IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15282 OF 2022

Roshanbi Aziz Motiwala
Through POA Mr. Iliyas Aziz Motiwala ... Petitioner
Versus
1. The Union of India through
the Secretary, Ministry of Road Transport and
Highways & Ors. ...Respondents

WITH
WRIT PETITION NO. 15284 OF 2022

Chandrashekhar Basalingappa Barbade
Decd. through L.Rs. Vaibhav C. Barbade ... Petitioner
Versus
1. The Union of India through
the Secretary, Ministry of Road Transport and
Highways & Ors. ...Respondents

WITH
WRIT PETITION NO. 15283 OF 2022

Shantinagar Zopadpattidharak Sangh
Thru. its President & Ors. ... Petitioners
Versus
1. The Union of India through
the Secretary, Ministry of Road Transport and
Highways & Ors. ...Respondents

WITH
WRIT PETITION NO.12214 OF 2024

Suresh Baburao Madhekar
(since deceased) through L.Rs.
S.S. Madhekar ... Petitioners
Versus
1. The Competent Authority for NHAI and Special
Land Acquisition & Ors. ...Respondents

AARTI GAJANAN PALKAR
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WRIT PETITION NO.12215 OF 2024

1. Balu Santu Allati & Ors. ... Petitioners
Versus
1. The Competent Authority for NHAI and Special Land Acquisition & Anr. ...Respondents

WITH
WRIT PETITION NO. 1172 OF 2024

Narayan Sakharam Vishwasrao & Ors. ... Petitioners
Versus
1. The Competent Authority for NHAI and Special Land Acquisition Officer No.13 & Ors. ....Respondents

Dr. Ramdas Sabban aw. Ms. Arundhati Sabban, Mr. Pravin Sabban, Mr. Shrikant Kompelli, for Petitioners.

Mr. Kedar Dighe, Addl. G.P. a/w. Ms. P.N. Diwan, AGP for State/Respondent No.2 in WP/12214/2024, WP/12215/2024, WP/12284/2024 & for Respondent No.1 in WP/1172/2024.

Mr. Ashutosh Misra, for Respondent No.1-UOI in WP-15284-2022, WP-15283-2022 and WP-15282-2022.

Ms. Riya Jariwal a/w. Mr. Adesh Jadhav i/b Mr. Sagar Ladda for Respondent Nos. 1 & 3 in WP/12284/2024, WP/12215-2024, WP-12214-2024, for Respondent No.2 in WP/1172-2024 for Respondent Nos.2 & 4 in WP/15284/2022, WP/15283/2022 & WP/15282/2022.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

RESERVED ON : SEPTEMBER 29, 2024

PRONOUNCED ON : OCTOBER 25, 2024

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JUDGMENT: (*Per, Somasekhar Sundaresan J.*)

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waive service. By consent of the parties, heard finally.

2. This is a batch of Writ Petitions that involve a singular and common question of law – whether, and how, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (***"2013 Act"***) would apply to determination of compensation, provision of rehabilitation and resettlement and making available infrastructure amenities in cases of land acquisition under the National Highways Act, 1956 (***"NH Act"***).

3. The case of the Petitioners is that while the law is clear that the entitlements to rehabilitation and resettlement under the Second Schedule of the 2013 Act would be available over and above the monetary compensation under the First Schedule of the 2013 Act even to cases of land acquisition under the NH Act, their grievance is that their requests for entitlements under the Second Schedule have been rejected in a mechanical manner, purporting to reply on a Manual of Guidelines, instead of an objective application of the substantive

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provisions of the relevant schedules of the 2013 Act to the facts relating to the Petitioners requests.

4. The case of the Petitioners is that the determination of compensation under the First Schedule, the rehabilitation and resettlement under the Second Schedule and provision of infrastructure amenities under the Third Schedule of the 2013 Act would apply entirely to cases of land acquisition under the NH Act. Consequently, they submit, the Competent Authority under the NH Act has to apply his mind consciously to the facts of each case of acquisition under the NH Act and examine the circumstances of each project and determine the entitlement under the schedules to the 2013 Act. At the heart of the Petitioners' claim is a Notification issued by the Ministry of Road Transport and Highways, Government of India bearing Reference No. NH-11011/30/2015-LA dated December 28, 2017 (***"2017 Notification"***), which makes it clear that matters of land acquisition for purposes of national highways are squarely covered by the 2013 Act.

5. Before delving into the contents of 2017 Notification, it would be relevant to examine an Order dated August 28, 2015 titled Right to Fair Compensation and Transparency in Land Acquisition,

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Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015 (***"2015 Order"***), which is an important milestone in the journey of the law governing the application of the 2013 Act to the acquisitions under the NH Act.

6. A brief overview of the journey of the legislative intervention in the form of the schedules of the 2013 Act into the operation of the NH Act, would be in order. Section 105(1) of the 2013 Act provides that the 2013 Act would not apply to the enactments relating to land acquisition specified in the Fourth Schedule, subject however, to Section 105(3). The NH Act is one of the enactments listed in the Fourth Schedule. Section 105(3) provides that within one year from the date of commencement of the 2013 Act, the Central Government shall direct that any of the provisions of the Act relevant to the first three Schedules of the 2013 Act, being beneficial to the affected family, shall apply to cases of land acquisition under the enactments listed in the Fourth Schedule, with such exceptions and modifications as the direction may contain, but without reducing the compensation or dilution of the provisions of 2013 Act relating to compensation, rehabilitation and resettlement.

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7. Meanwhile, the 2013 Act was amended by the RCTLARR (Amendment) Ordinance 2014, (***"First Ordinance"***) promulgated with effect from January 1, 2015 extending the provisions of the 2013 Act in relation to computation of compensation as per the First Schedule, rehabilitation and resettlement as per the Second Schedule, and the provision of infrastructure amenities as per the Third Schedule to the enactments listed in the Fourth Schedule. The substance of the First Ordinance was extended by two more ordinances promulgated in 2015. Eventually, without Parliament having passed an amendment to the 2013 Act, the second extension in the form of the third ordinance was scheduled to lapse on August 31, 2015. Such lapsing would have resulted in an abrupt cessation of benefits of enhanced compensation, rehabilitation and resettlement to land acquisition under the enactments listed in the Fourth Schedule. Therefore, in exercise of powers under Section 113 of the 2013 Act, which empowered the Central Government to remove difficulties, the 2015 Order was passed. Orders under Section 113 of the 2013 Act may contain directions consistent with the 2013 Act that are necessary or expedient to remove difficulties.

8. Consequently, the 2015 Order explicitly sought to address

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the consequences of the ordinance being scheduled to lapse, by extending the beneficial advantage that would be available under the 2013 Act and to ensure uniformity of treatment to landowners across legislation where land was being acquired. Consequently, with effect from September 1, 2015, the 2015 Order explicitly provided that the provisions of the First Schedule, Second Schedule and Third Schedule would apply to all cases of land acquisition under the enactments specified in the Fourth Schedule, thereby firmly bringing the NH Act within the scope of the benefits that ought to be provided to landowners who would lose their land in acquisition proceedings.

9. Lest there be any doubt about the actual impact of the 2015 Order and the ordinances that preceded it, the 2017 Notification also squarely dealt with the subject. The following extracts, starting with the very opening paragraph of the 2017 Notification are noteworthy:-

> *"I am directed to say that the land required for National Highway Projects is acquired under the provisions contained in Section 3 of the National Highways (NH) Act, 1956.* ***Pursuant to the enactment of the RFCTLARR Act of 2013 and its coming into force with effect from 01.01.2014, certain provisions of the 2013 Act became applicable to the other related Acts mentioned in the Fourth Schedule, including the NH Act, 1956 with effect from 01.01.2015 in terms of Section 105(3) of the RCTLARR Act, 2013****.*
>
> *4.3 It is clear from a reading of the above that* ***requisite action in compliance of Section 105(3) was taken within one year's time with the promulgation of Ordinance No.9 of 2014 dated 31.12.2014****. This* ***position continued with the issuance of two Ordinances in 2015, which was thereafter followed by the 'Removal of Difficulties Order" without any break in time****. As such, operation of the provisions of RFCLARR Act, 2013, which came into effect from 01.01.2014,* ***has been given effect in respect of the enactment specified in the Fourth Schedule (including the NH Act, 1956) with effect***

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from 01.01.2015, in compliance of sub-section (3) of Section 105 of the RFCTLARR Act, 2013.

