabilitation and Resettlement Scheme ('RR Scheme' for short) was published to which no objections were received. That final RR Scheme has been published and a declaration in that regard under Section 19 has been issued on 02.08.2024 and notice under Section 21 has also been issued on 08.08.2024 giving 30 days time regarding claim to compensation and RR Scheme.

5.3 Thereafter, a hearing was scheduled in the chamber of the Land Acquisition Collector on 11.09.2024, however, neither the Petitioner nor her relatives remained present for the hearing. The Petitioner has chosen to submit a written objection stating that the value of the land is more than Rs.50 crore per acre. In the meantime, pursuant to the order passed in the third writ petition, the declaration under Section 19 and notice under Section 21 were rescinded. The Collector has thereafter heard the Petitioner's objections and a detailed fresh report has been issued under Section 15 of the Act. Thereafter, again a declaration under Section 19 was issued after due approval from the concerned department and fresh notice under Section 21 was issued on 05.12.2024. That pursuant to one objection received, the hearing was scheduled on 08.01.2025. However, on the Petitioner's request for adjournment, fresh seven days notice was issued on 10.01.2025 scheduling the hearing on 17.01.2025. The Petitioner again applied for adjournment. This request was also accepted and the hearing was re-scheduled on 27.01.2025. However, the Petitioner once again requested for adjournment and also requested measurement of the land. It is submitted that even this request of the Petitioner was accepted and notice for land demarcation was issued on 31.01.2025 thereby scheduling demarcation on 10.02.2025. On the said day, the Petitioner did not remain present and submitted one more adjournment application.

5.4 Mr. Venegavkar, relying on all the above dates and events submitted that due process of law has been followed and several opportunities have been already given to the Petitioner. He submitted that demarcation was completed on the scheduled date and as a final opportunity, a notice was issued for hearing on 21.02.2025.

5.5 He submitted that the subject-land is not covered under Section 10 of the said Act, because it is not multi-cropped irrigated land but simply a tree plantation. The claim of the Petitioner in that regard is disputed. It is contended that the Petitioner has been given sufficient opportunity and every time the Petitioner comes with a new objection and therefore it cannot be considered and entertained endlessly. It is submitted that consent terms signed between the Petitioner and the Respondents in the first writ petition, was regarding 'removal of encroachment on government land' and not in respect of 'the land acquisition'. It is then submitted that since the subject-land is attached under the provisions of SAFEMA - The Smugglers And Foreign Exchange Manipulators (Forfeiture off Property) Act, 1976, the amount of compensation towards land acquisition will be deposited with the authority in a reference under Section 64 of the said Act, to safeguard the interest of the government.

5.6 It is submitted that the Petitioner has filed multiple litigations in respect of the same dispute with the Respondent authorities and it is going on since 2020. Because of the Petitioner's multiple litigations, the initial tender cost of Rs.83 crores and odd amount has now escalated to Rs.101 crores and odd amount and the Respondent government is already slated to suffer the loss of Rs.17 crores and odd amount. It is submitted that the subject-land is required for health and education infrastructure facility which is the need of the public at large and therefore the petition needs to be dismissed.

6. The Petitioner thereafter filed a rejoinder affidavit dated 10.03.2025 contending inter alia that coconut plantation is treated as cultivation in the entire Kokan region extending up to Kerala and the contention of the Collector that coconut trees are not covered under Section 10 of the said Act is liable to be rejected. The Petitioner has again suggested some alternate lands and satellite images from Google maps are relied upon in support of the contention that barren lands are available at comparable distance insisting that these alternate lands would fulfill the requirement. It is accepted that the present subject-land is different from the subject-land of the petition in which consent terms were filed.

7. We have considered the rival submissions and perused the record.

8. At the outset, we must note that the said Act is a complete code in itself for the purpose of land acquisition and payment of compensation and the Respondents have to follow the procedure provided therein.

About due procedure.

9. From the documents produced on record including those produced along with affidavit in reply, it is clear that principles of natural justice was followed in considering the petitioner's objections, as explained below.

10. It is seen from record that under order of this Court dated 04.05.2023 in second writ petition, though this Court came to the conclusion that the Respondents have not followed the mandatory requirements as contemplated

under the said Act, the Respondents were granted liberty to adopt appropriate proceedings for the purpose of acquiring the subject matter property. Pursuant to this liberty, the Respondents have undertaken the entire process all over again, beginning from issuance of Section 4 notification of the said Act on 02.08.2023. Thereafter family members of the Petitioner attended hearing on 26.09.2023 and thereafter procedure was followed and the matter reached upto the stage of notice under Section 21 of the said Act dated 08.08.2024 for possession. We note that attendance sheet dated 26.09.2023 indicates name of one Mr. Dhirubhai J. Tandel who has later on attended further meeting on 24.10.2024 as authorised representative.

11. At this stage, on 26.08.2024, the Petitioner again filed the third writ petition and objected about consideration of 'her objections'. In this petition, since this Court expressed prima facie that all objections raised by 'the Petitioner' were also required to be dealt with in detail, the Respondent Collector made a statement through its Advocate that a fresh report under Section 15 of the said Act would be prepared on Petitioner's objection. On this fair stand, recorded in paragraph 6 of the order, the petition was disposed of on 10.10.2024 permitting a fresh report to be issued. It has come on record that due to this order, the declaration under Section 19 and notice under Section 21 of the said Act were rescinded.

12. Record shows that after this order dated 10.10.2024, hearing took place on 24.10.2024 but Petitioner did not attend, instead, authorised representative Mr. Dhirubhai Jivan Tandel and Mr. Mehul D. Tandel attended the hearing. Thereafter the Petitioner has sought adjournment on multiple times. The objections already raised are considered and fresh report dated 06.11.2024 has been issued. Therefore it cannot be said that procedure was not followed or that the Petitioner was not given opportunity.

About legitimate expectation and altering of position

13. It is material to note that first writ petition was filed challenging order of the Respondent-Collector directing the Petitioner to remove encroachment on the government land. This petition was compromised by the Petitioner and other petitioners therein with the Respondents, agreeing that they shall vacate their possession to the extent of 30 meter from the retention wall, which was being constructed at that time towards seawards side of the hotel and hand it over to the Respondents. The Petitioner with other petitioners in that petition also agreed that they will permit the Respondents to demolish back area beyond the already agreed 30 meter portion and also agreed that they will not claim any monetary compensation for the said exercise. In return, the Respondents agreed that they will not dispute the title of the Petitioner in respect of certain survey numbers, including the present subject-land. The petitioner agreed to relocate the construction of the hotel at the her own expense and reconstruct the same towards landward side from the demarcation line. It is therefore clear that the subject matter of the first petition (which was compromised) and the subject

matter of the present petition are not one and the same.

14. Having noted that the first petition was in respect of a different portion of land we note that in the teeth of alleged encroachment by the Petitioner, she has chosen to compromise it without compensation. Respondents have specifically contended that subject matter of the first petition was land encroached by the petitioner and therefore there was no question of paying any compensation. The consent terms only indicate that Respondents had agreed not to dispute the title of the Petitioner in respect of present subject-land, which the Respondents are admittedly not disputing. In fact the Respondents have taken clear stand that the compensation for land acquisition will be deposited. Therefore, we are of the considered view that that the consent terms filed in the first writ petition will not help the Petitioner. For that reason, the argument of legitimate expectation that since she has altered her position based on earlier compromise, present subject land should not be acquired, has no merit.

About Section 10 of the said Act

15. So far as the argument about Section 10 of the said Act is concerned, we note that it is a special provision to safeguard food security. It is the contention of the Petitioner that there are more than 300 fruit bearing trees in the land including trees of coconut, mango, neem, tamarind and guava. Assuming the same to be true, it is nobody's case that Petitioner is a fruit supplier and is contributing to efforts for food security. Petitioner is a hotelier, who runs a hotel resort. The coconut trees may be contributing to a picturesque landscape of the resort but that does not mean that the Petitioner's said plantation is contributing to food security. There is also no material placed to indicate that the subject-land is multi-cropped irrigated land as per Section 10 of the said Act. In that view of the matter, we are unable to accept that this special provision would apply to the subject-land.

About other available properties.

16. About the argument that alternatively a property of an influential politician is available and therefore the impugned land acquisition proceedings / award should be quashed, no concrete material is brought to our notice, in support thereof. It is squarely in the realm of disputed questions of fact and therefore it is not proper for this Court to consider such aspect in writ jurisdiction.

17. We are also not impressed with the argument that the Collector's consideration of eastern and northern side lands having residential housing of several local families, is not contemplated under the said Act. Considering that the said Act is a complete code in itself, such consideration can not be said to be outside its scope. In any case, the said consideration is a rational one. So far as land on southern side is concerned, the Collector has considered ban on transactions under order of the Hon'ble Supreme Court. It is not appropriate for us to comment on the same, considering that it is based on Apex Court's directions.

18. In the facts and circumstances and for the reasons stated above, we do not find that this is a fit case to interfere. The writ petition is accordingly dismissed. No order as to costs.

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

20. At this stage, a request is made on behalf of the Petitioner to grant status-quo for some time. Considering the facts and circumstances narrated above and the statement made by learned counsel for the Respondents that possession notice is not yet given, we do not find it necessary to grant any status-quo.