

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

WRIT PETITION NO.10154 OF 2014

1. Saluji Aabaji Ekkar
Age : 71 years, Occu. Agri,
R/o. Kokramba, Tal – Mantha,
Dist. Jalna.
2. Digamber Gulabrao Ekkar
Age : 38 years, Occu. Agri.,
R/o. Shirpur, Tq. – Mantha,
Dist. Jalna.
3. Ashroba Dattarao Ekkar,
Age: 56 years, Occu. Agri.
- 3A. Shivaji Ashroba Ekkar,
Age : 26 years, Occu. Agri.,

Both R/o. Kokramba Tal – Mantha,
Dist. Jalna.
4. Nayab Bandu Ekkar
Age: 66 years, Occu. Agri.,
- 4A. Vilas Bandu Ekkar,
Age : 51 years, Occu. Agri.,

Both R/o. Shirpur, Tal – Mantha,
Dist. Jalna.
5. Mahadu Sahebrao Ekkar,
Age : 56 years, Occu.: Agri.,
R/o. Shirpur, Tal. Mantha,
Dist. Jalna.
6. Dnyanoba Shankar Ekkar,
Age : 61 years, Occu.: Agri.,
R/o. Shirpur, Tal – Mantha,
Dist. Jalna.
7. Raosaheb Bapurao Gaikwad,
Age: 61 years, Occu.: Agri.,

R/o. Shirpur, Tal – Mantha,
Dist. Jalna.

8. Balabhau Bapurao Ekkar,
Age: 63 years, Occu. Agri.,

8A. Santosh Balabhau Ekkar,
Age : 27 years, Occu. Agri.,

Both R/o. Shirpur, Tal – Mantha,
Dist. Jalna.

... **PETITIONERS**

VERSUS

1. The State of Maharashtra
Through its Secretary
Irrigation Department, Mantralaya,
Mumbai.

2. The Collector, Jalna.

3. The Deputy Collector/
Special Land Acquisition Officer,
Minor Irrigation Works,
Tq. & Dist. Jalna.

4. The Executive Engineer,
Minor Irrigation Division, Jalna,
Tq. & Dist. Jalna.

... **RESPONDENTS**

Mr. AB Kale, Adv. h/for Mr. AM Hajare, Adv. For
petitioners;

Mrs. AV Gondhalekar, AGP for Respondent Nos. 1 to 3.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 18th JUNE, 2015.

ORAJ JUDGMENT (PER:-R.M.BORDE, J.)

1) Heard. Rule. Rule is made returnable

forthwith by consent of learned counsel for the parties.

2) The agricultural lands belonging to the petitioners have been taken over in possession by the respondents for public purpose. According to the petitioners, the acquiring body took possession of the property by entering into private negotiations with the petitioners on 30th April, 1992. The proceedings in respect of acquisition of lands were initiated with issuance of a Notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) on 3.12.2009 and the Award came to be passed on 30.4.2011.

3) The petitioners tendered applications on 8.2.2013 to the Collector, claiming rental compensation in accordance with the policy framed by the State Government. However, the said applications were not considered by the Collector, which inaction prompted the

petitioners to approach this Court by presenting Writ Petition No.6134/2013. The said writ petition came to be disposed of by Division Bench of this Court on 21.4.2014 with directions to the Collector and Land Acquisition officer, to take decision on the applications tendered by the petitioners, claiming rental compensation within a period of four months from the date of such order. It was further directed to the acquiring body to disburse the amount of rental compensation, so determined by the Collector, within a period of six weeks from the date of such decision.

4) Learned Collector, who dealt with the applications tendered by the petitioners, surprisingly rejected the same, placing reliance on the Judgment of the Supreme Court in the matter of R.L.Jain (D) by Lrs Vs. DDA and Ors. reported in AIR 2004 SC 1904(1). The reliance placed by the Collector on the aforesaid judgment is misplaced. The Supreme Court in the aforesaid

decision has observed that the proceedings in respect of acquisition of land under the provisions of the Land Acquisition Act, commence with issuance of Section 4(1) notification and that "taking over possession" of the land / property of any of the claimants before initiation of the proceedings under the Land Acquisition Act, does not come within the purview of the provisions of the said Act. The Supreme Court proceeded to hold that the benefits accruable to the claimant under the provisions of the Land Acquisition Act, are admissible from the date of Section 4 Notification and such benefits cannot be claimed for a period preceding issuance of Section 4 notification. It does not however mean that the claimant, whose land is taken over in possession without initiating the proceedings under the Land Acquisition Act, is not entitled to claim the benefits under the policy of the State Government.

5) The State of Maharashtra has issued

Government Resolutions on 1.12.1972; 2.4.1976 and 14.3.1988, prescribing payment of rental compensation in order to meet such contingencies. In fact, taking over possession of the property of a claimant without initiating the proceedings under the Land Acquisition Act is *per se* illegal. However, having noticed that in many cases the State authorities, looking to the emergent situation, have taken over possession of the property belonging to the agriculturists without initiating the proceedings under the Land Acquisition Act and with a view to compensate the agriculturists, the State Government has pronounced the policy for payment of rental compensation. The Collector has, in fact, interpreted the decision rendered by the Supreme Court, exactly in reverse manner. In this view of the matter, the petitioners are entitled to receive the amount of rental compensation under the policy of the State Government and the decision, rendered by the Collector, disentitling the petitioner to receive the amount of rental

compensation is erroneous and is liable to be quashed and set aside and same is accordingly quashed and set aside.

6) Respondent Nos. 2 and 3 are directed to determine the amount of rental compensation, receivable by the petitioners, as expeditiously as possible and preferably within a period of three months from today. On determination of the amount of rental compensation, Respondent No.4, the acquiring body, is directed to pay the amount, so determined, to the petitioners, as expeditiously as possible, and preferably within a period of eight weeks from the date of such determination. It is clarified that, in view of Judgment delivered by the Division Bench of this Court in Writ Petition No.2559/2008 decided on 24.7.2008 as well as clarification issued by the Supreme Court in the matter of Executive Engineer, Minor Irrigation Vs. Dinkar & Ors. in SLP No.31222-31223/2009 decided on 19.11.2014, the petitioners are entitled to claim the

benefits under the Government Policy in accordance with law. Rule is accordingly made absolute as above. In the facts of the case, there shall be no order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/