

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.316 OF 2016

Pune Municipal Corporation,)
Through the Municipal Commissioner,)
Shivaji Nagar, Pune.) ...Applicant

....Versus....

- 1). Mr.Rajeev L. Sangtani,)
Age : 39 Years, Occupation Business)
R/at 65, Koregaon Park, Pune)
)
- 2). Ms.Nina L. Sangtani,)
Age : 43 years, Occupation Business)
R/at 65, Koregaon Park, Pune)
)
- 3). Mrs.Manisha Nitesh Idnanee @)
Manisha L. Sangtani)
Age : 41 Years, Occupation Business)
R/at 4, Salisbury Park, Pune - 37)
)
- 4). M/s.Atur Sangtani & Associates)
A Partnership Firm, duly registered)
under the Indian Partnership Act, 1932)
Through its Partner -)
Mr.Rajiv L. Sangtani, Having)
Address at : Atur Chambers, 2-A)
Moledina Road, Cap, Pune – 411 001)
)
- 5). The Special Land Acquisition)
Officer No.16, Pune)
)
- 6). The Collector, Pune) ...Respondents

WITH

CIVIL APPLICATION NO.459 OF 2017
IN
CIVIL REVISION APPLICATION NO.316 OF 2016

- 1). Mr.Rajeev L. Sangtani,)
Age : 39 Years, Occupation Business)
R/at 65, Koregaon Park, Pune)
)
 - 2). Ms.Nina L. Sangtani,)
Age : 43 years, Occupation Business)
R/at 65, Koregaon Park, Pune)
)
 - 3). Mrs.Manisha Nitesh Idnanee @)
Manisha L. Sangtani)
Age : 41 Years, Occupation Business)
R/at 4, Salisbury Park, Pune - 37)
)
 - 4). M/s.Atur Sangtani & Associates)
A Partnership Firm, duly registered)
under the Indian Partnership Act, 1932)
Through its Partner -)
Mr.Rajiv L. Sangtani, Having)
Address at : Atur Chambers, 2-A)
Moledina Road, Cap, Pune – 411 001)
-Applicants

IN THE MATTER BETWEEN :

Pune Municipal Corporation,)
Through the Municipal Commissioner,)
Shivaji Nagar, Pune – 411 005)

...Petitioner

....Versus....

- 1). Mr.Rajeev L. Sangtani,)
Age : 39 Years, Occupation Business)
R/at 65, Koregaon Park, Pune)
)
- 2). Ms.Nina L. Sangtani,)
Age : 43 years, Occupation Business)
R/at 65, Koregaon Park, Pune)
)

- 3). Mrs.Manisha Nitesh Idnanee @)
 Manisha L. Sangtani)
 Age : 41 Years, Occupation Business)
 R/at 4, Salisbury Park, Pune - 37)
)
- 4). M/s.Atur Sangtani & Associates)
 A Partnership Firm, duly registered)
 under the Indian Partnership Act, 1932)
 Through its Partner -)
 Mr.Rajiv L. Sangtani, Having)
 Age : 38 Years, Occupation Business)
 R/at 65, Koregaon Park, Pune.)
)
- 5). The Special Land Acquisition)
 Officer No.16, Pune)
)
- 6). The Collector, Pune) ...Respondents

Mr.J.P. Sen, Senior Counsel I/b Mr.Abhijit P. Kulkarni with Mr.M.M. Adujar for the Applicant.

Mr.P.S. Dani, Senior Counsel with Mr.S.R. Ganbavale I/b Mr.Sangramsingh Yadav for the Respondent No.1.

Mr.A.R. Patil, A.G.P. for the Respondent Nos.5 and 6.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 29TH AUGUST, 2018
PRONOUNCED ON : 19TH OCTOBER, 2018

JUDGMENT :-

1. By this civil revision application filed under section 115 of the Code of Civil Procedure, 1908, the applicant has impugned the order dated 11th April, 2016 passed by the learned *Ad-hoc* District Judge – 2, Pune below Exhibit – 24 in L.R. No.162 of 2015 which was filed by the Pune Municipal Corporation, an Acquiring Body

contending that the reference made by the respondents under section 18 of the Land Acquisition Act, 1894 (for short "the Act of 1894) was not tenable and the learned *Ad-hoc* District Judge – 2, Pune did not have jurisdiction to entertain the said reference.

2. The Civil Application No.459 of 2017 is filed by the applicants (original defendants) herein *inter-alia* praying that the order dated 20th June, 2016 thereby staying further hearing of L.R. No.162 of 2015 be vacated and for an order and direction against the Pune Municipal Corporation to pay an amount of Rs.52,71,50,268/- being the balance amount allegedly payable under the award dated 22nd December, 2014 during the pendency of this civil revision application. Some of the relevant facts for the purpose of deciding the civil revision application and the civil application are as under :

3. The applicant is a local authority and also is a planning authority under the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short "the Act of 1966") in the city of Pune. The respondent nos.1 to 4 are the original owners of the suit land.

