

(2023) 09 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 11331, 11393 Of 2023

Neha Jitendra Agrawal And Others

APPELLANT

Vs

Divisional Commissioner And Others

RESPONDENT

Date of Decision : 13-09-2023

Acts Referred:

Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 11, 13, 21, 51, 52, 53, 64, 65

Citation : (2023) 09 BOM CK 0022

Hon'ble Judges : Devendra Kumar Upadhyaya, CJ; Arun R. Pedneker, J

Bench : Division Bench

Advocate : P.R. Katneshwarkar, Dipesh D. Pande, D.R. Kale, Dnyaneshwar Suresh Bagul, Pravin S. Patil

Final Decision : Disposed Of

Judgement

1. Heard the learned counsel for the petitioners in both the writ petitions and Mr. Pravin S. Patil, Additional Govt. Pleader representing the State/respondents.
2. By instituting these proceedings under Article 226 of the Constitution of India, primarily, challenge has been made to the award dated 8th May, 2023 declared by the Special Land Acquisition Officer, Upper Tapi Project, Hatnur, Dist. Jalgaon under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as, "the Acquisition Act of 2013").
3. At the outset, a preliminary objection has been raised by the learned State counsel as to the maintainability of the writ petitions in view of the availability of a statutory remedy by way of making a reference to the Land Acquisition, Rehabilitation and Resettlement Authority (hereinafter referred to as "the Authority" for sake of brevity) under Section 64 of the Acquisition Act of 2013. It has been argued by the learned AGP that Section 64 provides an efficacious statutory remedy to a person who is aggrieved by the award in any manner and hence, the petitioners may take recourse to the said statutory remedy instead of

invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

4. Replying to the said objection regarding maintainability of the writ petition, learned counsel for the petitioners have stated that, as a matter of fact, while declaring the award, the Special Land Acquisition Officer (SLAO) has taken into account a Joint Survey Report dated 31st May, 2018, which was conducted before the issuance of notification under Section 11 of the Acquisition Act of 2013, which was issued on 20th August, 2020. The submission thus is, that any report based on a survey conducted prior to the date of issuance of notification under Section 11, could not have been taken into account by the SLAO while declaring the award and hence, the SLAO while declaring the award has contravened the provisions of the Acquisition Act of 2013 and in such a situation, the writ petitions would be maintainable.

5. Having considered the rival submissions made by the learned counsel for the respective parties, what we find is that the preliminary grievance of the petitioners in these petitions is in relation to the trees attached to the land acquired for construction of Bhagpur Dam, in Jalgaon District. It has been urged by the learned counsel for the petitioners that, in fact, after publication of notification under Section 11, no survey was conducted so as to ascertain the correct number of trees attached to the land which has been acquired, as a result of which the petitioners have been granted less compensation for the trees, than what they are entitled to.

6. Section 64 of the Acquisition Act of 2013 provides for making a reference to the Land Acquisition, Rehabilitation and Resettlement Authority by the Collector. For the said purpose, the said provision stipulates that any person, who has not accepted the award may, by written application to the Collector ask him that the matter be referred to the Authority for determination in respect of the objection as to the measurement of the land, the amount of compensation, person to whom it is payable and rights of Rehabilitation and Resettlement under Chapters V and VI or even for determination as to the apportionment of the compensation amongst the persons who are interested.

7. Section 64 of the Acquisition Act of 2013 is extracted hereinbelow :-

"64. Reference to Authority :-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested :

Provided that the Collector shall, within a period of thirty days from the date of

receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 21, or within six months from the date of the Collector's award, whichever period shall first expire :

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

8. On perusal of the afore-quoted Section 64 of the Acquisition Act of 2013 and also having due regard to the nature of the grievance raised in these writ petitions, we are of the opinion that such grievance can be looked into and adjudicated appropriately by the Authority. The Authority, in terms of Section 51, is established by the Government and as per Section 52 and 53 of the Act, it comprises of a Presiding Officer who is or has been a District Judge; or who is a qualified legal practitioner for not less than seven years. The very composition of the Authority make it a judicial authority having been entrusted with judicial functions under the Acquisition Act of 2013.

9. In view of the aforesaid, we have no hesitation to hold that the nature of grievance in these writ petitions can be better looked into and appreciated and even adjudicated by the Authority under the provisions contained in Section 64 of the Acquisition Act of 2013.

10. Once a person makes an application to the Collector, requiring him to refer the matter for determination to the Authority, the Collector is required to make a statement to the Authority as per the provisions contained in Section 65 of the Acquisition Act of 2013, which reads thus :-

"65. Collector's statement to Authority :-

(1) In making the reference, the Collector shall state for the information of the Authority, in writing under his hand -

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under section 13 and the amount of compensation awarded under the provisions of this Act;

(d) the amount paid or deposited under any other provisions of this Act, and

(e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) The statement under sub-section (1) shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the persons interested respectively.”

11. Thus, Section 65 clearly requires that while making the reference to the Authority, the Collector shall state in writing certain information and particulars for determination of the Authority and such information includes the situation and extent of the land, particulars of any trees, buildings or standing crops thereon. As such, while making reference, the Collector has to make statement to be available for consideration of the Authority and such statement will also include particulars of any trees standing on the land acquired.

12. In view of the aforesaid, as already observed, we are of the opinion that Section 64 read with Section 65 of the Acquisition Act of 2013 provides a complete mechanism for redressal of the grievance raised in these writ petitions.

13. Resultantly, we dispose of the writ petitions with the following directions :-

(a) The petitioners in these writ petitions shall make written application to the Collector, Jalgaon under Section 64 of the Acquisition Act of 2013, for referring the matter to the Authority raising their grievance therein, within a period of two weeks from today;

(b) On receipt of the written application under Section 64 of the Acquisition Act of 2013, the Collector shall prepare a statement in terms of Section 65 of the Acquisition Act of 2013 and for the said purpose, shall appoint a Committee of two senior Revenue Officers not below the rank of Sub Divisional Officer to conduct a survey of the land of the petitioners, and submit a report in respect of the requirement of Section 65 of the Acquisition Act of 2013 and based on such report, he shall make a statement to the Authority for its consideration, within a period of four weeks from the date he receives a written application from the petitioners under Section 65.

(c) While the Committee conducts survey for the purpose of preparation of statement under Section 65 of the Act, the petitioners or their representatives shall be present on the spot for which the petitioners shall present themselves before the Collector within two weeks, whereupon the Collector shall fix a date for the survey to be conducted.

(d) Once reference is made to the Land Acquisition, Rehabilitation and Resettlement Authority, the Authority shall expedite the proceeding and proceed to determine the same in accordance with law.