

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

40 WRIT PETITION NO. 3188 OF 2015
WITH CA/2282/2016 IN WP/3188/2015

WAMAN BARKU SALVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Kulkarni Girish B
AGP for Respondents State: Mrs. S. S. Raut
Advocate for Respondent No.7: Mr. S. S. Tope

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 22nd November, 2016

ORDER:

1. The petitioners by the present writ petition seek direction against the respondents to deposit the amount of compensation, as well as rental compensation, so also to return the possession of the agricultural land taken in possession by the respondents for the purpose of percolation tank.

2. Mr. Kulkarni, the learned counsel for the petitioners submits that, in the year 2008 the possession of the agricultural land of the petitioners has been taken by the respondents for the construction of percolation tank. Even the percolation tank is constructed, however, the amount of compensation has

not been paid nor the rental compensation is paid. The respondents cannot retain the possession of the land and also default in payment of compensation. The learned counsel submits that, this court by an ad interim order had directed the respondents to deposit the amount.

3. Mr. Tope, the learned counsel submits that, the amount is required to be paid by the Government. Even as per the policy, the construction of the percolation tank was under the Marathwada Development Package for which the funds are to be borne by the Government. The Zilla Parishad is not responsible for the same. The Zilla Parishad has submitted the proposal, from time to time since the year 2007 under the old Act and after introduction of the Act 2013 has thrice submitted the proposal but it is the State who is not taking any action.

4. Learned A.G.P. states that, the proposal has been received and steps in accordance with law will be undertaken for acquisition.

5. Though, right to property is not a fundamental right it still remains a constitutional right.

Nowadays, it has been brought within the contours of human right. The land of the petitioners-agriculturists is taken in possession by the respondent for the purpose of construction of percolation tank in the year 2008. Till date, the respondents have not taken up acquisition proceedings nor have paid any compensation amount to the petitioners. Agriculture is the only source of livelihood of such agriculturists. Their land is acquired and total apathy is shown by the respondent-authorities in the matter. No person can be deprived of his property without due process of law. Without acquisition, the property of the petitioners has been taken in possession. The respondent-State cannot lose the concept of a welfare state. It has to take recourse to the provisions of law while taking possession of the property. As the percolation tank is already constructed, it would not be appropriate to pass any orders with regard to possession, as the situation has become irreversible.

6. The learned A.G.P. on instructions of the Land Acquisition Officer who is present in the Court does not dispute that proposal has been received from Zilla Parishad for acquisition. The respondent-State shall

make endeavour to initiate acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 immediately. The notification as required under the provisions of the Act 2013 shall be issued expeditiously and preferably within three months from the date of this order and acquisition proceedings thereafter shall be completed within the period stipulated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The compensation amount that would be arrived at shall be paid to the petitioners upon passing of the award immediately. The State may also endeavour to pay advance compensation to the petitioners if it is feasible.

7. The amount of Rs. Six lakhs is being deposited by the Acquiring body with the Court pursuant to the interim orders. The said amount is allowed to be withdrawn by the petitioners and shall be adjusted in the payment of compensation amount as would be arrived by the Land Acquisition Officer.

8. Writ petition is accordingly disposed of with aforesaid observations and directions. No costs. In

view of disposal of writ petitions, Civil application also stands disposed of.

9. As far as rental compensation is concerned after the passing of the award, the petitioners may take appropriate steps for the same.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC