

(2014) 07 BOM CK 0046

In the Bombay High Court

Case No : Writ Petition Nos. 6195, 11317 of 2013 and Civil Application No. 319 of 2014

Sukhdeo Govind Gawari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Constitution of India, 1950 — Article 39
Land Acquisition Act, 1894 — Section 11, 12, 12(2), 4
Maharashtra Project Affected Persons Rehabilitation Act, 1999 — Section 10, 11, 13, 14, 14

Citation : (2014) 5 ABR 232 : (2014) 5 ALLMR 709 : (2014) 6 MhLj 105

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Girish S. Godbole, Gaurav Potnis i/by Pallavi H. Potnis and Nitin Deshpande, AGP, Advocate for the Appellant; Nitin Deshpande, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Parties were put to notice that the Petitions will be taken up for final disposal at admission stage. Accordingly, we have heard the learned counsel representing the Petitioners and the learned AGP for Respondents at length.

FACTS OF THE CASE

2. The issue in these Petitions is as regards the right of rehabilitation claimed by the Petitioners who are claiming to be project affected persons. As far as the Petitioner in Writ Petition No. 6195 of 2013 is concerned, he claims to be the owner of the agricultural lands more particularly described in paragraph 1 of the Petition. The Petition has been filed in his capacity as the Legal representative of his father Govind Dhondu Gawari. It is contended that the lands of the Petitioner were acquired for the submergence of Bhama Askhed Irrigation Project (for short "the said Project"). Award u/s 11 of the Land Acquisition Act, 1894 (for short

"the said Act of 1894") was declared on 30th April, 1997 and the possession of the said lands was taken on 28th May, 1997. It is pointed out that the Petitioner has not been resettled by allotting him a suitable land from the land pool i.e. from the benefited zone of the said Project. Reliance is placed by the Petitioners on the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short "the said Act of 1999") and the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (for short "the said Act of 1976"). The case made out in the Petition is that it is the duty of the State Government to prepare and maintain Sankalan Register as per the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1989 (for short "the said Act of 1989") and the said Act of 1999. The Petitioners have contended that the Sankalan Register will show the extent of the land the project affected person is entitled to for his rehabilitation. It is contended in the Petition that at the time of or before the payment of the compensation in accordance with section 12 of the said Act of 1894, a notice should have been given to the Petitioner by the Resettlement Officer u/s 16 of the said Act of 1999. In paragraph 5, it is contended that if lands are to be allotted to the affected persons, it is mandatory that a notice u/s 16 of the said Acts of 1989 and 1999 should be given stating therein that the amount payable under the notice u/s 12(2) of the said Act of 1894 is deductible if the project affected person wants to claim a land for rehabilitation. It is contended that the amount of occupancy price payable towards the land likely to be allotted should be incorporated in the notice. Reliance is placed on sub-section 2(a) of section 16 of the said Act of 1989 and the said Act of 1999. It is alleged in the Petition that the Petitioner was not served with any notice and, therefore, he was deprived of a right to get allotment of a land for rehabilitation. By placing reliance on various provisions of the said Act of 1999, the Petitioner invited attention of the Court to a Judgment and Order passed by a Division Bench of this Court on 2nd May, 2011 in Writ Petition No. 8385 of 2010 (Ram Shankar Deshmukh and others vs. State of Maharashtra and others and other connected matters. Prayer in this Petition is for issuing a writ of mandamus enjoining the Respondents to resettle the Petitioner by granting him a land of his choice in fixed area in the land pool of the said Project and to allow him to pay occupancy price of the land allotted to him. A direction is sought that the law laid down by this Court in the case of Ram Shankar Deshmukh and others should be made applicable to the Petitioner and a relief be granted to the Petitioner in terms thereof.

3. The Petitioner in Writ Petition No. 11317 of 2013 has claimed that he was the owner of the agricultural lands described in paragraph 1 of the Petition which was also acquired for submergence under the same project. Award dated 20th May, 2000 was made u/s 11 of the said Act of 1894 and possession of the acquired land was taken on 31st October, 2000. The contentions raised in this Petition are more or less similar to the contentions raised by the Petitioner in Writ Petition No. 6195 of 2013. The prayers are identical.

REPLY OF THE STATE GOVERNMENT

4. The State Government has filed a reply dated 12th December, 2013 along certain documents. Reliance is placed on a booklet in Marathi language published by one of the then District Resettlement Officers. It is stated that the booklet was published on 10th June, 1982. It is contended that Special Land Acquisition Officer had issued notices to the displaced persons making them aware that failure to deposit 75 percent of the compensation amount would render them ineligible to claim alternate land. Reliance is placed on a sample notice. It is contended that in many cases, the project affected persons have given up their claim to alternate land by accepting 100 percent compensation. Certain documents in support of the case have been annexed to the affidavit-in-reply. Reliance is placed on a meeting held on 11th June, 1997 of the Project Affected Persons.

5. There is another affidavit dated 3rd December, 2013 filed by Shri Ganesh Patil, the Additional Collector. It is contended that in Pune District more than 65 percent of the eligible project affected persons have been rehabilitated and still 863 applications for grant of land are pending before various authorities. It is pointed out that some of the applications have been belatedly filed by the applicants who have not deposited the requisite amount of 65 percent or 75 percent of the compensation, as the case may be, at the time of accepting compensation under the said Act of 1894. It is contended that some of the cases are of those applicants who have given up their claim by accepting the entire compensation amount. It is pointed out that in case of some of the applicants, their names are not found in the Sankalan Register and they have not supplied requisite documentary evidence. It is pointed out that 215 applications of the project affected persons are pending who have deposited either 65 percent or 75 percent of the compensation. It is pointed out that a large number of Petitions are filed in this Court by project affected persons of Chaskaman Project. It is pointed out that the project affected persons of the said Project (Bhama-Askhed) have filed more than 380 Petitions in this Court seeking similar reliefs.

6. In the said affidavit, it is further stated that on 7th May, 1997, the Tahsildar-Khed directed various Kamgar Talathis to give a notice by beat of drums to the displaced persons for getting alternate land by way of compensation and the villagers were called upon to submit their applications and documents. A copy of the order issued by the Tahasildar, Khed to the Talathi on 7th May, 1997 is annexed as Exhibit 13B. Placing reliance on document at Exhibit 15, it is contended that in the year 1998, the Circle Officers and Talathis had taken the displaced/project affected persons to the lands in the benefited zone which were to be allotted by them. Reliance is placed on the statements given by various project affected persons that they were not interested for grant of land and would prefer to get 100 percent compensation.

7. Another difficulty which is pointed out in the reply is that now most of the record of the acquisition for the said project may not be available. Reliance is placed on Anderson's Manual which governs the Rules regarding preservation of

record of various State Government Departments. It is provided that after revision of the said Manual in the year 1967, it is provided that notices in relation to the land acquisition are required to be preserved only for a period of one year. It is contended that as the acquisition of lands under the provisions of the said Acts of 1976, 1989 and 1999 is required to be made under the said Act of 1894, Rules under the Anderson Manual are applicable even to the proceedings of acquisition under the said three Acts. It is pointed out that a large number of Petitions including the present Petitions have been filed more than a decade after acquisition was completed. Reliance is placed in the said affidavit on various provisions of the aforesaid three enactments.

8. It is pointed out that after such long lapse of time the lands in benefited zone are not available for allotment to the project affected persons. It is pointed out that though large number of lands form a part of benefited zone, all the lands are never acquired. The policy of the Government is to acquire lands required by the displaced persons who have applied and deposited the amounts. It is contended that if after such long lapse of time, if the Writ Court issues a writ directing the State Government to provide lands to the project affected persons of the said project, fresh acquisition proceedings will have to be initiated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the said Act of 2013"). It is pointed out that under the said Act of 2013, compensation is payable four times the market value of the land to be acquired and, therefore, if at this stage, the writs are issued for allotment of lands, the State Government will be put under a huge monetary burden. It is stated that if lands are now ordered to be allotted to such large number of project affected persons who have approached the authorities or the Court after lapse of 10 years or more from the date of completion of acquisition, a budgetary provision will have to be made for acquisition of the lands or allotment of the lands to the said persons. It is stated that if after a decade after the acquisition is completed, allotments are ordered to be made to those who are willing to deposit 65% or 75% compensation today, the expected financial burden for acquiring lands in Pune District will be of more than Rs. 7,000 Crores. It is submitted that unless an application is made by the project affected persons under sub-section (1) of section 16 of the said Act of 1999, there is no occasion to issue a notice as contemplated by sub-section (2) of section 16. It is contended that the Petitioners have indulged in suppression of material facts. It is contended that the Petition suffers from gross delay. It is contended that suddenly a large number of persons claiming to be project affected persons have woken up at the instance of middlemen or estate agents as the prices of lands in the area are very high.

REJOINDER OF THE PETITIONERS

9. In the rejoinder, both the Petitioners have relied upon various provisions of the said Act of 1999. Attention of the Court is invited to section 15 of the said Act of 1999 which requires publication of a scheme for rehabilitation. The contention is

that unless there is a scheme published in accordance with section 15, project affected persons could not have made applications under sub-section (1) of section 16 of the said Act of 1999 as the name of the village and Gat number of the lands sought cannot be incorporated unless there is a scheme made in accordance with section 15. It is contended that the State must satisfy the Court that there is a compliance made with the requirements of Section 15 of the said Act of 1999. It is contended that the three enactments are beneficial legislations for giving effect to the directive principles of the State policy incorporated in Article 39 of the Constitution of India. Apart from relying upon the decision in the case of Ram Shankar Deshmukh and others, the Petitioners have relied upon the decision of this Court in Civil Application No. 209 of 2013 in Writ Petition No. 263 of 2012 which is dated 22nd August, 2013. The said Civil Application was taken out for modification of the order dated 17th July, 2012 passed in the main Writ Petition. The order passed in the said main Writ Petition was in terms of the Judgment and Order in the case of Ram Shankar Deshmukh and others. While dealing with the ground of delay in filing the Petition, reliance is placed on the decisions of the Apex Court in the case of Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others, and in the case of S.B. Kishore Vs. Union of India and others,

CONSIDERATION OF THE DECISIONS IN RAM SHANKAR DESHMUKH AND THE STATE V/S. SHANTARAM NAWALE AND OTHERS

10. Before we consider the submissions on merits, a reference will have to be made to the decision of this Court in the case of Ram Shankar Deshmukh and others. Writ Petitions were filed by the project affected persons of the said project wherein an Award u/s 11 of the said Act of 1894 was made on 1st December, 1999 and the possession was taken over on 20th May, 2000. The Division Bench has reproduced sub-section (2) of section 16 of the said Act of 1999. For the sake of convenience, it will be necessary to reproduce entire section 16 which reads thus:-

16. Grant and assignment of land and payment of special grant.-

(1) An eligible affected person who is desirous of getting land or plot or both in the area shown for the purpose in the scheme published u/s 15 may make an application to the Collector in the prescribed form for grant of land or plot, and subject to such rules as may be prescribed, it shall be lawful for the Collector-

(a) to grant land acquired u/s 14 to such affected person with the occupancy status on the land held by him earlier;

(b) to grant a plot of land to such affected person in a new gaathan or extended part of the existing gaathan with the occupancy status on the land held by him earlier and rupees ten thousand as a special grant for construction of house on such plot,

in such manner, as far as possible, according to the provisions of parts III and IV

of the Schedule and on such terms and conditions as may be prescribed:

Provided that-

(i) if the allottee of the land under sub-clauses (a) and (b) of sub-section (1) is an occupant Class II, he shall be entitled to conversion of the land to occupant Class I after a period of ten years on payment of premium as may be prescribed;

(ii) the affected person referred to in sub-clause (d) of Clause (2) of Section 2 shall be eligible to a constructed house on the basis of the Indian Awas Scheme of the State Government.

(iii) the affected person referred to in sub-clause (e) of Clause (2) of Section 2 shall be eligible only for grant of a plot under Clause (b);

(iv) subject to the provisions of sub-sections (2) and (3), the occupancy price of the land or plot, as the case may be, granted under Clause (a) or (b), except under sub-clause (ii) above, shall be determined and paid in the manner as may be prescribed.