4.4. Following the notification of the aforesaid Ordinance, the Ministry of Road Transport & Highways issued a letter dated 29.04.2015 whereby the select provisions of RFCTLARR Act, 2013 were made applicable to the NH Act, 1956 with effect from 01.01.2015. A conjoint reading of the aforesaid shows that the Ordinance (Amendment) remained in force till 31st August, 2015. 'Removal of Difficulties Order' was issued by the Department of Land Resources on 28th August, 2015, which took effect from 01.09.2015. However, since the date of application of the selected relevant provisions of the RFCTLARR Act, 2013 to the NH Act, 1956 was 01.01.2015 in terms of the Ordinance (Amendment) No.9 of 2014, remains an unambiguous and accepted position that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule have been made applicable to all cases of land acquisition under the NH Act, 1956, i.e. the enactment specified at Sr.No.7 in the Fourth Schedule to the RFCTLARR Act, with effect from 01.01.2015."

[Emphasis Supplied]

10. It will be seen from the plain reading of the foregoing that even the 2017 Notification evidently acknowledges that the position obtaining from the First Ordinance, came to be protected and has been available right from that date. It further records that the said benefits of the three Schedules to the 2013 Act would have lapsed on August 31, 2015, but on August 28, 2015, in exercise of the powers under Section 113 of the 2013 Act, the 2015 Order came to be passed keeping such entitlements intact. The 2017 Notification essentially compiled the various Office Memorandum, Circulars, Guidelines, Orders and Clarifications in two Annexures. Stating that the entire issue was examined afresh in consultation with the Learned Attorney General of India, the Ministry of Road Transport & Highways issued comprehensively revised guidelines in supersession of the various

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contents of the guidelines issued until then.

11. In this process, the 2017 Notification describes in significant detail, the contents of each of the three ordinances which explicitly made the subject matter of determining compensation, provision of rehabilitation and resettlement and provision of infrastructural amenities in accordance with the first three Schedules of the 2013 Act, in the case of all land acquisition under the NH Act.

12. Various operational clarifications were set out in the 2017 Notification but they are not relevant for purposes of adjudicating this batch of Petitions. The 2017 Notification also made clear that the benefits flowing from the aforesaid three schedules are the subject matter of the benefits that ought to flow to cases of land acquisition under the NH Act and not the application of other provisions such as Section 24 of the 2013 Act, which provides for lapse of acquisition should compensation not be paid and possession not be taken.[1]

13. Purely for convenience, in this judgment, the facts referred to are taken from Writ Petition No.15282 of 2022 (*Roshanbi Aziz Motiwala Vs. Union of India & Ors.*). In the facts of that case, the

[1] *The law on interpreting Section 24 of the 2013 Act was declared in the case of Indore Development Authority V/s. Manoharlal & Ors., (2020) 8 SCC 129.*

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preliminary acquisition notification under Section 3-A of the NH Act was published on July 9, 2013 in respect of acquisition of land for purposes of the Pune-Solapur National Highway No. 9. The Competent Authority under the NH Act passed an Order under Section 3-G determining the compensation payable for the acquisition vide orders dated May 8, 2015 and July 15, 2017. The main order came to be passed on May 8, 2015 while on July 15, 2017, a supplementary order came to be passed. The Petitioners' primary claim is for rehabilitation and resettlement benefits under the Second Schedule and infrastructure amenities under the Third Schedule of the 2013 Act, in addition to the compensation they have received under the First Schedule. They submit that 26 project affected and displaced families have been referred to in the schedule to the compensation order passed under Section 3-G of the NH Act.

14. Towards this end, an application asking for benefits under the Second Schedule of the 2013 Act came to be filed on June 26, 2019. Such benefits not being given to the Petitioners, Writ Petition No.2637 of 2021 came to be filed before this Court and a Division Bench directed, by an order dated September 16, 2021, the Competent Authority under the NH Act to decide such application expeditiously

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and within a period of four months.

15. On March 23, 2022 the Competent Authority rejected the application dated September 28, 2021 that had been made by the Petitioners pursuant to this Court's order.

16. It is a challenge to such rejection of benefits by the Competent Authority that forms subject matter of these Petitions. All the other Petitions have had a similar journey with a variation in the number of project affected persons and their families. All but two of the petitions relate to the same National Highway No. 9, with variation in the dates of the events described above. Writ Petition No. 12215 of 2024 and Writ Petition No. 1172 of 2024 relate to National Highway No. 50 connecting Pune and Nashik. Such variations do not have a bearing on the adjudication of the issues emerging from these Petitions.

17. It is seen from the record that the Competent Authority has expressed a clear view that only payment of compensation for land acquisition under the NH Act would be covered by the provisions of the First Schedule of the 2013 Act. It has been ruled that there is no element of interest payment as provided under the 2013 Act that would

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be applicable to acquisitions under the NH Act. Likewise, the Competent Authority has ruled that a Manual of Guidelines on land acquisition for national highways has been published and according to the said guidelines, the family of the landowner would not be entitled to any benefits as contemplated in the 2013 Act. So also, the Competent Authority has explicitly ruled that there is no question of rehabilitation being provided to the affected families of the landowners in addition to the payment of compensation.

18. The Manual of Guidelines came to be published in December 2018. Such a manual itself purports to only play the role of an enabling guide to officials involved in land acquisition for national highways. The Manual of Guidelines itself points out that the document was merely aimed at providing clarity on issues covered by the 2017 Notification. There is nothing in it that gives it the character of an instrument of law that would somehow override or supersede or render inapplicable the legal position obtaining from the 2013 Act read with the 2015 Order issued under Section 113 of the 2013 Act, and the 2017 Notification.

19. In fact, in the preface scripted by the author of the Manual,

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Mr. Y.S. Malik, Secretary, Road Transport and Highways has stated the following :-

> *"Land Acquisition constitutes the first basic requirement for capacity addition of an existing road notified as a National Highway or development of a Green-field National Highway.* ***The introduction of RFCTLARR Act, 2013 and application of its select provisions (First, Second and Third Schedules) with effect from 01.01.2015 for acquisition of land under the National Highways Act, 1956 has added an altogether new dimension for compensation to the landowners.***
>
> *As per the information gathered from the National Highways Authority of India (NHAI), the average cost of land acquisition was about Rs. 80.00 Lakh per Hectare before 01.01.2015, which has now gone up to about Rs. 3.60 crore per Hectare. Out of a total expenditure of Rs. 1,52,000 crore during the period of last four years (April 2014 to March 2018), the NHAI has spent an amount of Rs. 81,000 crore on the Land Acquisition as against an expenditure of about Rs. 41,000 crore on the Civil Works.*
>
> *Introduction of an altogether new regime for determination of compensation for acquisition of land under the RFCTLARR Act of 2013 and its application to the NH Act, 1956, led to a number of ambiguities and lack of clarity in the initial stages. The sheer size and scale of expenditure on Land Acquisition for construction and development of National Highways led to a lot of concerns. Notification and application of Multiplication Factor, method of calculation of the total compensation amount, and levy of Administrative Charges for LA for the National Highways by about 13 states, all varying from state to state, emerged as another set of major concerns.*
>
> *It was at this stage that the* ***issues were identified through an in-depth analysis and a set of Comprehensive Policy Guidelines were issued on the subject vide Ministry's letter dated 28.12.2017. However, a number of issues have been identified requiring further clarity on the subject. Therefore, need arose for addressing these related issues, with updates and legal opinions, which are being addressed through this Manual of Guidelines for all concerned, be it the DPR Consultants, the officers of MoRTH and its project implementing agencies (NHAI, NHIDCL, BRO and the State PWDs), or the Competent Authorities appointed as such for undertaking the Land Acquisition for NH projects****. I have made an attempt to cover as much of the ground as possible till date.* ***The need for its further updates cannot be ruled out as we go along. I hope all concerned associated with the process of Land Acquisition for the National Highways and associated purposes find it useful in undertaking the process forward in a seamless manner.****"*
>
> ***[Emphasis Supplied]***

20. The Manual indeed explains what displacement would mean and what resettlement and rehabilitation would mean. In our opinion,

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it would be vital on the part of the Competent Authority to explicitly deal with the relevant Schedules of the 2013 Act, apply them to the facts of each individual case of acquisition, and state what element of the rehabilitation and resettlement under the Second Schedule and provision of infrastructure facilities under the Third Schedule would be part of the entitlements due, and what part would not lead to any entitlements. The approach would necessarily have to be that the ingredients of the Second Schedule and the Third Schedule must be applied to the facts of each case to then rule on what facets of rehabilitation and resettlement would be attracted and what facets would not be attracted, with detailed reasons.

