

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

WRIT PETITION NO. 3384 OF 2004

Prakash S/o Suryabhan Mahajan,
Aged : 49 years, Occ. Agriculture,
R/o Tambewadi, Tq. Paranda,
Dist. Osmanabad.

.. **Petitioner**

Versus

1. The State of Maharashtra,
through the Secretary to the
Government Maharashtra in
Revenue & Forest Department,
Mantralaya, Fort, Mumbai.
2. The Divisional Commissioner,
Aurangabad.
3. The Collector,
Osmanabad.
4. The Additional Collector/Enquiry Officer,
Osmanabad.
5. The Special Land Acquisition Officer,
Minor irrigation Canal, Osmanabad,
Head-Office Paranda, Dist. Osmanabad.
6. The Tahsildar,
Paranda, Dist. Osmanabad.
7. The Talathi,
Sajja-Bhandgaon, Tq. Paranda,
Dist. Osmanabad.

.. **Respondents**

Mr S. S. Choudhari, Advocate for the petitioner
Mr S. R. Palnitkar, AGP for respondent/State

WITH**WRIT PETITION NO. 3386 OF 2004**

Kumar s/o Shahu Tambe,
Age : 28 years, Occu. Agril,
R/o. Deolali, Tq. Bhoom,
Dist. Osmanabad.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Dept.
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad.
3. The Collector,
Osmanabad.
4. The Additional Collector/Enquiry Officer,
Irrigation Canal, Osmanabad,
5. The Special Land Acquisition Officer,
Minor irrigation Canal, Osmanabad,
Head-Office Paranda, Dist. Osmanabad.
6. The Tahsildar,
Paranda, Dist. Osmanabad.
7. The Talathi,
Sajja-Bhandgaon, Tq. Paranda,
Dist. Osmanabad.

.. **Respondents**

Mr V. D. Salunke, Advocate h/f Mr Ghute, Advocate for the petitioner
Mr S. R. Palnitkar, AGP for respondent/State

WITH

WRIT PETITION NO. 3385 OF 2004

Rushikant s/o Mahadeo Mahajan
Age 48 yrs., Oc. Agri.
R/o Tambewadi, Tq. Paranda,
Dist. Osmanabad.

.. **Petitioner**

Versus

1. The State of Maharashtra
2. The Collector,
Osmanabad, Tq. and Dist. Osmanabad.
3. The Special Land Acquisition Officer,
Minor Irrigation Canal, Osmanabad,
Head Office Paranda, Dist. Osmanabad.
4. Ramesh Majrikar,
Additional Collector,
Inquiry Officer, Tq. and Dist. Osmanabad.
5. The Tahsildar, Paranda,
Tq. Paranda, Dist. Osmanabad.

.. **Respondents**

Mr R. V. Naiknaware, Advocate for the petitioner
Mr S. R. Palnitkar, AGP for respondent/State

**CORAM : A.V. NIRGUDE &
V. K. JADHAV, JJ.
DATED : MARCH 10TH, 2015**

ORAL JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. As common issue is involved in all these petitions, the same are disposed of by this common order.

2. Lands of petitioners were acquired sometime in 1993 to 1999 for Minor Irrigation Project. Awards were passed during 1993 to 1999. Certain compensation was awarded to the petitioners. Petitioners received the compensation. Sometime in the year 2000, a complaint was lodged with this Court in Writ Petition No. 3453 of 2000 and others, that the petitioners received more amount than they were entitled to. After hearing all the sides, this Court passed detail order on 5th September, 2000. It *inter alia* observed thus:

“In this regard, it is to be noted that whether the petitioners received compensation in respect of the valuation of the trees which were not in existence in acquired area or it was obtained by exercising fraud by showing more number of trees though not in existence in acquired area, is disputed question of fact and this Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India cannot go into the merits of such disputed facts..... In this regard we are of the opinion that, as the grievance of the petitioners is that though there were trees in the acquired area under the awards made prior to the final award of 2000, valuation was not made and paid to them, it needs enquiry giving the petitioners an opportunity of being heard. Considering the facts and circumstances of the case, we feel that enquiry as regards the grievance made by the petitioners in this regard needs to be made and in view of this, all these petitions can be disposed of by issuing directions to the

Additional Collector, Osmanabad, who is present in the Court of to make an enquiry in this regard. In the result, we direct the Additional Collector, Osmanabad to make an enquiry personally as to whether previous awards i.e. awards prior to the award of the year 2000 in respect of the acquired lands of the petitioners referred to above covers the issue as regards the value of the trees, if any, standing in acquired lands of the petitioners and whether excess payment is made in respect of the valuation of the trees in acquired area and submits the report to this Court and to send a copy thereof to the Collector for taking further necessary action as per the provisions of law. The enquiry, shall be made and completed within 30 days from the date of receipt of the Writ from this court. The Additional Collector shall give opportunity to all the petitioners and the complainants of being heard while holding the enquiry.”

3. It appears that, thereafter certain enquiry was conducted by the Collector and he came to a conclusion that petitioners received amount in excess and such amount should be recovered from them. It has also come to our notice that, before filing of these petitions, the Collector even directed the Land Acquisition Officer to amend the award as per Section 13-A of the Land Acquisition Act by giving opportunity of hearing to the affected persons. The order quoted above passed by this

Court can be said to be a step in that direction. Since this order is still in force, the same should be taken to its logical end.

4. The Court clearly recorded finding that the enquiry is required to be made as to whether any person had received excess amount etc. Now when such enquiry is done and certain findings are recorded, the same ought to be incorporated in the land acquisition award which was passed earlier. Unless such amendment in the award is made, the Collector could not have resorted to recovery proceedings against the petitioners. The reply filed in this petition does not indicate that the Land Acquisition Officer or the Collector had effected amendment in the land acquisition awards as contemplated under Section 13-A of the Land Acquisition Act, though some inquiry was conducted. Even during the pendency of this petition, similar situation arose on 27th July, 2004. We quote Roznama entry of that day as under :

“Heard respective counsel for the petitioners and Shri N. B.

Khandare, learned A.G.P. for the State.

Rule.

Shri Khandare, learned A.G.P. has produced before us a draft award. As the said award is not made final, it has no effect. Before finalising the award U/s 13-A of the Land Acquisition Act, the Collector/Land Acquisition

Officer has to give hearing to the affected parties. As the draft award is produced before us further process of hearing the petitioners is to be undertaken by the Collector/Land Acquisition Officer. Till then we continue interim order granted by this Court dated 8.6.2004.

Liberty to apply.”

5. Though this order was passed, the State of Maharashtra, the Collector and the Land Acquisition Officer apparently did not take this order seriously. They did not give hearing to the affected parties nor they amended the award. Since then, apparently they are sitting tight over the case without further action. We are, therefore, passing following order which would conclude these petitions.

ORDER

- (i) The action initiated for recovery of amount against the petitioners is set aside.
- (ii) The Collector shall, after giving reasonable opportunity of hearing to the petitioners, effect amendment if required, in the Land Acquisition Awards. If amendment is effected in the Land Acquisition Awards, copies of the same should be given to the petitioners.

- (iii) The Collector shall record the finding as to whether any person has received excess amount and, thereafter, he shall effect amendment to the award. It is, thereafter, he can start proceedings for recovery of amount against the concerned persons.

6. Rule made absolute in above terms. The petitions are disposed of accordingly. No costs.

[V.K. JADHAV, J.]

[A.V. NIRGUDE,J.]

sgp