

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 5908 OF 2012**

Godavari Marathwada Irrigation
Development Corporation,
Jalna Road, Aurangabad
Through Executive Engineer,
Minor Irrigation Department,
Osmanabad, Dist. Osmanabad.

...PETITIONER

VERSUS

1. The State of Maharashtra,
2. The Collector,
Collector Office, Osmanabad,
District Osmanabad
3. The Special Land Acquisition Officer,
Krishna Khore Project, Osmanabad
District Osmanabad.
4. Vithal S/o Ambadas Nande
Age : 65 years, Occ : Agri,
5. Anant S/o Rama Nande
Age : 60 years, Occ : Agri,
6. Arun S/o Prabhu Paul,
Age : 54 years, Occ : Agri,
7. Fulchand S/o Prabhau Paul,
Age : 70 years, Occ : Agri,

8. Sopan S/o Maruti Nande
Age : 75 years, Occ : Agri,
9. Uttam S/o Vitthal Bhakre
Age : 65 years, Occ : Agri,
10. Yasin S/o Hanif Mujavar
Age : 20 years, Occ : Agri,
11. Jaherabi W/o Yasin Mujavar,
Age : 65 years, Occ : Agri,
12. Ahmed S/o Yasin Mujavar,
Age : 35 years, Occ : Agri,
13. Rajendra S/o Maruti Dhone
Age : 35 years, Occ : Agri,
14. Dilip S/o Ramchandra Pawar
Age : 38 years, Occ : Agri,
15. Ashok S/o Bhimrao Kapse
Age : 53 years, Occ : Agri,
16. Rangnath S/o Pralhad Nande
Age : 75 years, Occ : Agri,
17. Ankush S/o Rangnath Nande
Age : 45 years, Occ : Agri,
18. Santosh S/o Rangnath Nande
Age : 30 years, Occ : Agri,
19. Dnyanoba S/o Bapu Chaugule
Age : 70 years, Occ : Agri,
20. Rama S/o Krishna Nande
Died through L.Rs.
- 20-A) Anant S/o Rama Nande
Age : 70 years, Occ : Agri,

- 20-B) Shivaji S/o Rama Nande
Age : 60 years, Occ : Agri,
- 20-C) Shankar S/o Rama Nande
Age : 55 years, Occ : Agri,
21. Sopan S/o Maruti Nande
Age : 75 years, Occ : Agri,
22. Uttam S/o Vithal Bhakre
Age : 60 years, Occ : Agri,
23. Khodabai W/o Bapurao Nande
Died through L.Rs.
- 23-A) Khodabai W/o Rangnath Nande
Age : 60 years, Occ : Agri,
- Nos.4 to 23-A, R/o Aalni,
Tq. Dist. Osmanabad.

...RESPONDENTS

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Mr.Tatyasaheb Bhosle Advocate for Petitioner.
Mrs.V.S. Choudhari, A.G.P. for Respondent
Nos.1 to 3.
Mr. A.B. Kale, Advocate for Respondent Nos.4
to 7, 10, 12, 13 to 19, 20A, 23A.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING ORDER: 05TH MARCH, 2018.

DATE OF PRONOUNCING ORDER : 14TH MARCH, 2018.

ORDER [PER S.S. SHINDE, J.] :

This Petition takes exception to the
impugned order dated 25th May, 2010 passed by

Respondent No.3.

2. Learned counsel appearing for the petitioner submits that, the order impugned in this Petition is in ignorance of the Government Resolutions dated 17th April, 2003 and 26th December, 2003 issued by the Irrigation Department, Government of Maharashtra, Mantralaya Mumbai. He further submits that, the Special Land Acquisition Officer has not properly verified the record and contrary to the date of taking possession mentioned in the Award, has mentioned 1st March, 2001 as a date on which the possession of the land of the Respondents was taken by the petitioner. Whole approach of the Special Land Acquisition Officer is contrary to the orders passed by this Court in Writ Petition No.7396/2010 (Kalyan S/o Uttamrao Dubale V/s State of Maharashtra and others). It is submitted that, the possession is taken after issuance of notification under Section 4 of the Land Acquisition Act,

therefore, the claimants are not entitled for rental compensation or interest on such rental compensation. Learned counsel invites our attention to the Award passed by the Special Land Acquisition Officer on 10th August, 2005. It is submitted that, the Reference Petition under Section 18 of the Land Acquisition Act is pending before the Civil Court and the Respondents have claimed rental compensation for acquired land by submitting an application with the Special Land Acquisition Officer. Therefore, relying upon the pleadings in the Petition, grounds taken therein and annexures thereto, learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

3. On the other hand, Mr.A.B. Kale, learned counsel appearing for Respondent Nos.4 to 7, 10, 12, 13 to 19, 20A and 23A invites our attention to the impugned order, and submits that keeping in view the record maintained by the office of the

Special Land Acquisition Officer, it is mentioned that the possession of the land of the Respondents has been taken prior to issuance of Section 4 Notification, and therefore, the Respondents are entitled for rental compensation with interest, in view of the ratio/law laid down in the following cases :-

(1) R.L. Jain (D) by Lrs V/s D.D.A. and others¹

(2) State of Maharashtra and others V/s Maimuma Banu and others²

(3) Bhagwat Nathu Patil V/s State of Maharashtra and ors³

(4) Maimune Banu Hamidali Khan and others V/s State and others⁴

It is submitted that, the Respondents have not yet received the amount towards rental compensation and the interest thereupon for long

1 AIR 2004 SC 1904

2 AIR 2003 SC 3698

3 2009(1) Bom.C.R. 328

4 2001(3) Bom.C.R. 529

period, therefore, the petitioner may be directed to release the payment forthwith.