(2) An affected person eligible for the grant of land or plot under sub-section (1) shall forfeit his right to get the same if-

(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of forty-five days from the date of receipt by him of a notice in that behalf from the Collector; or

(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five percent of the amount of compensation which he has received for his land which is acquired from him in the affected zone or, of the likely cost of the land to be granted to him under sub-section (1), whichever is less, at the time of payment of such compensation to such affected persons.

(3) After payment of the amount under Clause (b) of sub-section (2), the remaining amount towards the occupancy price payable by the affected person for the land allotted to him shall be recovered from him free of interest in such manner and installments as may be prescribed:

Provided that, the first installment of such recovery shall commence one year after the irrigation facility is made available to him.

(4) The State Government shall pay a special grant to all such affected persons who have deposited an amount as per Clause (b) of sub-section (2)A of this section but have not been allotted land in the benefited zone and the rate of the special grant shall be rupees four hundred per mensem for the period from the date of actual displacement of the person from the land to the date of allotment of land in the benefited zone.

(5) Nothing in this Act shall prevent the project authority to lease out to the affected person the land acquired from him till the gorge filling of an irrigation project is taken up and not used for quarrying dam seat, etc.

(6) Nothing in this act shall prevent the Collector to lease out to the affected person the land acquired from him in the benefited zone, which is still in his possession, for whatever reason, till the possession of such land is granted to any eligible affected person and such land shall be given only on lease.

11. The case of the Petitioners in the said Petition was that at the time of payment of compensation, no notice was given to them by the Collector about their entitlement to get an alternate land. The stand taken by the State in the said Petitions was that as the Petitioners have not deposited 65 percent of the amount of compensation awarded on account of the acquisition of their land for the said project within the stipulated time of 45 days, the Petitioners were not entitled to get an alternate land. The said submission was dealt with in paragraphs 4 and 5 of the said Judgment which read thus:-

4. The statutory provisions are very clear and therefore limitation stipulated in sub-section (2) of section 16 of the Act will begin to run only after the Collector serves a notice upon the land losers as provided in section 16(2) (a). The learned AGP sought to contend that 65% amount is required to be deposited at the time when the land loser received compensation as provided under clause (b) of section 16(2). It is not possible to accept the above contention for the simple reason that the land loser will come to know about the entitlement to get alternate land only when he receives the notice in that behalf from the Collector as specifically provided under clause (a) of sub-section (2). Hence, it has to be held that for a land loser to forfeit his right to get alternate land under the provisions of the above Act, mere non deposit of 65% of the compensation at the time of receiving the compensation is not sufficient unless the land loser was given the notice u/s 16(2) (a) by the Collector in the first place. In view of the above discussion, the petitions are allowed.

5. The Collector, Pune shall give a notice to the petitioners u/s 16(2)(a) for grant and allotment of land. The notice shall be given by Registered Post A.D. or by hand delivery by 31 May 2011. It will be open to the petitioners to communicate the willingness to accept the grant of land within a period of 45 days from the date of receipt of such notice from the Collector. Petitioners shall also deposit with the Collector 65% of the amount of compensation received by them for the land acquired from them or the likely cost of land granted to them, whichever is less at the time of payment of such compensation to the petitioner.

12. Petitioners are relying upon the order dated 22nd August, 2013 in Civil Application No. 2099 of 013 in Writ Petition No. 263 of 2012 [The State of Maharashtra and others vs. Shantaram B. Nawale (deceased), through Legal representative Shri Lahu Shantaram Nawale & Ors.] The said Civil Application was made in a disposed of Writ Petition wherein similar directions were issued by this Court as given in the case of Ram Shankar Deshmukh and others. An application was taken out by the State Government for extension of time for issuing a notice under clause (a) of sub-section (2) of section 16 of the said Act of 1999 in terms of the Judgment and Order in the main Writ Petition. It was

contended in the Civil Application that some of the Writ Petitioners had given up their right to claim allotment of lands. The Division Bench relied upon the order dated 20th March, 2013 passed by another Division Bench in the case of Mahadu Rambhau Bendure vs. State of Maharashtra and Ors. (Writ Petition Nos. 1668 and 1669 of 2013). In paragraph 7 of the Judgment and Order, the Division Bench held that the requirement of clause (a) of sub-section (2) of section 16 of the said Act of 1999 must be strictly observed since a deprivation of the entitlement to the allotment of alternate land results in forfeiture of a valuable right. In paragraph 9, the Division Bench came to the conclusion that merely because some of the project affected persons had communicated to the Special Land Acquisition Officer that they were not desirous of obtaining alternate land, it would not amount to relinquishment of a valuable right which is conferred by the said Act of 1999. It was held that the forfeiture of that right can only take place strictly in accordance with the provisions of sub-section (2) of section 16 of the said Act of 1999. This Court held that the statement was allegedly made by some of the Petitioners to Special Land Acquisition Officer that they were not interested in getting the land will not amount to waiver of the right to get alternate land. The Division Bench held that the said Land Acquisition Officer is not the authority under the law to scrutinize the applications for grant of land under the said Act of 1999. It was further held that it is only upon issuance of notice under clause (a) of sub-section (2) of section 16 of the said Act of 1999, that the time to deposit 65 percent of the amount of compensation would begin to run. It is only thereafter that the issue of forfeiture would arise. This Court while extending the time granted to issue notices under sub-section 2(a) of section 16 observed that it would be open to the District Resettlement Officer to verify as to whether the petitioners were the project affected persons as claimed by them.

CONSIDERATION OF THE PROVISIONS OF THE SAID ACT OF 1976

13. Now, it will be necessary to make a reference to the said Act of 1976. Under the said Act, sub-section (7) of section 2 defines a "displaced person" to mean any occupant who, on account of the acquisition of land in the affected zone [including a land in the gaathan] for the purpose of a Project has been displaced from such land. The term "Project" under sub-section (12) of section 2 is defined to include the construction, extension or improvement of any work for the water supply or for purposes of irrigation or for the production and supply of electricity and includes any other work of public utility, the construction, extension, improvement or development of which results in displacing persons from lands which may be used for such work. Section 10 confers a right on a displaced person. The State Government is under an obligation to resettle the displaced persons on a land in the benefited zone in accordance with the said Act of 1976. Sub-section (1) of section 11 of the said Act of 1976 contemplates of the State Government issuing a notification in official gazette declaring that the provisions of the said Act shall apply in relation to the project specified in the notification. It is provided that the notification shall also specify the villages or areas which are likely to be in the affected or the benefited zone. Sub-section (2) provides for the

mode of publication of such notification. From the provisions of sections 13 to 15, it appears that the lands in the benefited zone are available for resettlement of the displaced persons holding lands which are required for the project or lands which would be adversely affected by the project which form part of affected zone. Section 14 provides for a provisional declaration of the affected zone and the benefited zone. The section 15 deals with a final declaration of the affected zone and the benefited zone. Section 16 confers power on the State Government to compulsorily acquire lands for carrying out the purposes of the said Act of 1976 in accordance with the said Act of 1894. It also confers power to acquire lands included in a gaathan in affected zone. Sub-section (4) confers power on the State Government to acquire land from holdings in the benefited zone for the purposes of resettling the displaced persons. Section 17 provides for the extent of land to be granted to the displaced persons. Sub-section (1) of section 19 enjoins the Resettlement Officer to publish a public notice in the Official Gazette as well as in accordance with the modes provided in sub-section (2) of section 11 calling upon the displaced persons in the affected zone to intimate to him in writing before the date specified in the notice whether they require land for resettlement and if so, to submit in duplicate a statement containing various particulars as provided in sub-section (1). Section 20 enjoins the Resettlement Officer to prepare draft schemes for resettlement of displaced persons on the basis of statements received by him under sub-section (1) of section 19. Section 20 provides for the contents of the schemes. Section 21 contemplates publication of the schemes. Section 23 provides for grant of land on payment of occupancy price to the displaced persons in accordance with the schemes. The said Act of 1976 was repealed by the said Act of 1989.

