

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 21st OF MAY, 2024

WRIT PETITION No. 22176 of 2022

BETWEEN:-

**GOPAL PATIDAR S/O LATE SHRI ONKAR
PATIDAR, AGED ABOUT 60 YEARS,
1. OCCUPATION: AGRICULTURE VILLAGE
SUSARI, TEH. KUKSHI, DISTT. DHAR
(MADHYA PRADESH)**

....PETITIONER

(BY SHRI ROHIT KUMAR MANGAL, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY MANTRALAYA
1. VALLABH BHAWAN BHOPAL (MADHYA
PRADESH)
2. COLLECTOR. DISTRICT DHAR (MADHYA
PRADESH)
LAND ACQUISITION AND
REHABILITATION OFFICER, SARDAR
3. SAROVAR PROJECT, KUKSHI, DISTRICT
DHAR (MADHYA PRADESH)
SUB DIVISIONAL OFFICER, (REVENUE)
4. KUKSHI, DISTRICT DHAR. (MADHYA
PRADESH)
EXECUTIVE ENGINEER. NARMADA
DEVELOPMENT NARMADA
5. DEVELOPMENT DIVISION. NO. 16 KUKSHI,
DISTRICT DHAR (MADHYA PRADESH)**

....RESPONDENTS

***(SHRI VAIBHAV BHAGWAT, G.A. FOR THE STATE AND SHRI VIVEK PATWA,
ADVOCATE FOR RESPONDENT NO.5)***

This petition coming on for admission this day, the court passed the following:

ORDER

1] Heard on I.A. No.2718/2023, which is an application for deleting the name of petitioner No.2 on account of her death, is hereby allowed and since her LR is already on record as petitioner No.1, no further order is required to be passed. Let the amendment be carried out during the course of the day.

2] Heard finally with the consent of the parties.

3] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs :-

“(a) Entire Land Acquisition proceedings in case no. 15/A-82/2021-22 kindly be quashed;

(b) Preliminary notification dated 14/03/2022 — - published U/s11 ANNEXUREP/4 may kindly be quashed,

(c) Declaration U/s 19 dated 10/06/22 U/s 11 ANNEXUREP/9 may kindly be quashed ;

(d) Notice U/s 21 dated 16/09/22 vide ANNEXURE P/7 may kindly be quashed; and

(e) and any other relief which this Hon'ble court may kindly be deemed fit may kindly be granted.”

4] The petition is filed against issuance of notification dated 14/03/2022, 10/06/2022 and 16/09/2022 issued by respondents No.2 and 3 respectively, and subsequently another notification has also been issued by respondent No.3 on 26/04/2024, whereby the earlier notification dated 16/09/2022 has been recalled. Thus, the aforesaid subsequent notification is also under challenge by way of amendment.

5] Counsel for the petitioner, at the outset, has submitted that these notifications which have been issued by the respondents are in violation of S.41 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013) as the land of the petitioner falls within the scheduled area as provided under Section 41 of the Act of 2013, and for which a permission from **Gram Sabha or the Panchayats or the autonomous District Councils** is mandatory.

6] Counsel for the respondents, on the other hand, has not disputed the legal position, however, it is submitted that since the respondents have already invested more than Rupees 400 Crores in Dahi Micro Lift Irrigation Project, and now only the power sub-station is to be constructed, which, the respondents have proposed to construct on the land adjacent to the existing power sub-station. However, it is not denied that Gram Sabha, Susari has not given its consent under Section 41 and thus, it is submitted that the respondents may be afforded an opportunity to take recourse of the remedies against the resolutions passed by Gram Panchayat on 02/06/2023 and 24/11/2022.

7] Heard counsel for the parties and perused the record.

8] From the record, it is apparent that the dispute involved revolves around Section 41 of the Act of 2013, the relevant excerpts of which reads as under:-

“41. Special provisions for Scheduled Castes and Scheduled Tribes.–

(1) As far as possible, no acquisition of land shall be made in the Scheduled Areas.

(2) Where such acquisition does take place it shall be done only as a demonstrable last resort.

(3) In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force: Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

(4) to (11) not reproduced as not relevant”

(Emphasis supplied)

9] A perusal of the aforesaid Section clearly reveals that it is mandatory for the authorities to take permission from the concerned Gram Panchayat before acquiring the land under the provisions of the Act of 2013, and admittedly, the permission has already been denied by the Gram Panchayat, Susari vide its resolution dated 24/11/2022 and 02/06/2023.

10] In view of the same, since the notifications issued by the respondents clearly violate the mandatory provisions of Section 41(3) of the Act of 2013, this Court has no hesitation to hold that the impugned notices issued by the respondents under Ss.11 and 19 dated 14/03/2022 and 10/06/2022 respectively, and the notice for possession dated 26/04/2024, under Section 25 cannot be sustained in the eyes of law, and are hereby *quashed*.

11] Accordingly, the petition stands allowed, however, with liberty reserved to the respondents to take recourse of remedies as are available to them under law to challenge the resolutions passed by the Gram Panchayat.

12] So far as the other grounds raised by the counsel for the petitioner are concerned, since the petition is being disposed of only on the ground of competency of the respondents to issue notifications, the petitioner's rights to contest the matter on the other grounds shall stand reserved if the occasion arises.

13] With the aforesaid direction, petition stands *allowed and disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi