

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

WRIT PETITION NO.2141 of 2014

1. Kisan s/o Bapu Gund,
Age 66 years, Occu: Agriculture;
2. Haribhau s/o Bapu Gund
Age 60 years, occu: Agriculture;
3. Mangal w/o Sunil Ghodke,
Age 45 years, Occu: Agriculture;
4. Hausrao s/o Rambhau Gund,
Age 40 years, Occu: Agriculture;
5. Babasaheb s/o Rambhau Gund,
Age 22 years, Occu: Agriculture;
6. Mahadev s/o Badrunath Gund,
Age 30 years, Occu: Agriculture;
7. Dwarkabai w/o Udhav Chaudhary,
Age 35 years, Occu. Agriculture;
8. Santosh s/o Raghunath Chaudhary,
Age 34 years, Occu: Agriculture;

All r/o Waghluj, Tq. Ashti, Dist. Beed.

...PETITIONERS

VERSUS

1. The State of Maharashtra
Through Secretary,
Department of Irrigation, Mantralaya,
Mumbai.
2. District Collector, Beed,
Collector Office, Beed.
3. The Executive Engineer,
Minor Irrigation Division, (L.S.)
Beed.

4. Executive Engineer,
Minor Irrigation Division, (L.S.)
Sub Division Ashti, Tq. Ashti, Dist. Beed.
5. Special Land Acquisition Officer No.2
Beed, Collector Office, Beed.

...RESPONDENTS

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Mr. Nikhilesh K.Tungar, Advocate for the
petitioners.

Mr.P.P.More, AGP, for respondent State.

Mr. K.U.More, Advocate for respondent nos. 3 and
4.

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CORAM: R.M.BORDE

AND

P.R.BORA, JJ.

DATE : March 9th, 2015

ORAL JUDGMENT: (Per R.M.Borde, J.)

1. Heard. Rule. Rule made returnable and heard
forthwith with the consent of learned Counsel for the
parties.

2. The petitioners contend that a portion of
agricultural land belonging to them out of survey Nos.47
and 49 situated at village Waghluj, Tq. Ashti, district Beed,
has been taken in possession by the respondent nos. 3
and 4 for the purpose of construction of a village tank.
The petitioners consented for taking possession of the land
in the year 2005, however, they have never given up their

claim and entitlement to receive amount of compensation in respect of the land area utilized by the respondents for construction of a village tank. It is also not a matter of dispute that the village tank has been constructed over the land belonging to the petitioners in the year 2005 itself. Since the respondents did not determine the amount of compensation payable to the petitioners in respect of the area utilized for construction of a village tank, they approached respondent nos. 3 and 4 by tendering applications on several occasions. The request of the petitioners for determination of compensation has not been considered favourably by the concerned respondents. As such, the petitioners are constrained to approach this Court.

3. An affidavit in reply has been presented on behalf of respondent nos. 3 and 4 wherein it has been stated that the petitioners have willingly given possession of the lands for construction of a village tank and have waived their right to claim compensation. In support of the contentions that the petitioners have waived their right to claim compensation, nothing has been produced on record by respondent nos. 3 and 4. The petitioners claim that they have parted with the possession of the portion of the land with a view to enable the concerned respondents to construct a village tank, however, they have never waived their right to receive compensation in respect of the property taken in possession by the respondents. In these circumstances, the concerned respondents cannot be

permitted to claim that petitioners have waived their right to receive amount of compensation.

4. Respondents have placed reliance on the judgment of the Supreme Court in the matter of **State of Maharashtra V. Digambar ((1995) SCC (4) 683)** to contend that the petitioners are responsible for delay and laches occurred in approaching this Court. In our view, the decision cited is not applicable to the facts and circumstances of this case.

5. In the circumstances, a direction needs to be issued to the respondent nos. 1 to 5 to determine and pay the amount of compensation in respect of the land utilized for construction of the village tank.

(a) Respondent nos. 3 and 4 are directed to tender necessary proposal to the Collector under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as expeditiously as possible preferably within a period of three months from today.

(b) On receipt of the proposal, all the respondents shall ensure determination of compensation payable to the petitioner and actually pay the same, as expeditiously as possible, preferably within a period of two years from today.

(c) It would also be open for the respondent nos. 3 and 4 to negotiate with the petitioners and arrive at compromise and to pay the amount on the basis of such compromise.

Rule is accordingly made absolute. There shall be no order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

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