CONSIDERATION OF THE PROVISIONS OF THE SAID ACT OF 1989

14. The said Act of 1989 also defines "Project" which includes an irrigation project. Sub-section (2) of section 2 defines "affected person" to mean an occupant whose land in the affected zone (including land in the gaathan) is acquired u/s 14 for the purposes of a project. The definition of "affected person" in the said Act of 1989 is much wider than the definition of "displaced persons" under the said Act of 1976. The definition of "affected person" also includes the person, who is a tenant in actual possession of a land in the affected zone at the time of acquisition of land. The said Act of 1989 also contains the concepts of affected zones and benefited zones. The concepts are no different from the same concepts under the said Act of 1976. Section 10 confers a right of resettlement on a displaced person from affected zone in an irrigation project on a land in the villages receiving benefit of irrigation from such project. The said right is subject to availability of sufficient land for the purposes of rehabilitation. Section 11 contemplates that the State Government shall notify in Official Gazette, the villages or areas which are likely to be in the affected or the benefited zones of a project and specify, provisionally the area of holdings in such area or villages, if any, to which restrictions specified in section 12 shall apply. Sub-section (2) of section 11 contemplates publication of such notification in the villages or areas

which are likely to be in the affected and the benefited zones, by beat of drums and by affixing a copy of notification in some prominent place or places in the zones, and in the village Chavdi and in the office of the Panchayat, if any. Section 12 imposes restrictions on transfer, subdivision, partition of agricultural land in the villages or areas specified in the notification under sub-section (1) of section 11 without proper permission of the State Government. Section 13 contemplates the State Government making a declaration in the Official Gazette and by also publication of such notification in the manner provided in sub-section (2) of section 11 containing the extent of area which shall constitute the area of affected zone and if the project is an irrigation project, the extent of area which shall constitute the area of benefited zone under the said project. Section 14 confers power on the State Government to compulsorily acquire any land for the purposes of the said Act in accordance with the provisions of the said Act of 1894. Sub-section (4) of section 14 confers a power on the State to acquire a land from holdings in the benefited zone according to the slab declared in the notification under sub-section (1) of section 13 for the purposes of rehabilitating affected persons from the affected zones. Section 15 provides that the Collector shall prepare the proposals for rehabilitation of the affected persons from the affected zones and publish a notice containing such proposals in the manner laid down in sub-section (2) of section 11 for the information of such affected persons. Sub-section (1) of section 16 contemplates an application being made by eligible affected person, who is desirous of getting a land or a plot in the area shown for that purpose in the scheme published under sub-section 15. An application is required to be made to the Collector in the prescribed form under sub-section (2) of section 16 of the said Act of 1989, which reads thus:-

16 (2) An affected person eligible for the grant of land or plot under sub-section (1) shall forfeit his right to get the same if,-

(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of 45 days from the date of receipt by him of a notice in that behalf from the Collector; or

(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five per cent of the amount of compensation which he has received for his land which is acquired from him in the affected zone or of the likely cost of the land to be granted to him under sub-clause (a) of sub-section (1), whichever is less, at the time of payment of such compensation to such affected person.

CONSIDERATION OF THE PROVISIONS OF THE SAID ACT OF 1999 AND CONCLUSIONS

15. Now, we turn to the scheme of the said Act of 1999. The said Act of 1989 was repealed by the said Act of 1999. As provided in the earlier two enactments, the said Act of 1999 defines "affected zone" and "benefited zone". The definition of "affected person" under sub-clause (2) of section 2 includes an occupant whose land in the affected zone (including a land in the gaathan) is acquired u/s

14 for the purposes of a project within the meaning of the said Act of 1999. Under sub-section (10) of section 2, "Project" has been defined to include construction, extension, improvement or development of any work for the supply of water for the purposes of irrigation. Sub-section (1) of section 10 reads thus:-

10(1) The State Government shall in accordance with the provisions made by or under this Act and subject to the availability of sufficient land for the purpose, rehabilitate affected persons from the affected zone under an irrigation project, on land in the villages or areas receiving benefit of irrigation from such project.

16. Section 11 is material which reads thus:-

11. Areas of affected and benefited zone to be notified.-

(1) In respect of a project to which this Act applies, the Commissioner of the revenue division, in which the entire or major part of the project lies, shall by notification in the Official Gazette-

(a) specify the village, or areas, if any, which are likely to be in the affected or benefited zone of such project;

(b) specify, provisionally the area of holding in such villages or areas if any, to which restriction specified in Section 12 shall apply.

