(2022) 12 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No.7121 Of 2019

Raosaheb And Others APPELLANT

Vs

State Of Maharashtra And Others RESPONDENT

Date of Decision : 14-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Contract Act, 1872 — Section 2(d)
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 2(2), 3(u), 11, 26, 27, 28, 29, 30, 63

Citation : (2022) 12 BOM CK 0063

Hon'ble Judges : Mangesh S. Patil, J;Y. G. Khobragade, J

Bench : Division Bench

Advocate : Dnyaneshwar A. Bide, A. R. Kale, Ashok Tapse, P. D. Suryawanshi

Final Decision : Allowed

Judgement

Y. G. Khobragade, J

1. Rule. Rule made returnable forthwith. With the consent of parties, the petition is taken up for final disposal at the admission stage.

2. Heard the learned counsel for the petitioner, the learned AGP for respondent Nos. 1 to 4 and the learned counsel for respondent No.5.

3. By way of present petition under Article 226 of the Constitution of India, the petitioners are praying quashing of award No.2018/SDO/LNQ/SR-13/2006, dated 13.08.2019 passed by respondent No.4 - Sub-Divisional Officer, Majalgaon, whereby it has decided to go for execution of sale-deeds through private negotiations in respect of acquired land bearing Gut No.116 admeasuring 4 Hectare 75 Are along with structure and fruit bearing trees for construction of percolation tank No.8, Asardoha, Taluka Dharur, District Beed. The petitioners further pray to quash and set aside proposals dated 14.06.2016 and 31.08.2016 under which direct sale-deed through private negotiations was directed and

consent agreement dated 15.02.2019 was executed. They have further prayed for issuance of directions against the respondents to initiate acquisition proceeding as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the Act of 2013").

4. The learned counsel appearing for the petitioners submitted that the petitioners are the owners of land Gut No.116 admeasuring 4 Hectare 75 Are, situated at Asardoha, Taluka Dharur, District Beed and the respondent No.5 acquired said land and taken possession in the year 2004-2005 itself under notification dated 1. 03.2004 but it was lapsed. Therefore, again on 01.03.2008 the respondents initiated fresh land acquisition proceeding and the respondent No.4 called for joint measurement vide communication dated 18.05.2012. Accordingly, the joint measurement of petitioners land was conducted and during inspection 90 fruit bearing trees of custard apple (Sitaphal) and 14 stone bands were found and joint measurement report was submitted. However, again on 13.04.2016, the respondent No.5 visited the spot and prepared spot inspection panchanama, but did not proceed further.

5. The learned counsel appearing for the petitioners submitted that respondent No.5 could have submitted proposal of land acquisition as per new enactment i.e. the Act of 2013 which came in force w.e.f. 01.01.2014, but no such proceeding was initiated and submitted proposal for direct purchase method through private negotiation, on 14.06.2016. The proposal through private negotiation was refused by respondent No.4, but again on 31.08.2018, the respondent No.5 submitted proposal for consent award through direct sale-deed by private negotiation which is contrary to the Government Resolution dated 12.05.2015 issued by the State Government, whereby guidelines have been framed for direct purchase through private negotiation.

6. The learned counsel for the petitioners submits that as per the new enactment of 2013, the Collector submitted proposal for fixation of rates of acquired land with Town Planning Authority and rates of acquired land @ Rs.8,224/- per Are fixed but the Sub-Divisional Officer declared the draft consent award. However, respondent No.4, without any legal base, reduced rates of compensation from Rs.8224/- per Are to Rs.5,412/- per Are, though it was the statutory duty of respondent No.4 to consider rates fixed by the District Level committee which requires multiplication and could have applied multiplier as per the provisions of Sections 26 to 30 of the Act of 2013. However, the respondent No.4 arbitrarily reduced fixed rates of acquired land and declared the consent award and directed execution of sale-deed/consent letter dated 15.02.2019 through private negotiation in favour of respondent No.5, but, again on 20.06.2019, the respondent No.5 was directed to draw panchanama. According to the learned counsel for the petitioner, the respondent No.5 drew panchanama on 02.07.2019 and described about actual acquisition of petitioners land for construction of percolation tank No.8 and though proposal for allocation of fund was forwarded

