

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11833 OF 2015

**Pundlik Kalu Kamadi,
Age major, Occu. Agriculture,
Residing at Sufale Digar, Post
Kathara Tal. Kalwan, Dist. Nashik**

.. Petitioner

Versus

- 1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.**
- 2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.**
- 3. State of Maharashtra**

.. Respondents

WITH

WRIT PETITION NO.11801 OF 2015

**Soma Lilu Jagtap,
Age major, Occu. Agriculture
Residing at Sufale Digar, Post
Kathara Tal. Kalwan, Dist. Nashik**

.. Petitioner

Versus

- 1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.**
- 2. The Executive Engineer,**

Urdhava Godavari Project,
Trimbak Road, Nashik.

3. State of Maharashtra

.. Respondents

WITH

WRIT PETITION NO.11802 OF 2015

1. Ramdas Ramji Chaudhari

2. Shivdas Ramji Chaudhari

Both major, Occu. Agriculture

Residing at Sufale Digar, Post

Kathara Tal. Kalwan, Dist. Nashik

.. Petitioners

Versus

1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.

2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.

3. State of Maharashtra

.. Respondents

WITH

WRIT PETITION NO.11803 OF 2015

Pundlik Kalu Kamadi,

Age major, Occu. Agriculture,

Residing at Sufale Digar, Post

Kathara Tal. Kalwan, Dist. Nashik

.. Petitioner

Versus

1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.
2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.
3. State of Maharashtra

.. Respondents

WITH

WRIT PETITION NO.11804 OF 2015

Motiram Pandu Chaudhari,
Age major, Occu. Agriculture
Residing at Sufale Digar, Post
Kathara Tal. Kalwan, Dist. Nashik

.. Petitioner

Versus

1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.
2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.
3. State of Maharashtra

.. Respondents

WITH

WRIT PETITION NO.11805 OF 2015

Soma Arjun Pawar,
Age major, Occu. Agriculture
Residing at Sufale Digar, Post
Kathara Tal. Kalwan, Dist. Nashik

.. Petitioner

Versus

- 1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.**
- 2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.**
- 3. State of Maharashtra**

.. Respondents

WITH

WRIT PETITION NO.11834 OF 2015

**Shankar Lahanu Jagtap,
Age major, Occu. Agriculture
Residing at Sufale Digar, Post
Kathara Tal. Kalwan, Dist. Nashik**

.. Petitioner

Versus

- 1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.**
- 2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.**
- 3. State of Maharashtra**

.. Respondents

WITH

WRIT PETITION NO.11835 OF 2015

- 1. Motiram Laxman Pawar**
- 2. Ulsha Laxman Pawar (Decease)**

Legal heirs

A) Bhausing Ulsha Pawar

B) Bhivraj Mahadu Pawar

No.2-B Minor, his minor guardian

No.2-A

C) Sau Jijabai Mahadu Wagh

D) Sau Mirabai Pavaji Chaudhari (Chaure)

E) Smt. Shanubai Sitaram Chaure

F) Smt. Budhibai Ulsha Pawar

All major, Occu. Agriculture

Residing at Sufale Digar, Post

Kathara Tal. Kalwan, Dist. Nashik

.. Petitioners

Versus

1. The Special Land Acquisition Officer,

Scarcity No.1, Nashik.

2. The Executive Engineer,

Urdhava Godavari Project,

Trimbak Road, Nashik.

3. State of Maharashtra

.. Respondents

WITH

WRIT PETITION NO.11836 OF 2015

Tanaji Damu Chaure,

Age major, Occu. Agriculture

Residing at Sufale Digar, Post

Kathara Tal. Kalwan, Dist. Nashik

.. Petitioner

Versus

1. The Special Land Acquisition Officer,
Scarcity No.1, Nashik.
2. The Executive Engineer,
Urdhava Godavari Project,
Trimbak Road, Nashik.
3. State of Maharashtra

.. Respondents

Mr. S. D. Shinde, for the Petitioner in all Petitions.

Mr. S. D. Rayrikar, AGP for the Respondents.

CORAM : R.M. SAVANT, J.
DATE : 9th DECEMBER, 2015

ORAL JUDGMENT

1. Rule, considering the nature of challenge raised in the Petitions made returnable forthwith and heard.

2. The above Writ Petitions take exception to the identical orders all dated 15.05.2015 passed by the Learned Joint Civil Judge Senior Division, Nashik, by which orders the applications filed by the Petitioners in each of the above Petitions filed for correction of the order dated 17.03.2015 came to be rejected.

3. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioners are the persons from whom lands have been acquired for the Godavari Irrigation Project.

The Petitioners aggrieved by the compensation offered by the Special Land Acquisition Officer by the Awards declared by him under the Land Acquisition Act, 1894 had filed reference applications under Section 18 of the said Act for enhancement of compensation. The Reference Court had in the said references enhanced the compensation. Pursuant to which the Respondents have filed First Appeals in this Court. The decretal amount in terms of the Award of the Reference Court came to be deposited by the Respondents in the Reference Court. This was sometime in an around January 2015. The Claimants filed Civil Applications for withdrawal of the amount deposited in the First Appeals which were filed by the Respondents in this Court. In the said applications the Claimants had sought withdrawal on the condition of furnishing a personal undertaking and solvent security. A Learned Single Judge of this Court has disposed of the Civil Applications by order dated 07.01.2015 and in the context of the present Petitions clause (a) of the said order is material and is reproduced hereinunder :-

“(a) Applicants in all the Civil Applications are permitted to withdraw the amount deposited by the respondent State of Maharashtra by furnishing solvent security to the satisfaction of the Reference Court.”

(emphasis supplied)

Hence, the Claimants who were the Applicants in the Civil Applications were permitted to withdraw the amount on furnishing solvent security to

the satisfaction of the Reference Court.

4. It is pursuant to the said order dated 07.01.2015 that the Claimants applied for withdrawal of the amounts which were lying in deposit in the Reference Court by filing applications. In the said applications the Reference Court passed an order on 17.03.2015 directing the Claimants to furnish Bank Guarantee of a Nationalised Bank for the amount to be withdrawn. It is the case of the Claimants that though they endeavoured to furnish the Bank Guarantees, it was not possible for them to do so on account of the onerous conditions which were sought to be imposed by the Bank whilst issuing the Bank Guarantees namely that the Claimants had to deposit an equivalent amount with the Bank. The Claimants therefore filed instant applications for variation of the order dated 17.03.2015 in so far it directs the Claimants to furnish Bank Guarantees and permit the Claimants to withdraw the amounts on the basis of solvent security. As indicated above, the said applications have been rejected by the impugned orders. The said rejection is on the ground that furnishing a Bank Guarantee of a Nationalised Bank is a normal custom/procedure in such type of cases and that all the Claimants in such cases are able to furnish Bank Guarantees. It is further observed that merely because the Claimants in the instant case do not find it economical, such procedure cannot be departed with. As indicated above, it is the said

order dated 15.05.2015 which is taken exception to by way of the above Petitions.

5. Heard the Learned Counsel for the parties. The Learned Counsel for the Petitioners sought to make submissions against the Claimants being directed to furnish Bank Guarantees. It was the submission of the Learned Counsel that the Claimants are the deprived land holders and small farmers and in fact are 'Adivasis' who are not able to comply with the onerous conditions imposed by the Banks in the matter of furnishing Bank Guarantees.

6. Per contra, the Learned AGP Mr. S. D. Rayrikar would seek to contend that since the Claimants are seeking to withdraw the amount, the interest of the State should be protected so as to see to it that in the event the State succeeds in the First Appeals the amount is secured.

7. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, in the Civil Applications filed by the Claimants in this Court for withdrawal of the amounts a Learned Single Judge of this Court has by order dated 07.01.2015 permitted such withdrawal on the Claimants furnishing solvent security to the satisfaction of the Reference Court. Hence, this

Court had also considered the said aspect and had permitted the withdrawal on the Claimants furnishing solvent security. The Reference Court in my view in the teeth of the said direction of this Court has erred in directing the Claimants to furnish a Bank Guarantee for the amount of which withdrawal is sought. In so far as Bank Guarantee is concerned, it is required to be noted that the Bank Guarantee is furnished by the Bank only after an amount equivalent to the amount of the Bank Guarantee is deposited by the person who seeks Bank Guarantee or the amount is made good in any other manner by way of fixed deposits etc., the said condition would therefore be a onerous condition in so far as the Claimants involved in the present cases are concerned. It would not be possible for such Claimants to furnish a Bank Guarantee and would therefore render the permission to withdraw the amount illusory. It is to be borne in mind that the Claimants are the deprived land holders whose lands have been acquired for the irrigation project and the amounts they seek to withdraw is the compensation they are entitled to for the acquisition of their lands.

8. It is also required to be noted that in the First Appeals the challenge is to the enhancement which has been granted by the Reference Court and therefore only that part of the Award of the Reference Court is under challenge by the State. Be that as it may, in my view, the interest of justice would be served if the Reference Court is directed to permit the

Claimants to withdraw the amount on furnishing solvent security to its satisfaction. This as indicated above was in fact the direction which was issued by the Learned Single Judge of this Court by the said order dated 07.01.2015. The orders dated 17.03.2015 and 23.03.2015 therefore to stand quashed and set aside. The Claimants would be entitled to withdraw the amount by furnishing solvent security to the satisfaction of the Reference Court. The Petitions are allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.

[R.M. SAVANT, J]