IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

District: Nanded

WRIT PETITION NO.11420 OF 2017

1. Sopan s/o Nagorao More,
Age: 50 years, Occu: Agri.
R/o: Mahati, Taluka Umri,
District Nanded

2. Choutrabai Raosaheb Kanole,
Age: 55 years, Occu: Agri.
R/o: As above

3. Raosaheb s/o Shankar More,
Age: 40 years, Occu: Agri.
R/o: As above

4. Govindrao s/o Bapurao Kadam,
Age: 44 years, Occu: Agri.
R/o: As above

5. Narayan s/o Gangaram More,
Age: 50 years, Occu: Agri.
R/o: As above

6. Gopichand s/o Sambhaji More,
Age: 56 years, Occu: Agri.
R/o: As above

7. Laxmibai Anandrao More,
Age: 47 years, Occu: Agri.
R/o: As above

8. Ganesh s/o Nagorao More
Died per L.Rs.
Aashabai Ganesh More,
Age: 30 years, Occu: Agri.
R/o: As above

9. Ashok s/o Madhavrao More,
Age: Major, Occu: Agri.
R/o: As above

10. Yogesh s/o Keshav More,
Age: Major, Occu: Agri.
R/o: As above

11. Sunil s/o Madhav More,
Age: Major, Occu: Agri.
R/o: As above

12. Nivrutti s/o Mahajan Devkar,
Age: Major, Occu: Agri.
R/o: As above

13. Babu s/o Satwa Shelke,
Age: 40 years, Occu: Agri.
R/o: As above

14. Balaji s/o Shankar Jadhav,
Age: 50 years, Occu: Agri.
R/o: As above

15. Venkati s/o Maroti Devkar,
Age: 35, Occu: Agri.
R/o: As above

16. Sheshrao s/o Digambarrao More,
Age: 55 years, Occu: Agri.
R/o: As above

17. Maroti s/o Digambarao More,
Age: 35 years, Occu: Agri.
R/o: As above

18. Babarao s/o Bapurao Kadam.
Age: 40 years, Occu: Agri.
R/o: As above

19. Balasaheb s/o Shyamrao More,
Age: 60 years, Occu: Agri.
R/o: As above

20. Bhujang s/o Bhujang Shelke,
Died, through L.Rs.
Ramabai Bhujang Shelke,
Age: 50 years, Occu: Agri.
R/o: As above

21. Avdhut s/o Bhivsen Shelke,
Age: 50 years, Occu: Agri.
R/o: As above

22. Gajrabai Sopan More,
Age: 60 years, Occu: Agri.
R/o: As above ……**PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Irrigation Development Department
Mantralaya, Mumbai

2. District Collector, Nanded,
District Nanded

3. Deputy Collector (Land Acquisition),
Nanded, District Nanded

4. Executive. Engineer,
Irrigation Department,
Chinchala Distribution Canal
Medium Project, Nanded ……**RESPONDENTS**

Mr. S. S. Gangakhedkar, Advocate for Petitioners
Mr. P. K. Lakhotiya, AGP for Respondent – State
Mr. S. G. Karlekar, Advocate for Respondent No.4

CORAM : KISHORE C.SANT AND
AJIT B. KADETHANKAR, JJ.
RESERVED DATE : 01.07.2026
PRONOUNCED DATE : 06.07.2026

JUDGMENT (*Per Ajit B. Kadethankar, J.*):-

. Rule. Rule made returnable forthwith. Considering the prayers in the petition and by consent of the parties, we heard the matter for final disposal.

2. **Subject-matter**: Substantial facts in this case are not under dispute. The issue is only in respect of applicability of the Act under which compensation has to be paid to the Petitioners against their acquired land. (i) award for land acquisition compensation was passed on 16-12-2013 under the provisions of the Land Acquisition Act 1894; (ii) neither the compensation was deposited in treasury nor the possession was taken till 01-01-2014 i.e. enforcement date of the Right to Fare Compensation and Transparency of Land Acquisition, Rehabilitation and Resettlement Act 2013, and (iii) the compensation was paid post 01-01-2014, that too, by installments.

On this backdrop, the Petitioners claim that the compensation be determined under the provisions of the Right to Fare Compensation and Transparency of Land Acquisition, Rehabilitation and Resettlement Act 2013 in view of provisions of its section 24.