(2) Such notification shall be published in the village or areas which are likely to be the affected and benefited zones, by beat of drums and by affixing a copy of notification in some prominent place or places in the zones, and in the village chavdi and in the office of the Village Panchayat, if any, and also in the office of the Tahsildar, the Collector, the project authority and the Commissioner.

17. Section 12 provides for restrictions on transfer, sub-division, partition, or improvement of land in the villages or areas specified in the notification u/s 11. Section 13 provides for a declaration of affected or benefited zones. Section 14 confers power on the State Government to acquire lands for the purposes of the said Act which includes a power to acquire lands in the benefited zone of the project for rehabilitating affected persons from the affected zone. Section 15 is material which reads thus:-

15. Preparation of proposals of rehabilitation and publication, thereof.-Subject to the general or special order which the Commissioner may take in this behalf, the Collector shall prepare, within six months from the date of notification under sub-section (3) of section 13, the proposals in one of more stages, from time to time, as the circumstances may require for rehabilitation of the affected persons from the affected zone under a project and publish a notice containing such proposals in the matter laid down in sub-section (2) of section 11 for the information of such affected persons.

18. Sub-section (1) of section 10 confers a right of rehabilitation on an affected person from the affected zone under an irrigation project. The right is of rehabilitation on the land in the villages or areas receiving benefit of irrigation

from such project. The said right is subject to the availability of sufficient land for the purpose. Under the said Act of 1976, the right of rehabilitation is not qualified. But, in both 1989 and 1999 Acts, the right is specifically made subject to availability of sufficient land for rehabilitation. We have already quoted section 16 in paragraph 10 above. On plain readings of the orders of the first Court and the orders which are earlier passed in similar matters, we must note that what is considered therein is subsection (2) of section 16 of the said Act of 1999. Sub-section (2) is applicable to an affected person who is eligible for grant of a land or a plot under sub-section (1) of section 16. Sub-section (2) lays down the circumstances in which an affected person eligible for grant of land forfeits his right to get the same. Sub-section (1) enables an eligible affected person who is desirous of getting a land or a plot or both in the area shown for the purposes in the scheme published u/s 15 to make an application to the Collector in prescribed form for grant of a land or a plot. Thus, an application can be made under sub-section (1) of section 16 only by an eligible affected person who is entitled to get allotment of a land or a plot. Such application presupposes publication of a scheme in accordance with section 15 of the said Act of 1999 or of the said Act of 1989. Unless there is a scheme published under subsection 15, there is no occasion for an eligible person to make an application under sub-section (1) of section 16. Thus, it follows that if there is no scheme framed u/s 15, the right of an eligible affected person to get allotment of a land or a plot, as the case may be, cannot be defeated by his failure to make an application under sub-section (1) of section 16. A right is created under sub-section (1) of section 10 in favour of an eligible affected person to get allotment of a land subject to availability of lands for that purpose. If there is a default on the part of the State on account of failure to publish a scheme u/s 15, no fault can be found with the failure of an eligible affected person to make an application under sub-section (1) of section 16 of the said Act of 1999. It is also clear that the right conferred by sub-section (1) of section 10 can be forfeited only in the manner provided under the said Act of 1999. Thus, the forfeiture of the right can be effected only in accordance with sub-section (2) of section 16.

19. A notice as contemplated by clause (a) of sub-section (2) of section 16 can be issued only to an affected person eligible for grant of a land. Therefore, unless the Petitioner who approaches this Court is an affected person eligible for grant of a land or a plot, a notice cannot be issued to him under clause (a) sub-section (2) of section 16, as the said provision presupposes that the person to whom the notice is addressed is eligible for grant of a land or for a plot in terms of the provisions of the said Act of 1999.

20. What we have held above will also squarely apply in case of an eligible affected person to whom the provisions of the said Act of 1989 are applicable. Though the scheme of the said Act of 1976 appears to be different from the other two enactments, even under the 1976 enactment, section 20 and section 21 require resettlement officer to prepare a draft scheme and to publish the final scheme in accordance with the provisions thereof.