21. From a plain reading of the orders impugned in these Petitions, it is indeed evident that such an exercise has not been undertaken. Specifically, portions of the Manual have been quoted in mechanical application, without an articulation of how the benefits flowing from the Second Schedule and the Third Schedule would, or would not be available to the Petitioners. It is a matter of record that the Petitioners have no grievance about the computation and payment of compensation in terms of the First Schedule. The core grievance is essentially about rehabilitation and resettlement benefits that the

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Petitioners seek to enforce as their entitlements under the Second Schedule, over and above the compensation already paid to them.

22. Specifically, the Petitioners contend that they are indeed displaced persons and are therefore entitled to provision of housing owing to displacement under Item 1 of the Second Schedule; choice of annuity or employment under Item 4 of the Second Schedule; subsistence grant for affected families under Item 5 including a higher grant for SC/ST; transportation cost for shifting of families and belongings under Item 6; one time financial assistance towards cattle shade or petty shop under Item 7; one-time grant for artisans and small traders under Item 8; one-time resettlement allowance under Item 10; and reimbursement of stamp duty and registration fees at actuals.

23. The footnote to the Second Schedule makes it abundantly clear that such entitlements would be over and above the entitlement to compensation as provided in the First Schedule. In our opinion, it is necessary for such specific pleas to be specifically addressed by reference to the relevant provision and ingredients of the said Second Schedule and their application to the facts of each case. Such pleas cannot be summarily disposed of by purported invocation of the

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Manual, without consideration of the legal provisions of the first three Schedules to the 2013 Act.

24. As seen above, the author of the Manual has himself stated that the Manual is not conclusive and in fact, further issuance of guidelines may be necessitated. Such guidelines would only be developed by experience gained from the grassroots. If the Manual were to be treated as if it is a substitute for the 2013 Act, instead of being an aid and guide to that law, there would be no further need for further guidelines to be issued in future – something that the Manual's author has recognised upfront.

25. Consequently, in our opinion, it would be incumbent on the Competent Authorities involved in the acquisitions covered by these Petitions, to consciously apply their mind to the facts of each case and apply the provisions of the Second Schedule and the Third Schedule of the 2013 Act to such facts, and adjudicate and rule on the benefits being provided. A mechanical and generic reference to the Manual to simply reject the representations of the Petitioners is neither in consonance with the requirements of law, nor in line with the directions issued by this Court when it sent the matter to the Competent

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Authorities asking them to deal with the representations and objections of the Petitioners.

26. In the light of the above discussion, we are of the clear opinion that the Petitioner's application for entitlement to rehabilitation and resettlement over and above the monetary compensation are required to be decided afresh. However, in so observing, we have not, and do not intend to have, pronounced upon any elements of merits and facts involved in any of these Petitions. All contentions on merits of the case of all the parties are expressly kept open, with a direction to the Competent Authority to appropriately adjudicate and rule upon them.

27. Consequently, these Writ Petitions are finally disposed of with following order:-

(a) The rejections of the objections and representations filed by the respective Petitioners before the respective Competent Authorities is hereby quashed and set aside, with a direction that the representations made by the Petitioners, with particular regard to the entitlements claimed under the Second Schedule of

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the 2013 Act, and entitlements, if any, under the Third Schedule of the Act, shall be decided by the Competent Authorities by way of reasoned orders;

(b) The Petitioners are given liberty to file with the relevant Competent Authority, specific representations to demonstrate their claimed entitlements under the Second Schedule and the Third Schedule, within a period of two weeks from the date on which this judgment and order is uploaded on this Court's official website; and

(c) The Competent Authorities shall decide such representations as expeditiously as possible, and make every endeavour to pass the reasoned orders as directed, within a period of 12 weeks from the receipt of the representations.

28. With the issuance of such directions, theses Writ Petitions are disposed of in the aforesaid terms. Rule is made absolute in the aforesaid terms. No costs.

[SOMASEKHAR SUNDARESAN, J.] [G. S. KULKARNI, J.]

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