4. The suit land was initially reserved for garden in the development plan in the city of Pune of the year 1987. On an application made by the owners to cancel the reservation on 22nd October, 1992, the State Government issued the directions for

modification of the plan to convert the reservation of the subject plot into a residential user.

5. On 22nd December, 1992, the General Body of the applicant passed a resolution to de-reserve the suit plot vide its Resolution no.384. The final notification was issued in the Government Gazette on 18th February, 1993 granting final approval for de-reservation of the suit plot.

6. Some of the members of public filed a Writ Petition bearing No.2087 of 1993 in this Court impugning the said resolution published in the Government Gazette on 18th February, 1993. The said writ petition filed by those members of public viz. Shri Rusi Kapadia & Others came to be allowed. The action of de-reservation of the suit plot was set aside by this Court. The respondent nos.1 to 4 filed a Special Leave Petition which was converted into a Civil Appeal Nos.8274 and 8275 of 2003. On 19th October, 2005, the Hon'ble Supreme Court directed the individual persons to deposit the amount of compensation for land acquisition with the State Government within six months from the said order dated 13th May, 2005. The Standing Committee thereafter passed a resolution on 19th October, 2005 requesting the General Body of the applicant to pay compensation for the suit plot from the municipal funds.

7. On 13th December, 2016, the Standing Committee of the applicant passed a resolution granting approval of the suit land . The applicant also made an application before the Hon'ble Supreme Court for seeking permission to acquire the suit land by issuing a fresh notification. On 11th February, 2008, the Hon'ble Supreme Court disposed of the said application filed by the applicant and granted liberty to the applicant to acquire the suit land by issuing a fresh notification.

8. On 22nd January, 2009, the proposal for acquisition of the suit land was transferred to the Special Land Acquisition Officer for further action. On 22nd July, 2011, a notification for acquisition of the suit land came to be published in the Official Gazette. The said notification was also published in the local newspaper dated 26th July, 2011. The respondent nos.1 to 4 thereafter filed a Writ Petition No.7986 of 2011 in this Court impugning the said notification dated 22nd July, 2011 and for other reliefs. This Court disposed of the said writ petition and held that it would not be appropriate to entertain the writ petition as the remedy to raise the objections was before the Land Acquisition Officer. This Court directed the Land Acquisition Officer to consider the said objections in accordance with law and in accordance with the order passed by the Hon'ble Supreme Court in

the earlier round of the writ petition.

9. On 3rd February, 2015, the respondent nos.1 to 4 filed the objections under section 5(a) of the Act of 1894 before the Special Land Acquisition Officer – 16, Pune. The applicant filed its reply to the said objections filed by the respondent nos.1 to 4. The Divisional Commissioner, Pune Division, Pune granted sanction for issuance of the notification under section 6 of the 1894 Act. The respondent nos.1 to 4 challenged the said approval by filing a Writ Petition No.11257 of 2012 in this Court. The said writ petition is pending. In the said writ petition, this Court passed an order directing that the possession of the suit land shall not be taken without making payment of compensation that would be determined under the award. This Court also directed the applicant to submit as to whether the applicant was ready to make payment of compensation declared on 22nd December, 2014 and quantified the amount of Rs.71,57,50,655/- and if was ready to make such payment, within what period the applicant would make such payment.

10. The applicant however, filed an affidavit on 7th February, 2015 contending that determination of the award by the Special Land Acquisition Officer was on much higher side than the market price of the suit plot. It was contended by the applicant that the

amount of compensation could not have exceeded Rs.18,83,88,089/- after calculating the same as per the provisions of “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” (for short “the Act of 2013”). The applicant thereafter made a representation before the Collector, Pune, requesting him to reconsider the award.

11. This Court thereafter heard Writ Petition No.11257 of 2012 filed by the respondent nos.1 to 4 and Writ Petition (Stamp) No.4858 of 2015 filed by the applicant. The parties informed this Court that the respondent nos.1 to 4 had already submitted the reference to the District Collector, Pune. This Court recorded the statement made by the applicant in the order dated 8th October, 2015 that it would deposit undisputed amount with the Competent Authority. This Court deferred the hearing of the writ petition till the finding of the Reference Court on the quantum was rendered. This Court directed that the Reference Applicant be decided preferably on or before 30th November, 2016. The applicant raised an objection about the maintainability of the Reference Application filed by the respondent nos.1 to 4 under section 18 of the Act of 1894.