by the respondent No.2 - Divisional Commissioner vide its communication dated 26.08.2019 to the Collector, but instead of allocation of fund, on 12.10.2021, the Divisional Commissioner held that if the award under the provisions of the Act of 2013 is passed, then the proposal needed to be submitted for amount of Rs.03,32,97,840/-. However, said proposal for direct purchase through private negotiation by consent award was already obtained from the petitioners. Therefore, the proposal for allocation of fund of Rs.87,87,500/- was submitted instead of Rs.03,32,97,840/-, which is without any basis and the respondents reduced the compensation of petitioners' acquired land. Therefore, the consent award dated 13.08.2019 passed by the respondent No.4 is illegal, bad in law, so also, the proposal dated 14.06.2016 and 31.08.2016 submitted by the respondent No.5 for direct purchase through private negotiations from the petitioners, is contrary to the provisions of the Act of 2013 and the consent letter dated 15.02.1999 through private negotiation, needs to be quashed and set aside.

7. The learned counsel appearing for the petitioners submitted that the Government Resolutions dated 12.05.2015, 30. 09.2015 and 25.01.2017 are contrary to the provisions of the Act of 2013 on the ground that it does not provide for direct purchase through the private negotiation so also while fixation of price of acquired land, the acquiring body failed to consider standing fruit bearing trees, stone bands. Therefore, the entire land acquisition proceeding and consent deed dated 15.02.2019 are liable to be quashed and set aside and to issue directions to the respondents to initiate acquisition proceeding under the provisions of the Act of 2013.

8. In support of these submissions, the learned counsel appearing for the petitioners has placed reliance on the judgment dated 09.12.2021 passed by the Division Bench of this Court in Writ Petition No. 2806 of 2020, wherein it has been held that Section 63 bars the Civil Court from entertaining disputes relating to land acquisition in respect of which the Collector or the Authority is empowered by or under the said act. The dispute relating to the land acquisition is essentially the dispute as regards the right of the land owners to have fair compensation, apportionment of shares and the measurement of the lands.

9. The learned counsel appearing for the petitioners further placed reliance on the case of Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation – (2013) 1 SCC 353, wherein the Hon'ble Apex Court held that the right to property is now considered to be not only a constitutional or the statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right.

10. The respondent No.4 – Sub Divisional Officer has filed its reply affidavit and countered the claim of the petitioners. The learned AGP submitted that consent award of acquired land of the petitioners was prepared on 13.08.2019 as the petitioners gave their consent for award as per the guidelines of Government Resolution dated 12. 05.2012, 30.09.2015 and 25.01.2017 and the petitioners

executed bond on 05.02.2019, so also, the rate of acquired land ascertained as per ready reckoner provided under circular dated 30.11.2018 with undertaking that they will not approach any Court for further compensation. Accordingly, on 31.03.2022, the compensation from planning department was received and letter was issued to the Circle Officer and Talathi to execute sale-deed in the name of Government. However, the Talathi submitted a report on 01.09.2022 stating that the petitioners have declined to execute sale-deed though they consented and shown willingness to accept compensation as per ready reckoner rate. Therefore, now the petitioners cannot refuse to execute sale-deeds, hence, prayed for dismissal of the petition.

11. Having regard to the submissions canvassed on behalf of both the sides, we have gone through the record. Since the petitioners have claimed that the respondents – Acquiring Body acquired their land for the public project i.e. construction of percolation tank, but no compensation has been paid and though the Town Planning Authority determined the price of acquired land, but the respondent No.2 – Divisional Commissioner determined very low price and the petitioners were directed to execute consent sale-deed by private negotiation. However, the petitioners have refused to accept low compensation under this circumstance question arises as to whether there is previty of contract between the petitioners and the respondents.

12. As per Section 2(d) of the Indian Contract Act, 1872. "Consideration" is the most important element of any contract. Consideration is regarded as the foundation of every contract which forms the basis of it. In case in hand, it is not in dispute that on 1. 03.2004, the respondents initiated land acquisition proceeding under the provisions of the Land Acquisition Act, 1894 and acquired the land of the petitioners land bearing Gut No.116, admeasuring 4 Hectare 75 Are along with fruits bearing trees of Custard apple (Sitaphal) for construction of percolation tank No.8 at village Asardoha, Taluka Dharur, District Beed and on 17.08.2013, the joint measurement of petitioners' land was undertaken, but no compensation was paid to them.

13. The acquisition of land of the petitioners was initiated under the old enactment i.e. Land Acquisition Act, 1894 and during the pendency of said proceeding the new enactment i.e. the Act of 2013 came into force w.e.f. 01.01.2014 prior to determination of compensation and on 14.06.2016 and 31.08.2016, the respondent No.5 submitted proposal for acquisition of land in question under new enactment of 2013 as per guidelines contemplated under Government Resolution dated 12.05.2015 and 30.05.2015 for direct purchase through private negotiation, which the respondent Nos. 3 and 4 accepted. Thereafter, the land Acquiring body conducted panchanama for determination of compensation under the Act of 2013. While drawing the panchanama, the respondents – Acquiring body found standing 50 fruit bearing trees on the field of petitioner No.1. As per the amended schedule, out of Gut No.116 admeasuring 4 Hectare 75 Are, the petitioner No.1 is in possession of 1 Hectare 89 Are and

the petitioner No.2 is in possession of 2 Hectare 86 Are land.

14. It is needless to mention here that on 17.12.2016, the respondent No.3 – Collector issued communication to the Deputy Collector, Land Acquisition Officer and forwarded proposal for acquisition under the the Act of 2013 by direct purchase and proposal for determination of compensation was forwarded to the Town Planning Authority. Accordingly, on 07.11.2016, the Town Planning Authority ascertained the rate of the petitioners land at the rate of Rs.8,224/- per Are i.e. total Rs. 8,22,400/- for 4 Hectare 75 Are on the basis of last three sale transactions of S. No.298, 162 and 215. Thereafter, the said proposal was submitted with respondent No.2. Accordingly, on 15.02.2019, the petitioners were called to execute consent award. Thereafter, on 12.10.2019, proposal for allocation of fund was submitted with respondent No.2 Divisional Commissioner, but the respondent No.2 considered the amount of Rs.87,87,500/-instead of Rs.93,37,250/- which was ascertained by the committee.

15. Section 11 of the Act of 2013 provides procedure for acquisition of land for public purpose. Section 28 provides parameters for determination of compensation amount for acquired land. Section 3(u) provides definition of "market value" of land determined in accordance of Section 26, which provides as under:

"26. Determination of market value of land by Collector.–(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

16. In the case in hand, the respondent No.1 – Collector determined compensation of Rs.93,37,250/-, because if the award of compensation was to be passed under the Act of 2013, it would come to Rs.3,32,97,840/-. It is not in dispute that the respondent Acquiring Body prepared consent letter from the petitioners for acquiring their land by determining compensation on the basis of ready recknor, however, the petitioners refused to accept the same. Therefore, to our conscious there is no privity of contract between the petitioners and the Acquiring Body and there is no consensus ad-idem in respect of the consideration/compensation to be paid to the petitioners. Therefore, impugned award dated 13.08.2019 for direct purchase through private negotiations is not binding upon the petitioners and the respondents can initiate afresh proceeding for determination of compensation under the provisions of new Act of 2013 (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) in adherence to the Government Resolutions dated 12.05.2015, 30.05.2015 and 25.01.2017.

17. In view of above discussions, we are inclined to allow the present writ petition and proceed to pass the following order:

ORDER

(i) The writ petition is allowed in terms of prayer clauses (C) and (F).

(ii) The respondent Nos. 3 to 5 are directed to initiate fresh proceeding for determination of compensation under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of acquisition of petitioners' land for public project within a period of four months from the date of this order.

(iii) The District Level Compensation Determination Committee shall give pre-decision hearing to the petitioners before determination of the compensation.

(iv) Rule is made absolute in above terms. No order as to costs.