21. However, from the provisions of sub-section (1) of section 10 of both 1989 and 1999 enactments, it appears that the right of rehabilitation is subject to availability of the lands for the purposes of rehabilitation. Thus, the affected person can claim rehabilitation only till lands are available for that purpose.

CONCLUSIONS ON FACTUAL ASPECTS

22. Now, turning to the facts of the case in Writ Petition No. 6195 of 2013, the land of the Petitioner has been acquired on the basis of the notification u/s 4 of the said Act of 1894 issued on 14th June, 1994. The Award u/s 11 was made on 30th April, 1997. The Petitioner is relying upon Sankalan Register which provides that area of the land to be allotted to his predecessor was 1 Hectare and 61 Ares. Thus, it appears that the predecessor of the Petitioner Govind Dhondu Gawari is a project affected person as his name appears in the Sankalan Register. The Petition does not disclose the date of death of the said Govind. There is a bald assertion in the Petition that the Petitioner has kept follow up with all the authorities but he has not been told when the land will be allotted to him. There is another bald assertion that the authorities/Respondents have taken advantage of an illiterate and ignorant farmer. We must note here that the Petitioner has signed the Petition in English. There is nothing stated in the Petition to show that till Advocate's notice was issued on 31st December, 2012, any application or representation was made by the Petitioner or his predecessor to any of the Respondents for allotment of land. The Petitioner has not stated what efforts were made by his predecessor Govind during his lifetime. The State Government in the additional reply has relied upon Anderson's Manual which provides for Rules regarding destruction of records. As per the said Manual, the notices in acquisition proceedings must have been destroyed long back. Moreover, a stand has been taken that if applications belatedly made by large number of affected persons like the Petitioners in these Petitions are entertained, the State will have to take recourse to acquisition under the provisions of the New Land Acquisition Act. The present Petition has been filed on 15th April, 2013, 16 years after the date of declaration of Award u/s 11. The State has specifically pleaded the ground of unavailability of documents and record. Now, it is unjust to expect the State to produce the record to show whether a scheme u/s 15 of the said Acts of 1989 or 1999 was prepared and whether the same was published in accordance with law. Supplementary affidavit of the State records that large number of project affected persons of the said project were already rehabilitated. Therefore, it is not as if that the State has failed to perform its duty in relation to all the project affected persons.

23. Thus, there is a long unexplained delay. Such delay is very crucial as the said Acts of 1989 and 1999 provide that the right to rehabilitate is subject to availability of sufficient lands for that purpose. In the present case, the first application in the form of a notice is made by the Petitioner, nearly fifteen years after the acquisition of his land was completed. This is in the context of the fact that the right of rehabilitation will be subject to availability of land for that

purpose. If the Petition is entertained, today the Petitioner will have to deposit only 65% of the compensation granted in the year 1997. Thereafter, the State will have to acquire a land to rehabilitate him by taking recourse to the New Land Acquisition Act.

24. As far as the Writ Petition No. 11317 of 2013 is concerned, the Award u/s 11 was declared on 20th May, 2000. As in the case of earlier Petition, even in this Petition, there are only bald assertions and there is no specific reference to any applications/representation made earlier before filing the Petition for grant of land. In this case, for the first time, an attempt to seek allotment of land has been made by issuing a notice in August, 2013. Again, the Petitioner has signed the Petition in English and, therefore, ground of illiteracy is not applicable. The Petition has been filed on 21st October, 2013. Hence, this is also a case of gross delay.

25. The reliance placed on the decision of the Apex Court in the case of Tukaram Kana Joshi is misplaced. In the present Petitions, the Petitioners have received compensation for their acquired lands. It is not a case of deprivation of compensation as in the case before the Apex Court. An attempt was made to rely upon another decision of the Apex Court in the case of S.B. Kishore v/s. Union of India. However, paragraph 6 of the decision specifically records that the same shall not be cited as a precedent.

26. Therefore, both the Petitions suffer from gross delay which is fatal considering the stand taken in the reply.

27. In the circumstances, we pass the following order:-

ORDER

(i) The Petitions are rejected.

(ii) Civil Application No. 319 of 2014 does not survive and the same is disposed of accordingly.