12. The applicant also filed an application (Exhibit – 24) on 6th February, 2016 *inter-alia* praying for dismissal of the said land

Reference Application filed by the respondent nos.1 to 4 under section 18 of the Act of 1894. The respondent nos.1 to 4 filed the reply to the said application on 16th February, 2016 before the learned *Ad-hoc* District Judge in the said application (Exhibit – 24). By an order dated 11th April, 2016, learned *Ad-hoc* District Judge – 2, Pune rejected the said application (Exhibit – 24) filed by the applicant holding that the reference made by the respondent nos.1 to 4 under section 18 of the Act of 1894 was maintainable before that Court on the ground that the provisions of the Act of 2013 were not applicable in the case at hand. Learned *Ad-hoc* District Judge – 2, Pune referred to the order dated 8th October, 2015 passed by this Court in Writ Petition No.11257 of 2012 with Writ Petition (Stamp) No.4858 of 2015 and held that after considering the provisions of the Act of 1894 and also the provisions of the Act of 2013, this Court had given a specific direction for making the reference under section 18 of the Act of 1894 before the learned Principal District Judge.

13. The learned *Ad-hoc* District Judge – 2, Pune also adverted to section 24 of the Act of 2013 and held that since the award under section 11 of the Act of 1894 had been made, then such proceedings shall be continued under the provisions of the Act of 1894 as if the said Act had not been repealed. learned *Ad-hoc* District Judge – 2,

Pune held that in view of the provisions of section 24 of the Act of 2013, the reference under section 18 of the Act of 1894 was maintainable before the learned *Ad-hoc* District Judge – 2, Pune as the entire acquisition proceedings and the award were passed under the provisions of the Act of 1894. Being aggrieved by the said order and judgment dated 11th April, 2016 passed by the learned *Ad-hoc* District Judge – 2, Pune, the applicant preferred this civil revision application.

14. Mr.J.P. Sen, learned senior counsel appearing for the applicant Corporation invited my attention to some of the exhibits annexed to the civil revision application and would submit that in view of section 64 of the Act of 2013, no reference was maintainable for enhancement of compensation or for any other relief. He submits that in any event the application, if any, for enhancement of compensation could be referred by the Collector under the said provisions for determination of the authority. He submits that the said provision of section 64 of the Act of 2013 has to be read with section 51 of the Act of 2013 and thus the application for enhancement of compensation, if any, could be determined only the the “Land Acquisition, Rehabilitation and Resettlement Authority” who had exclusive jurisdiction and power in the matters relating to the Land Acquisition,

Compensation, Rehabilitation and Resettlement.

15. It is submitted that the reference thus made by the respondent nos.1 to 4 under section 18 of the Act of 1894 was not at all maintainable. Learned *Ad-hoc* District Judge – 2, Pune thus had no jurisdiction to entertain the said reference filed under section 18 of the Act of 1894. He submits that the learned *Ad-hoc* District Judge – 2, Pune ought to have allowed the said application (Exhibit – 24) filed by the applicant. Learned senior counsel submits that the learned *Ad-hoc* District Judge – 2, Pune has exceeded his jurisdiction by deciding to entertain the said reference filed under section 18 of the Act of 1894 and thus the said order and judgment deserves to be quashed and set aside.

16. It is submitted by the learned senior counsel that in this case, the award was rendered by the Special Land Acquisition Officer admittedly on 22nd December, 2015. The said award also indicates that the same was under the provisions of Act of 2013 for a sum of Rs.71,57,50,655/- in favour of the respondents. He invited my attention to the order dated 8th October,2015 passed by this Court in Writ Petition No.11257 of 2012 filed by the respondents and Writ Petition (Stamp) No.4858 of 2015 filed by the petitioner recording the statement of the petitioner that it would deposit the undisputed

amount with the competent authority and deferred the hearing of the said writ petition till the finding of the reference Court was received. This Court directed that the reference to be decided as expeditiously as possible and preferably on or before 30th November, 2016.

17. The petitioner thereafter filed an objection to the maintainability of the said reference under section 18 of the Land Acquisition Land, 1894 filed by the respondents by filing an application (Exhibit - 24) *inter-alia* praying for dismissal of the land reference application filed by the respondents. The said application filed by the petitioner came to be dismissed on 11th April, 2016. This Court by an order dated 14th October, 2016 stated that no clarification of the earlier order passed by this Court was required.

18. Learned senior counsel for the petitioner placed reliance on section 24(1)(a) of the Act of 2013 and would submit that under the said provision if no award was rendered on the date of enactment of the said Act, all provisions of the said Act of 2013 would apply. He placed reliance on section 63 of the Act of 2013 and would submit that jurisdiction of the said Court is barred under the said provision. Under section 64, a reference can be made to the authority against the order of collector which is almost identical to the section 18 of the Land Acquisition Act, 1894. He submits that the said authority has

been now already constituted for the purpose of deciding the claim of enhancement of the compensation.

19. Learned senior counsel placed reliance on section 114 of the Act of 2013 and would submit that under the said provision, Land Acquisition Act, 1894 is already repealed subject to sub-section (2) of section 114. He submits that question of entertaining any reference application under section 18 for enhancement of claim under the provision of Land Acquisition Act, 1894 thus does not arise. The said applications were not at all maintainable.

