

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

WRIT PETITION NO. 3544 OF 2004

Bhagwan s/o Thoraji Ghogre and others	...Petitioners
versus	
State of Maharashtra and Ors	...Respondents

Mr.S.K.Adkine, Advocate for Petitioners
Mr.A.P.Basarkar,AGP for Respondent Nos.1 and 2
Mr.B.A.Shinde, Advocate for Respondent No.3.

CORAM : NITIN W. SAMBRE, J.
DATED : 13th NOVEMBER, 2017.

ORAL ORDER :-

1. Heard learned counsel for the respective parties.
2. Pursuant to the provisions of sections 31, 39 and 41 of the Bombay Irrigation Act, the respondent No.2-Collector has assessed the compensation/damages payable to the petitioners of Rs.8,23,285/-, which is based on the report dated 6th August, 1998 submitted by the Executive Engineer and that of Agricultural Officer as against earlier report dated September 11, 1989, submitted by the Soil Conservation Officer. The incident in question giving rise to claim compensation has accrued on July 23, 1989.
3. As such, the report of the Soil Conservation Officer dated September 11, 1989 appears to have been

drawn immediately after the incident in question, whereas, the report drawn by the Executive Engineer is almost after a period of 10 years, which is found to be not proper for awarding compensation.

4. The reason for discarding the report dated September 11, 1989 of the Soil Conservation Officer as observed by Collector is, the reports of Executive Engineer and the Agricultural Officer appear to be more viable, logical and acceptable, though the same have been brought after a period of 10 years.

5. Apart from above, the report of the Executive Engineer, which is after a period of 10 years of the incident in question was accepted by the Collector for awarding compensation, for the reason of the existing position on the date thereof i.e. after 10 years.

6. What is noticed from the report while determining compensation is that the Soil Conservation Officer has taken into account the non-existent facts, whereas, the Executive Engineer and Agricultural Officer have considered that no soil was transported for levelling the fields, which were affected because of the incident in question.

7. The approach of the learned Collector in

discarding the report of Soil Conservation Officer appears to be perverse and arbitrary, for the reason that the report of the Soil Conservation Officer was drawn immediately after the incident i.e. on September 18, 1989. The report of the Executive Engineer was drawn after a period of 10 years. It cannot be expected from the petitioners-agriculturists- to keep their lands idle and await compensation so as to carry out their agricultural activities to earn their livelihood.

8. The approach of the Collector in accepting the report dated August 06, 1998 of the Executive Engineer which was delayed after a period of 10 years which is incomplete and unrealistic approach thereto, the order passed by the Collector on August 17, 1998 needs to be modified.

9. It is directed that the compensation be awarded to the present petitioners as reflected in the report of Soil Conservation Officer drawn on September 11, 1989.

10. The compensation be paid within six months from today with 12 % interest per annum.

Petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)