

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 3683 OF 2020

Radhika J. Bhalerao
& Others .. Petitioners.
v/s.
State of Maharashtra
& Others .. Respondents.

WITH
WIT PETITION NO.2928 OF 2022

Durgadevi V. Avhad
& Others .. Petitioners.
v/s.
State of Maharashtra
& Others .. Respondents.

WITH
WRIT PETITION NO.117 OF 2021

Ranjana B. Thorat
& Others .. Petitioners.
v/s.
State of Maharashtra .. Respondent.

WITH
WRIT PETITION (ST.) NO.94031 OF 2020

Jagdish L. Zawar
& Another .. Petitioners.
v/s.
State of Maharashtra
& Others .. Respondents.

Mr. Nikhil Mengade with Mr. Dhaval Deshpande, Rahul Lathi, Yash Jariwala and Pranay Dave, for the Petitioners in all the Petitions.

Mr. Vijay Patil, for Respondent No.3 in WP No.3683 of 2020 and WP(St.) No.94031 of 2020.

Mr. A. A. Kumbhakoni, Advocate General with Mr. P. P. Kakade, G.P with Mr. Akshay Shind, 'B' Panel Counsel with Mr. R. M. Shinde, AGP for the Respondent-State in all the Petitions.

**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.
DATED : 24th MARCH, 2022.**

PC (PER S.V.GANGAPURWALA, J):-

Rule. Rule returnable forthwith with the consent of the parties.

1 The Petitioner assails corrigendum dated 11th September, 2018. Under the said corrigendum, the circular dated 30th August, 2019 is not made applicable to the acquisition for the Nagpur-Mumbai Express Highway Project.

2 Under the Government Resolution dated 13th August, 2018, the Government had taken a decision to consider the ready reckoner as per the Maharashtra Stamp Act, 1958 for the purpose of determining the market value of the land. The said decision is sought to be escaped for the Nagpur-Mumbai Express Highway Project.

3 The learned Counsel for the Petitioner submits that the Respondents cannot differentiate between the projects while determining the compensation amount. Same would be violative of Article 14 of the Constitution of India. The Respondents cannot determine the quantum of compensation for projects applying different policies. According to the learned Counsel, the same also would not be in consonance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

4 The learned Advocate General for the State submits that guidelines are provided for determination of the ready reckoner rates under the Indian Stamps Act. Under the Notification dated 23rd August, 2014, Rules have been framed namely – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014 (the Rules 2014). The learned Advocate General submits that in case the award is passed, the Petitioners have right to assail before the executive. Before the executive, the Petitioner can raise all the contentions. The learned Advocate General submits that circular need not be quashed. The learned Advocate General submits that 83% of acquisition is complete by private purchase and compensation paid. In view of that, impugned communication is issued.

5 The acquisition made for Nagpur-Mumbai Express Highway is under the provisions of the Maharashtra Highway Act. If the acquisition is under the Maharashtra Highway Act, then the provisions of Section 26 to 30 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are applicable for determination of the compensation. Section 26 of the Right to Fair Compensation Act lays down the following criteria for determination of compensation. Section 26 reads 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 o 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.

6 Section 19-B of the Maharashtra Highway Act, provides for the determination of the amount payable as compensation. Proviso to Sub-Section 3 of Section 19-B of the Act provides that the State Government while issuing the general order under the preceding proviso shall adhere to the provision of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, relating to determination of the amount of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules.

7 Section 26(1) (a) of the Act of 2013 provides the mechanism for determination of the market value, *inter alia*, the quantum of compensation payable upon acquisition of the citizen's land/ property.

8 Section 26 (1)(a) of the Act 2013 provides that the Collector shall adopt in assessing and determining the market value of the land, the following criteria namely – the market value, if any, specified in the Indian Stamp Act 1899 for the Registration of the Sale Deeds or agreements to sell, as the case may be, in the area where the land is situated.

9 The Maharashtra Stamps (Determination of True Market

Value of the Property) Act, 1995 lays down the procedure for determining the value of the property for the purpose of the stamp duty. Moreover, Rules 2014, more particularly Rule 17(6) prescribes that while determining the market value of the land under clause (a) of sub-section 1 of Section 26 of the Act, the market value specified in the Indian Stamp Act, 1899 may be taken into consideration. However, in case, land situated in the Maharashtra, the market value of the land shall be determined as per the Bombay Stamp (Determination of True Market Value of property) Rules, 1995 made under the provisions of the Maharashtra Stamp Act.

10 Only because 83% of property for the project is acquired, it would be egregious not to apply the provisions of the statute for determination of compensation. If by private negotiation, the lands are acquired the compensation paid thereon cannot be the criteria to determine the market value for the claimants who do not agree for private negotiation. The compensation shall have to be computed in accordance with the Provisions and Statute, Rule of law, shall have to be followed.

11 The reading of the Act 2013, Rules 2014 and proviso to sub-Section 3 of Section 19B of the Maharashtra Highways Act conjointly the only irresistible conclusion that can be drawn is that for determining the compensation amount, the market value, if any, specified in the Stamp Act for registration of Sale Deed and/or Agreement of Sale as the case may be in the area of the land situated has to be considered.

12 The Executive in absence of any provision has got powers to issue Government Resolutions, Circulars, Administrative Instructions

under Article 162 of the Constitution of India. In case, no provision exists governing the field, then in that case, the Government Resolutions and Circulars can be issued, exercising executive powers. If a particular field is governed by the statute and/or rules, then the executive instructions has to be in conformity with the statutory provisions and the Rules. In exercise of executive power, the Executive cannot issue instructions, circumscribing the statutory provisions and the rules. The executive power may in absence of constitutional bar, be exercised, however, cannot be so exercised as to contravene any law relating to matter or rules having the force of law. The executive instructions cannot supplant statutory provisions or the rules.

13 The Circular dated 13th August, 2018 appears to be in consonance with the provision of Statute and Rules as referred to (supra), however, the corrigendum dated 11th September, 2018 deviates from the provisions of said statute and rules governing the principle for determination of compensation of the amount. Such an executive instructions contrary to the provision of the statute, rules cannot be sustained. The same would be beyond the purview of the powers conferred on an executive under Article 162 of Constitution of India.

14 In light of the above, the impugned corrigendum dated 11th September, 2018 is set aside.

15 As far as other prayers of the Petitioner with regard to compensation is concerned, Petitioner has a remedy to assail the award before the appropriate forum in accordance with law and as may be permissible. In writ jurisdiction, we may not embark upon the same.

16 Rule is accordingly made absolute in the above terms. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)