20. Learned senior counsel placed reliance on the judgment of Madhya Pradesh High Court in case of **Jeevanlal Mishra & Others vs. State of M.P. & Others, 2014(4) M.P.L.J. 675** and in particular paragraphs 6, 7, 9 and 10 in support of the submission that all the proceedings initiated under the Land Acquisition Act, 1894 on the commencement of Act 2014 would lapse if the award has been made five years or more prior to commencement of the 2013 Act. He submits that though the award in this case was rendered after enactment of the Act of 2013, the respondents could not invoke the provisions of section 18 of the Land Acquisition Act, 1894 for the purpose of seeking enhancement of the claim in the land acquisition proceedings.

21. Learned senior counsel placed reliance on the judgment of this Court in case of **Sakharbai Haribhau Shelke (since deceased) through her L.Rs. Smt.Rajani Vishwas Joglekar & Others vs. Sub Divisional Officer, Shrirampur & Others, 2014(4) Mh.L.J. 794** and in particular paragraphs 10 to 12 in support of his submission that since the provision of Land Acquisition Act, 1894 had been repealed by the Act of 2013, the provision of new Act will have to be looked into to determine whether and how far the new Act evinces a contrary intention affecting operation of section 6 of the General Clauses Act. He submits that the application for enhancement of the condition thus was governed, under the provisions of Act of 2013 and not under section 18 of the Land Acquisition Act, 1894.

22. Learned senior counsel invited my attention to the impugned order and in particular paragraphs 5 to 11 and would submit that the findings rendered by the reference Court is *ex-facie* contrary to the provisions of section 24 of the Act of 2013 and contrary to the principles of law laid down by this Court in case of **Sakharbai Haribhau Shelke (since deceased) through her L.Rs. Smt.Rajani Vishwas Joglekar & Others** (supra) and also the judgment of Madhya Pradesh High Court in case of **Jeevanlal Mishra & Others** (supra). He submits that the findings rendered by

the reference Court while rejecting the application filed by the petitioners are totally absurd.

23. Learned senior counsel for the applicant invited my attention to the order dated 8th October, 2015 passed by the Division Bench of this Court in Writ Petition No.11257 of 2012 with Writ Petition (Stamp) No.4858 of 2015 directing the parties who are parties to this civil revision application to appear before the Principal District Judge on 17th November, 2015 and directing that if the reference application was not yet forwarded, the Special Land Acquisition Officer – 16, Pune shall forward the same immediately. It was further directed that the reference under section 18 of the Act of 1894 shall be decided expeditiously as early as possible and preferably on or before 30th November, 2016. The Division Bench of this Court also directed the applicant herein to deposit the amount of Rs.12,33,48,089/- within a period of six weeks from the date of the said order in the Special Land Acquisition Officer – 16, Pune. This Court issued further directions in the said order about the delivery of possession and for withdrawal of the said amount by the respondent no.1 herein.

24. It is submitted by the learned senior counsel for the applicant that though the land acquisition award was admittedly

issued after 1st January, 2014, this Court in the said order dated 8th October, 2015 proceeded on the erroneous premise that the suit award was issued under section 11 of the Act of 1894. He submits that the Division Bench of this Court in the said order, did not decide the issue as to whether the application filed by the respondent no.1 for seeking reference under section 18 of the Act of 1894 was maintainable or not. The said application under section 18 of the Act of 1894 was already pending on the date of the said order passed by the Division Bench of this Court. There was no adjudication on the issue of maintainability of the said reference under section 18 of the Act of 1894 in the said order passed by the Division Bench of this Court on 8th October, 2015. The said writ petition is still pending before this Court.

25. Mr.Dani, learned senior counsel for the respondent no.1 on the other hand submits that the applicant herein had filed a writ petition challenging the quantification of the compensation awarded by the Special Land Acquisition Officer. The respondents had filed a writ petition challenging the entire acquisition proceedings. He placed reliance on the order dated 8th October, 2015 passed by the Division Bench of this Court in Writ Petition No.11257 of 2012 with Writ Petition (Stamp) No.4858 of 2015 and more particularly

paragraphs 2, 7 and 13(i) and would submit that the Division Bench of this Court in the said order between the same parties relating to the suit land in question had already directed the Principal District Judge to assign the reference to appropriate Court. It was further directed that if the reference application was not yet forwarded, the Special Land Acquisition Officer – 16 shall forward the same immediately. The Division Bench had directed that the reference under section 18 of the Act of 1894 shall be decided as expeditiously as possible and preferably on or before 30th November, 2016. He submits that the applicant has already taken advantage of the said order and thus this is not a fit case for interference with the impugned order passed by the learned *Ad-hoc* District Judge – 2, Pune rejecting the application filed by the applicant, considering the conduct of the applicant and the spirit of the order passed by the Division Bench of this Court.

26. Learned senior counsel placed reliance on section 24(1) (a) of the Act of 2013 and would submit that if no award under section 11 of the Act of 1894 is made as on 1st January, 2014, then the provisions of the Act of 2013 relating to determination of the compensation shall apply. He submits that in view of section 24(1)(b) of the Act of 2013, since the award under section 11 of the Act of

1894 has been made after 1st January, 2014, proceedings shall continue under the provisions of the Act of 1894 as if the said Act had not been repealed.

27. Learned senior counsel placed reliance on section 24(2) of the Act of 2013 and would submit that in certain circumstances set out therein, the land acquisition proceedings are deemed to have lapsed and appropriate Government is empowered to initiate the acquisition proceedings of such land afresh in accordance with the provisions of the Act of 2013. In such an event, the entire proceedings have to be abrogated. He submits that in this case, the situation contemplated under section 24(2) of the Act of 2013 has not arisen.

28. Learned senior counsel placed reliance on section 25 of the Act of 2013 and would submit that under the said provision, the Collector is under an obligation to make an award within a period of 12 months from the date of publication of the declaration under section 19 of the Act of 2013 and if no award is made within that period, the entire proceedings for acquisition of the land are lapsed subject to the powers of the appropriate Government to extend the period of 12 months if the circumstances exist justifying the same. He submits that the procedure for acquisition of the land is prescribed

under sections 11, 12, 15 to 19 of the Act of 2013. He placed reliance on sections 26 to 30 of the Act of 2013 and would submit that under those provisions, the procedure for determination of compensation, parameters to be considered in determination of the award, award of solatium is provided.

29. Learned senior counsel placed reliance on section 31 of the Act of 2013 and would submit that under the said provision, the Collector is empowered to pass rehabilitation and resettlement award for each affected family in terms of the entitlements provided in the Second Schedule. He refers to the First Schedule appended to the Act of 2013 read with section 30(2) in support of the submission that the said provision clearly applies to the proceedings of acquisition initiated under the provisions of the Act of 2013 and cannot be applied to the land already acquired under the provisions of the Act of 1894 and an award is already rendered under the provisions of the Act of 1894. He placed reliance on section 64 of the Act of 2013 and would submit that the reference to the authority made under the said provisions for enhancement of claim also refers to the awards passed under the Act of 2013. The said provision refers to the entire procedure for determination of enhancement of compensation. He submits that the said provision also refers to the

rights of rehabilitation and resettlement under Chapters V and VI which would obviously not apply to the land acquisition under the provisions of the Act of 1894.

30. It is submitted that the said provision clearly provided for enhancement of compensation to only such land acquisition proceedings which had started and culminated into an award under the provisions of the Act of 2013. The respondent no.1 did not have benefit of the other provisions of the Act of 2013 nor any benefit of Schedule II can be given to the respondent no.1 i.e. benefit of rehabilitation and resettlement under Chapters V and VI.

31. Learned senior counsel placed reliance on section 6 of the General Clauses Act and would submit that since the right of the respondent no.1 to seek enhancement of the claim had already accrued prior to enactment of the Act of 2013, such rights already accrued in favour of the respondent no.1 cannot be taken away since the Act of 2013 did not provide for a contrary provision.

32. Learned senior counsel placed reliance on the preamble of the Act of 2013 and would submit that under the Act of 2013, better rights are given to the land owners. Section 24(1) of the Act of 2013 does not prevent making of an award. He submits that if all the provisions of the Act of 2013 are made applicable as canvassed by

the learned senior counsel for the applicant to the land acquisition proceedings initiated under the Act of 1894 and the award having been rendered under section 11 thereof, the provisions of sections 4, 6 and 9 of the Act of 1894 would become redundant. He submits that this Court has to consider the legislative intent for enacting the Act of 2013 while tracing the remedy of the land owner for the purpose of seeking enhancement of claim for compensation made under the award not accepted by such landowner.

33. It is submitted that the right of making a reference under section 18 of the Act of 1894 is crystallised as on the date of issuance of the notification under section 4 of the Act of 1894 and cannot be taken away by virtue of section 6 of the General Clauses Act. He placed reliance on section 114 of the Act of 2013 which provides for repeal and savings and would submit that under the said provision, the rights already accrued in favour of the respondent no.1 under the Act of 1894 are protected and not taken away. The reference under section 18 of the Act of 1894 applied by the respondent no.1 thus would be maintainable.

34. Learned senior counsel for the respondent no.1 placed reliance on the judgment of the Hon'ble Supreme Court in case of **Soorajmull Nagarmull vs. State of Bihar & Ors., (2015) 10 SCC**

270 and in particular paragraph 11 in support of the submission that there is inconsistency between section 24(1)(a) and section 24(2) of the Act of 2013. He placed reliance on the judgment of this Court in case of **Ashok Narayan Lande vs. State of Maharashtra, 2018 SCC OnLine Bom.1763** and in particular paragraphs 9 to 12 holding that even though the proceedings have commenced under the old Land Acquisition Act, if no award was made under section 11 of that Act after it is repealed, an award still could be made under section 11 of the old Land Acquisition Act, but the compensation ought to be calculated as per the provisions of the new Act as mentioned in section 24(1)(a) of the Act of 2013. It is submitted that in this case, the land acquisition award was made under section 11 of the Act of 1894 though was made after 1st January, 2014, the reference filed by the respondent no.1 under section 18 of the Act of 1894 would be maintainable, whereas the compensation would be considered under the provisions of the Act of 2013.

35. Learned senior counsel for the respondent no.1 placed reliance on the judgment of this Court in case of **Agricultural Produce Marketing Committee, Anjangaon Surji, Amravati vs. State of Maharashtra & Ors., 2017(2) Mh.L.J. 409** and in particular paragraph 26 in support of the submission that if the award was not

made in the proceedings commenced under the Act of 1894 prior to 1st January, 2014 and has been made subsequently, such case would be covered under clause (a) of section 24(1) and at most, the owners of land would be entitled to compensation, to be determined under the provisions of the Act of 2013.

36. Learned senior counsel for the respondent no.1 placed reliance on the judgment of the Hon'ble Supreme Court in case of **Shriram Patel vs. The State of Madhya Pradesh, 2016 SCC OnLine MP 1403** and in particular paragraphs 4 to 7 and 9 in support of the submission that the land acquisition award in this case having been rendered after 1st January, 2014, the land acquisition proceedings would be continued further in terms of the express provision of section 24(1)(a) of the Act of 2013 which proceedings have been saved subject to the determination of compensation. He submits that the only compensation claimed by the respondent no.1 would vary as per the provisions of the Act of 2013.

37. Learned senior counsel for the respondent no.1 placed reliance on the judgment of this Court in case of **Sakharbai Haribhau Shelke (since deceased) through her L.Rs. - Smt. Rajani Vishwas Joglekar & Ors. vs. Sub Divisional Officer, Shrirampur & Ors. 2014(4) Mh.L.J. 794** and in particular

paragraphs 10 and 12 and would submit that in view of non-obstante provision under section 24(1)(a) of the Act of 2013, the said provision has overriding effect over all the other provisions of the Act of 2013. He submits that the Division Bench of this Court in the said judgment has held that the provisions of the Act of 2013 would apply to the extent of determination of compensation. He submits that though the provisions of the Act of 1894 is repealed by the provisions of the Act of 2013, the Court has to consider the provisions of the Act of 2013 only for the purpose of determining whether the said Act indicates different intention. Learned senior counsel fairly pointed out the said judgment and would submit that the said judgment was not brought to the notice of this Court in case of **Ashok Narayan Lande** (supra). He submits that the Division Bench of this court in the said judgment not having noticed the earlier judgment of the Division Bench of this Court in case of **Jairam Gangaram Burke & Ors.** (supra), the Division Bench of this Court in the later judgment in case of **Ashok Narayan Lande** (supra) took a different and inconsistent view.

38. It is submitted that in these circumstances, if this Court feels appropriate, the issue as to whether under section 24(1)(a) of the Act of 2013 if the land acquisition award under section 11 is rendered after 1st January, 2014, whether an application for

enhancement of claim under section 18 of the Act of 1894 would be maintainable or not or an application or reference to the authority under section 64 of the Act of 2013 only would be maintainable or not can be referred to the Larger Bench for consideration. Learned senior counsel fairly invited my attention to the prayers of the respondent no.1 before the Special Land Acquisition Officer for seeking resettlement of the respondent no.1 relying upon the provisions of the Act of 2013 and would submit that the said prayer was rejected by the Special Land Acquisition Officer on the ground that the respondent no.1 was not entitled to the said relief.

39. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Manager, VKNM Vocational Higher Secondary School vs. State of Kerala & Ors., (2016) 4 SCC, 216** and in particular paragraph 20 in support of the submission that the rights of the respondent no.1 to seek enhancement of claim under section 18 of the Act of 1894 had already accrued when the notification under section 4 of the Act of 1894 was issued and such right could not have been taken away having been already accrued in favour of the respondent no.1 in view of the said right having been specifically protected under section 24(1)(a) of the Act of 2013.

40. Learned senior counsel for the respondent no.1 placed

reliance on the judgment of the Hon'ble Supreme Court in case of **R. Radhakrishnan & Ors. vs. Secretary, State of Tamil Nadu & Others, (2015) 6 SCC 604** and in particular paragraphs 2 and 4 in support of the submission that the rights already accrued in favour of the respondent no.1 cannot be taken away by subsequent legislation i.e. the Act of 2013 in view of the said Act not taking away such existing right and on the contrary protecting such right under section 24(1)(a) of the Act of 2013. He submits that the legislative intent in repealing the earlier statute must be absolutely clear.

