

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.443 OF 2007

1. The Municipal Council,
Omerga, through
Sau. Shalini Matsendra Sarpe,
Age 50 years, R/o Nagar Parishad,
Omerga, District Osmanabad

AND

2. Prabhakar Vishwanath Kamble,
Age 41 years, Chief Officer,
Municipal Council, Omerga

through Subhash Ramrao Damshetty,
Age 50 years, Occ. Clerk,
Municipal Council, Omerga,
District Osmanabad

... PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai
(Copy served on G.P. Office,
High Court, Aurangabad)
2. The Sub-Divisional Officer,
Osmanabad.
3. The Chief Secretary,
Urban Development,
Division : Mumbai

(R.No.3 Deleted)

4. Ireshappa s/o Ganpati Kumbhar,
Age Adult, Occ. Business,
R/o Omerga, Tq. Omerga,
District Osmanabad.
 5. Ghanbas s/o Fakirappa Kumbhar,
Age 47 years, Occ. Agri.
R/o Omerga, Tq. Omerga,
District Osmanabad.
 6. Shivabai w/o Fakirappa Kumbhar,
Age 67 years, Occ. Agri.,
R/o Omerga, Tq. Omerga,
District Osmanabad.
 7. Champabai w/o Kashinath Kumbhar,
Age 37 years, Occ. Household & Agri.,
R/o as above
 8. Santosh s/o Kashinath Kumbhar,
Age major, Occ. Education,
R/o as above
 9. Umakant s/o Kashinath Kumbhar,
Age major, Occ. Education,
R/o as above.
 10. Shrimant s/o Awaba Kumbhar,
Age 29 years, Occ. Agri. & Business,
R/o as above.
 11. Babruwahan s/o Shrimant Kumbhar,
Age 29 years, Occ. Agri. & Business,
R/o as above.
 12. Shesherao s/o Shrimant Kumbhar,
Age 27 years, Occ. Agri. & Business,
R/o as above.
 13. Sow. Putalabai Shrimant Kumbhar,
Age 65 years, Occ. Household,
R/o as above.
- ... RESPONDENTS

Shri Vinesh Solshe, Advocate holding for
Shri Vivek Solshe, Advocate for petitioner
Shri S.G. Sangle, A.G.P. for State
Shri S.R. Barlinge, Advocate for respondents No.4, 7, 9, 10, 12 & 13

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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 5th May, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. This Court has granted interim relief in terms of prayer clause (C) vide order dated 12.2.2007 and the same is continued till date.

2. The petitioner is assailing the letter dated 17.12.2006, issued by the Sub-Divisional Officer, Osmanabad, directing the Municipal Council to deposit Rs.37,45,684/- from its own funds. The same is in respect of enhanced compensation amount.

3. Mr. Solshe, learned counsel for the petitioner submits that, the land is acquired by the State for providing houses to the landless persons as per the scheme of the Government. According to the learned counsel, the Municipal Council was

requested to send proposal for the acquisition of land to the Government. The same was upon the directions of the Government. The Municipal Council did not have any concern with the scheme of the Government. The plots from the acquired land have been allotted to the landless persons who were evicted from the Government land which was provided to the M.S.R.T.C. At the time of taking over the possession of the land, the land was outside the Municipal limits. According to the learned counsel, even in a reference under Section 18 of the Land Acquisition Act on behalf of the claimants, the Reference Court, while passing the award, has discussed the same in detail and had directed the State to deposit the amount of enhanced compensation and no orders were passed against the present petitioners.

4. Mr. Sangle, the learned A.G.P. submits that, the proposal was sent by the Municipal Council to the Government, the acquisition was at the behest of the Municipal Council, the Municipal Council was the acquiring body and as such, the letter has been rightly issued to the petitioner for depositing the amount.

5. Mr. Barlinge, learned counsel submits that the

present respondents are entitled for the compensation amount as decided by the Reference Court in the award.

6. We have considered the submissions canvassed by learned counsel for the respective parties and have also gone through the judgment. The judgment delivered by the Reference Court in Land Acquisition Reference No.354/1990 and 355/1990 was assailed by the Government before this Court. However, the same is rejected on the ground of delay. The judgment delivered by the Reference Court under Section 18 of the Land Acquisition Act has attained finality. As per the said judgment, only State is made liable to pay the compensation amount. The present petitioner has been exonerated from making payment of any compensation amount. It was held that the present petitioner has acted as an acquiring body only at the behest of the State and as per the directions of the State. The Municipal Council was not having any concern with the scheme of the Government and the possession of the plots were given to the beneficiaries by the Government itself in the year 1971. At the relevant time, the said land was also not within the limits of petitioner Municipal Council.

7. Considering all the aforesaid aspects of the matter, it

was erroneous on the part of the Sub-Divisional Officer to issue the letter dated 17.12.2006. In light of that, rule is made absolute. The impugned letter dated 17.12.2006 (Exhibit C) stands quashed and set aside. However, if any amount is sanctioned by the Government in respect of acquisition of the land to the Municipal Council, then the Municipal Council will be liable to pay the amount with interest to the extent of the grants sanctioned for the said purpose. The amount be paid expeditiously as the interest amount at the rate of 15% p.a. is mounting every day. Writ Petition disposed of accordingly. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)