3. **Facts in brief**:

3.1 On 18-12-2012, the State of Maharashtra issued notification u/s 4 of the Land Acquisition Act 1894 ('Old Act' for brevity) in respect of Petitioners' respective lands.

3.2 Notification u/s 6 of the Old Act was published on 04-04-2013 in

the official gazette.

3.3 Final Award under the Old Act came to be passed and published on 16-12-2013. Pertinent to note, it is explicitly mentioned in the Award that possession of the acquired properties was not taken.

3.4 The Right to Fare Compensation and Transparency of Land Acquisition, Rehabilitation and Resettlement Act 2013 ('New Act' for brevity) was introduced and was made effective w.e.f. 01-01-2014.

3.5 It is undisputed that till the date of making the New Act effective, neither any amount of compensation was paid to either of the Petitioners, nor possession was taken by the Authorities, nor the compensation was deposited in the treasury by the Authorities.

3.6 During 18-01-2014 to 16-08-2014, amount of compensation was disbursed to the Petitioners by installments.

3.7 Under these circumstances, the Petitioner filed present petition for following prayers:

A) This Writ Petition may kindly be allowed.
B) By issuing writ of mandamus or any other appropriate writ, order directions, the impugned Award dated 16.12.2013 passed by the Deputy Collector (Land Acquisition), Nanded be quashed and set aside, consequently the respondent authorities be directed to pass the Award in respect of acquired land of the petitioners in terms of provisions of Right to Fare Compensation and transparency of Land Acquisition Rehabilitation and Resettlement Act, 2013 and for

that purpose necessary directions be issued.

C) Pending hearing and final disposal of the present Writ Petition, the respondents be restrained from taking over possession of the petitioners acquired land and for that purpose necessary directions be issued.

D) Ad interim relief in terms of prayer clause "C" may kindly be granted.

E) Any other suitable and equitable relief may kindly be granted in favour of the present petitioners.

4. Submissions:

4.1 Mr. Shailendra Gangakhedkar, learned advocate representing the Petitioners submits that neither any compensation was paid nor the possession of the subject-matter lands was taken by the acquiring authority till 01-01-2014. He adds that nowhere the authorities in their reply affidavit have come with any evidence to show that the compensation was deposited in the treasury before 01-01-2014.

4.2 Mr. Shailendra Gangakhedkar, learned advocate relies upon paragraph No.363 of the Judgment and Order delivered by the Honorable Supreme Court in the case of ***Indore Development Authority Vs. Manoharlal and ors*** reported at ***AIR Online 2020 SC 346*** ('IDA case' for brevity), and submits that the Petitioners are entitled for compensation in the tune of the New Act.

4.3 Mr. Gangakhedkar further takes us to Section 24 of the New Act. He submits that during the pendency of the present Writ Petition,

possession of the respective lands of the Petitioners has been taken by the Government. However, in terms of the proviso to the Section 24 (2) of the Act, the Petitioners are entitled to get compensation in tune with the New Act.

4.4 Petitioners also rely upon the government Circular dated 09-05-2014 (Exh.D page 38) to clarify that the Petitioners are entitled to get compensation as per the New Act. Clause 3 of the Circular dated 09-05-2014 is reproduced below for convenience.

> ३. भूसंपादन अधिनियम — १८९४ मधील तरतूदीनुसार कलम ११ खालील निवाडा दि.३१/१२/२०१३ रोजी व त्यापूर्वी घोषित करण्यात आलेला आहे. परंतू घोषित निवाडयाप्रमाणे मोबदला रक्कम सर्व संबंधीतांच्या बॅंक खात्यामध्ये जमा केलेली नाही. अशा परिस्थितीत कलम २४ चे परंतू कायदयानुसार (proviso) कार्यवाही करणे बंधनकारक असून त्याप्रमाणे भूसंपादन अधिनियम १८९४ मधील कलम ४ च्या अधिसूचनेमध्ये नमूद कलेले सर्व हितसंबंधीत नवीन कायदयाच्या तरतूदीप्रमाणे मोबदला मिळण्यास पात्र राहतील.

4.5 It is another contention of Mr. Gangakhedkar that although the Petitioners accepted the award compensation, yet it was under protest.

4.6 Arguments on behalf of the Petitioners are concluded with submission that the State Authorities just to avoid the liability under the New Act, created such scenario to show that the award was passed under Old Act i.e. before 01-01-2013. It is further submitted that in clear terms of the New Act i.e. Section 24, this itself shall not absolve the authorities from compensating the Petitioners in tune with the New Act.

4.7 Mr. Pawan Lakhotia, learned Assistant Government Pleader would

rely upon the reply affidavit filed by the then Deputy Collector, Land Acquisition, PTMIW-2, Nanded. He submits that the award was evidently passed under the provisions of the Old Act and hence the compensation is rightly paid in accordance with the provisions under the Old Act.

4.8 Learned Assistant Government Pleader sought to submit that the compensation was received by the Petitioners without protest, and hence they are now estopped from raising the claim. With such submissions, Mr. Lakhotia concludes his submissions.

5. Consideration and discussion:

With able assistance of learned advocate for the Petitioners as well as learned Assistant Government Pleader, we have keenly perused the reply affidavit.

5.1 There is nothing on record to show that either possession of the subject-matter respective lands was obtained before 01-01-2014 or compensation was paid or deposited on or before 01-01-2014.

5.2 We find that the deponent of the reply affidavit merely described the sequence of the stages in the matter. These all stages and the sequence is not in dispute by anybody. It is only at the fag end of the reply, it is stated that in view of the IDA case (supra), “proceeding under the Old Act does not lapse under Old Act if compensation is deposited in treasury”.

5.3 Such vital defense must be supported by cogent evidence. Except for bare reference to the observations in IDA Case (supra), nothing is placed on record to show that the compensation was deposited in the

treasury before 01-01-2014, nor even such a definite statement is made in the reply affidavit with any details.

5.4 Mr. Lakhotia, learned Assistant Government Pleader could not dispute the provisions of law and the facts about publication of award, possession and the dates of disbursement of the compensation. However, he objected that any protest was recorded by the Petitioners while receiving the compensation. May it be, Whether the Petitioners received the compensation without protest or under protest is immaterial in the light of the clear provisions of the Section 24 of the New Act.

5.5 It is pertinent to note that this Writ Petition is not an appeal for enhancement in compensation, but the relief is sought for determination of compensation under appropriate legislation. What is disputed, is non-application of the provisions of the New Act to determine the compensation. If the law provides for determination of compensation as per New Act in the given set of facts, this is unfettered right of the Petitioners. Protest or non protest has least significance in such case. Even if for the sake of arguments it is accepted that the Petitioners do not record any protest, there can be no estoppel of the law.

5.6 Let us look into the text of Section 24 of the New Act:

24.(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,-

(a)where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b)where an award under said section 11 has been

made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

5.7 Thus, the entitlement of the Petitioners for determination of the compensation clearly has to be under the provisions of the New Act.

5.8 The controversy for applicability of Old or New Act for determination of compensation is settled by the Honorable Supreme Court in the IDA Case (supra). For convenience, text of the paragraph No.363 in the IDA Case (supra) is reproduced below:

*"**363.** In view of the aforesaid discussion, we answer the questions as under:*

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act of 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to

accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).
7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

6. **Conclusion**: Thus, for the reasons recorded above, we are of the considered view that the Petitioners have made out a successful case showing entitlement to receive compensation in accordance with the New Act. We have been apprised by Mr. Lakhotia, learned Assistant Government Pleader that the

Petitioners have already earned disbursement under the Old Act, and that there would be hardly any difference for which they might be entitled if the Writ Petition is allowed. May it be, the Authorities are under mandate to compute the compensation as per the provisions of the New Act and to pay the balance amount to the Petitioners. Hence we pass following order.

O R D E R

A. Writ Petition is allowed;

B. The respondent authorities are directed to determine and pay the amount of compensation to the Petitioners in accordance with the New Act, as expeditiously as possible, and in any event within six (6) months from today.

C. On determination of 'such' compensation as ordered supra, the same shall be paid to the Petitioners within the time stipulated above together with interest as per the New Act. Needless to mention, the amount already paid to the petitioners shall be adjusted appropriately.

7. Rule made absolute in above terms.

[AJIT B. KADETHANKAR, J.] [KISHORE C. SANT J.]

PRW