41. Mr.Patil, learned A.G.P. for the State Government supports the case of the Pune Municipal Corporation and would submit that the Authority for adjudicating upon an application for enhancement of the claim of compensation has been already established by the State Government under section 51 of the Act of 2013 and the said Authority is in place.

42. Mr.J.P. Sen, learned senior counsel for the applicant distinguishes the judgment of the Hon'ble Supreme Court in case of **Soorajmull Nagarmull** (supra) and would submit that there was no issue before the Hon'ble Supreme Court in the said judgment whether the land owner could be permitted to invoke the remedy of seeking enhancement under section 18 of the Act of 1894 though the

said Act of 1894 has been already repealed and the land acquisition award has been rendered after 1st January, 2014. It is submitted that there is inconsistency in the judgment of this Court in case of **Ashok Narayan Lande** (supra) and another judgment of the Division Bench of this Court in case of **Jairam Gangaram Burke & Ors.** (supra). He submits that the issue before the Division Bench of this Court in case of **Ashok Narayan Lande** (supra) was not as to what was the remedy available for seeking enhancement of claim for compensation under the Act of 2013.

43. It is submitted that in case of the judgment of the Division Bench of this Court in case of **Jairam Gangaram Burke & Ors.** (supra) this Court had specifically dealt with the remedy of the land owner to seek compensation under section 64 of the Act of 2013. It is submitted that only substantive right accrued, if any, under the Act of 1894 would be saved on enactment of the Act of 2013 and not the procedural law. It is submitted that the procedural law can be amended with retrospective effect. It is submitted that filing of reference is a substantive right, whereas the forum for adjudication of such substantive right is a procedural right and thus the change of such procedural right under the Act of 2013 would apply even after the land acquisition award has been rendered after 1st January, 2014.

44. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Maria Cristina De Souza Sodder & Ors. vs. Amria Zurana Pereira Pinto & Ors. (1979) 1 SCC 92** and in particular paragraph 5 thereof. He submits that by virtue of the Act of 2013, a right of filing a reference under section 18 of the Act of 1894 is not taken away however, only a forum is changed. He submits that repealing Act must specifically state that the earlier remedy for enhancement would continue which is absent in this case. There is no mention under the Act of 2013 and more particularly under section 24(1)(a) that in the land acquisition proceedings initiated and continued under Act of 1894 that though the award was rendered after 1st January, 2014, the remedy of seeking enhancement of compensation under section 18 of the Act of 1894 or any other provisions of the old Act would continue to apply. The Act of 2013 has provided a new forum for seeking the claim for compensation and such form only would be applicable for seeking enhancement of the claim of compensation. Learned senior counsel placed reliance on the judgment of this Court in case of **Securities And Exchange Board of India vs. Sterlite Industries (India) & Anr. 2004(1) Mh.L.J. 1046** and more particularly paragraphs 8 to 10.
45. Learned senior counsel for the applicant distinguishes the

judgment of the Hon'ble Supreme Court in case of S. Radhakrishnan & Ors. (supra) relied upon by the learned senior counsel for the respondent no.1 and would submit that the right of seeking enhancement of the claim for compensation is procedural right and not substantive right.

46. Mr.Dani, learned senior counsel for the respondent no.1 submits that the provisions of section 24(1) of the Act of 2013 begins with a non-obstante clause clarifying that notwithstanding contained in the Act of 2013, in any case of land acquisition proceedings initiated under the Act of 1894, whether the award under section 11 has been made, then such proceedings would continue under the provisions of the said Act of 1894 as if the said Act has not been repealed. He submits that the remedy of seeking enhancement provided under section 64 of the Act of 2013 would thus not stand attracted, the land acquisition award having been rendered after 1st January, 2014. He submits that the fact remains that the land acquisition award had been rendered under the provisions of the Act of 1894 and thus though the award is rendered after 1st January, 2014, the same would not be considered as an award under the provisions of the Act of 2013.

47. It is finally submitted that if this Court comes to the

conclusion that there is any inconsistency in the judgment of the Division Bench of this Court in case of **Jairam Gangaram Burke & Ors.** (supra) and in case of **Ashok Narayan Lande** (supra), the issue may be referred to the Larger Bench at the earliest.

48. Both the learned senior counsel have invited my attention to the several judgments in support of their rival submissions. Insofar as the issue raised before this Court as to whether the respondent no.1 could have filed an application for seeking reference under section 18 of the Act of 1894 though an award under section 11 of the Act of 1894 was rendered after 1st January, 2014, learned senior counsel for the respondent no.1 fairly invited my attention to the two judgments (i) in case of **Jairam Gangaram Burke & Ors.** (supra) and (ii) in case of **Ashok Narayan Lande** (supra). At this stage, I will consider whether there is any conflict in the views expressed by two Division Benches of this Court in aforesaid decisions in case of **Jairam Gangaram Burke & Ors.** (supra) and in case of **Ashok Narayan Lande** (supra) or not.

49. A perusal of the judgment of the Division Bench of this Court in case **Jairam Gangaram Burke & Ors.** (supra) clearly indicates that the award in favour of the land owner were passed on 8th February, 2016 and 8th March, 2016 i.e. after coming into force the

Act of 2013 with effect from 1st January, 2014. In paragraph 10 of the said judgment, the Division Bench of this Court has held that after enforcement of the Act of 2013, the award to be passed under the Act of 2013 though the proceedings may have commenced earlier, then the proceedings for enhancement of compensation will have to be taken up under section 64 of the Act of 2013. It is held that the reference for enhancement of compensation shall have to be filed and entertained in accordance with the Act of 2013. It is further held that if the proceedings for acquisition are commenced under the Act of 1894, the acquisition may not necessary lapse, however, if the award is passed after introduction of the Act of 2013, the award will have to be passed under the Act of 2013.

50. The Division Bench of this Court interpreted section 24(1) (a) and (b) of the Act of 2013 and held that it is only in those cases where the award under section 11 of the 1894 is passed then the proceedings would continue under the Act of 1894 as if the said Act had not been repealed. In case the award has not been passed under section 11 of the Act of 1894, then all the provisions of the Act of 2013 relating to determination of compensation and passing an award shall apply. The applicability of the provisions of the Act of 1894 would continue to apply only after the award under section 11

of the Act of 1894 is passed and not otherwise. If prior to repeal of the Act of 1894 the award is not passed, then the proceedings completed till the stage of repeal of the Act of 1894 are saved however, further proceedings i.e. determination of compensation and passing an award will have to be under the Act of 2013 and such interpretation would be in consonance with and in tune with reading section 24 and 114 of the Act of 2013 harmoniously.

51. However, in the later judgment delivered by the Division Bench of this Court delivered on 13th July, 2018 in case of **Ashok Narayan Lande** (supra), the Division Bench of this Court has considered the land acquisition award rendered on 24th September, 2015 which proceedings had commenced under the provisions of the Act of 1894. The Division Bench of this Court in the said judgment by applying the provisions of section 6 of the General Clauses Act, 1897, held that the proceedings that have been initiated under the old Act of 1894 are to be continued and completed under the provisions of the said Act subject to otherwise being provided in the Act of 2013. This Court after considering section 114 of the Act of 2013 read with section 6 of the General Clauses Act, 1897 held that the acquisition proceedings that were initiated under the old Act of 1894 had to be completed by taking recourse to the provisions under that Act only

and not by taking recourse to the provisions of the Act of 2013. The Division Bench however, held that one exception that can be found in section 24(1)(a) of the Act of 2013 which clearly stipulates that where under the award under section 11 of the old Act of 1894 has been made, then all the provisions of the new Land Acquisition Act relating to determination of compensation shall apply.

52. The Division Bench has held that even though the proceedings have commenced under the old Land Acquisition Act, if no award was made under section 11 of that Act after it is repealed, an award could be made under section 11 of the old Act but the compensation ought to be calculated as per the provisions of the new Act as mentioned in section 24(1)(a) of the Act of 2013. The compensation in that matter was calculated by applying the provisions of section 24(1)(a) of the Act of 2013 since the award was rendered after 1st January, 2014 and more particularly on 24th September, 2015. In my view, there is a clear conflict in the views expressed by the two Division Benches in the aforesaid two judgments and relied upon by the learned senior counsel for the applicant and for the respondent no.1 which is required to be resolved by referring the issue to the Larger Bench. This Court has thus not dealt with the other submissions made by the learned senior

counsel recorded aforesaid at this stage.

53. The office is accordingly directed to place the papers and proceedings of this civil revision application before the Hon'ble Acting Chief Justice to decide whether the following issues shall be referred to the Larger Bench for consideration :-

- i). Whether under section 24(1)(b) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the land owner or any party seeking enhancement of claim of compensation can invoke the provisions of section 18 of the Land Acquisition Act, 1894 for seeking enhancement of claim of compensation even though the land acquisition award had been rendered under section 11 of the Land Acquisition Act, 1894 after 1st January, 2014 ?
or
- ii). Whether any such person interested who has not accepted the award rendered after 1st January, 2014 declaring compensation under section 11 of the Land Acquisition Act, 1894 can seek reference by applying only to refer such claim to the Authority i.e.

the “Land Acquisition Rehabilitation & Resettlement Authority” established under section 51 of the Act of 2013 ?

54. Ad-interim relief granted by this Court on 20th June, 2016 to continue till further orders.

(R.D. DHANUKA, J.)