

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

7 WRIT PETITION NO. 1208 OF 2017

LALITKUMAR SURESH PATIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Patil Vinod Prakash
AGP for Respondents: Mr. A.R. Kale
...

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**
DATE : 03.07.2017.

P.C. :-

. The petitioner has complained to this Court that he owns land gut no. 1656, 1657, 1660 situated at Mauje Dongarkathora, Taluka Yawal, District Jalgaon. The land according to him as per the statutory records is 4 H 12 R and 0.55 R (potkharab) total ad-measuring 4 H 67 R.

2. It was acquired for public purpose for construction of a percolation tank.

3. The joint measurement took place on 26.05.2003, the 2/3rd amount of compensation was also deposited in the office of the Special Land Acquisition Officer but yet not paid to the claimants. The reason was obvious that statutory compliance was still to be made. At that time

the law in the field was the Land Acquisition Act, 1894. The notification under Section 4 of that Act was published. It is common ground that part 2 of that act is titled as 'acquisition'. There is a sub-heading 'preliminary investigation' and section 4(1) is a publication of preliminary notification and powers of the the officers thereupon. That in this case was published on 01.12.2008. Every step or measure thereafter including complying with section 5A, 6, 7 to 11 were taken and an award was declared on 23.04.2012.

4. Then, claim of compensation and request of payment of the same has been made from time to time. There is a representation made on 25.01.2016 but after noticing that in the meanwhile (Act 30) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has intervened. By that Act and particularly by Section 114 Sub-section 1 the earlier law namely Land Acquisition Act, 1894 is repealed.

5. Sub-section 2 of section 114 saves the applicability of Section 6 of the General Clauses Act, 1897.

6. It is in these circumstances, that the petitioner invokes Sub-section 2 of Section 24 and particularly the proviso thereto. So as to

claim compensation in terms of the Act of 2013. That he claimed by addressing a detailed application on 21.01.2016. The Special Land Acquisition Officer taking no cognizance of the same, this writ petition.

7. We have heard both sides.

8. The learned A.G.P. who accepts notice and waives service on behalf of respondent nos. 1 to 3 says it is the Zilla Parishad, Jalgaon which should have put the State in funds. So long as those funds are not forthcoming no assurance can be given by the State with regard to compliance with the mandate of the Act 30 of 2013. These are indeed sorry state of affairs. If huge piece and parcels of land have been acquired by the State in the sense they have been taken over physically from the owners and persons interested, put to use and in this case for a percolation tank, then, everybody must realize that the situation is virtually irreversible. If the state has no funds or the acquiring bodies has not put the Special Land Acquisition Officer in the necessary funds then, the State must ensure that it vacates and releases the land. That is by bringing it to the same shape, size and status in which was taken. That is not possible because percolation tanks are erected and constructed so as to implement certain welfare measures and schemes

including water supply schemes. However, the land owners are awaiting the fruits of the State action and at least in the form of payment of compensation which is their right in terms of the applicable law. At such belated stage the issue of lack of funds has been raised. We do not think that it befits a welfare state when it raises such defences or issues before this Court and which is the highest Court in the State. It cannot present itself before this Court in such a manner. That the public at large must accept that their statutory rights can be trampled upon and this Court must also be a silent spectator. If the state is depicting itself in such a light it should not expect any discretionary relief from this Court much less in its equitable jurisdiction. We do not expect the State to come forward with such pleas as have been raised before us and shifting the blame on to some other agencies. Eventually Zilla Parishads, Village Panchayats and other entities at the local level are but creatures of the State. They are the arms and organs of the State. They are functioning for ensuring that there is a unit of self-government at the local level. Hence, the State cannot wash of its hands and plead lack of funds.

9. We therefore direct the respondent nos. 1 to 3 to ensure and within two months from today that the necessary funds are provided and steps are taken to abide by the law. Else it must be ready to face all

consequences of its inaction including deprivation of the right, title and interest in the immovable property. If tomorrow a situation arises and the percolation tank is required to be demolished so as to bring the land to the same State and to render it fit for being handed over to the owner, then, it is the State which should entirely blame itself and not anybody else. A copy of this order be forwarded to the Principal Secretary in the Department of Revenue and Forest, Government of Maharashtra and also to the Ministry / Department of Finance. The writ petition stands disposed of.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]