4. We have carefully considered the submissions advanced by learned counsel appearing for the petitioner and learned counsel appearing for Respondent Nos.4 to 7, 10, 12 to 19, 20A and 23A. We have perused the averments in the Petition, grounds taken therein, annexures thereto and the impugned order passed by the Special Land Acquisition Officer.

5. Upon careful perusal of the impugned order, it appears that, the petitioner herein earlier approached to the High Court, and pursuant to the directions given to the Special Land Acquisition Officer, he undertook exercise to consider the cases of the private Respondents for their entitlement for rental compensation and interest thereon. In the impugned order, he has stated that, the possession of the lands of the

private Respondents was taken by private negotiation by the Executive Engineer, Minor Irrigation, Osmanabad on 1st March, 2001, for the purpose of constructing storage tank to store the water. The proposal was sent for Section 4 Notification on 4th May, 2000, however, the Notification was issued on 26th April, 2001, and thereafter the Award was passed on 10th August, 2005. Therefore, it appears that, the possession of the land of the private Respondents was taken on 1st March, 2001 and the Notification under Section 4 of the Land Acquisition Act was issued on 26th April, 2001.

6. The Supreme Court in the case of **R.L. Jain (supra)**, in para 11 has considered the scheme of land acquisition from Section 4(1) Notification till the Award. The Supreme Court in para 11 observed thus :-

"11. The scheme of the Act does not

contemplate taking over of possession prior to the issuance of Notification under S. 4(1) of the Act and if possession is taken prior to the said Notification it will de hors the Act. It is for this reason that both Ss. 11(1) and 23(1) enjoin the determination of the market value of the land on the date of publication of Notification under S. 4(1) of the Act for the purpose of determining the amount of compensation to be awarded for the land acquired under the Act. These provisions show in unmistakable terms that publication of Notification under S. 4(1) is the sine qua non for any proceedings under the Act."

7. Thereafter, the Supreme Court has discussed the applicability and scope of Section 34 of the Land Acquisition Act. An ultimate conclusion reached by the Supreme Court is that

the scheme of the Act does not contemplate taking over possession prior to issuance of Notification under Section 4(1) of the Act and if the possession is taken prior to the said Notification, it will be dehors the Act. In para 18, it is further observed that, in a case where the land owner is dispossessed prior to the issuance of preliminary Notification under Section 4(1) of the Act, the Government merely takes possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary Notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is

entitled while determining the compensation amount payable to the land owner for the acquisition of the property. The provision of S. 48 of the Act lend support to such a course of action. For delayed payment of such amount appropriate interest at prevailing bank rate may be awarded.

8. The Division Bench of this Court in the case of **Maimune Banu Hamidali Khan (supra)** has also discussed the scheme of the Land Acquisition Act and reached to the ultimate conclusion that, in view of the Government Resolutions issued in the year 1972 and 1977 recognizing the land/property owners right to receive rental compensation and interest thereon, in case possession is taken, such land owner/owners are entitled for rental compensation and also interest thereupon, in case of delay in disbursement of the said amount towards rental compensation, wherein the amount is taken by private negotiation before issuance of Notification under Section 4 of

the Land Acquisition Act by the State Government.

The para 15 of the said judgment reads thus :-

"15. When a citizen loses the possession of his land/property, the effect is nothing short of being thrown on the roads and that involves financial liabilities not only for loss of the land/property but also for rehabilitation by way of shelter and/or means of earnings. It can not be accepted that the Government has the power to throw the property owner on roads and ask him to wait for the land acquisition proceedings being initiated under the Act at its sweet will and even, may be decades later, as has happened in some of the cases at hand turning down the claim for compensation. The intention behind the resolutions as issued by the State Government is explicit and it shows the Government's full awareness that it has no authority in law to take the possession of the land/property by consent or by private negotiations prior to the date of publication of the notice under section 4(1) of the Act and therefore, to meet the

emergency situation, may be in the larger public interest to take over the immediate possession of the land/property. Therefore, the Government Resolutions appear to have been issued from time to time recognizing the land/property owners right to receive rental compensation and interest thereon. It is also seen from the record that in selected cases the Government has paid rental compensation as well as interest thereon and in some other cases, the same benefit has been denied to petitioners for the reasons best known to the Government. The directions issued by this Court from time to time which have been referred to in the earlier paragraphs, regarding payment of rental compensation have not been challenged by the State Government and these directions have become final. These directions have been implemented and rental compensation has been paid to the concerned land/property owners on the basis of the Resolutions allowing such payments. The loss of possession of agricultural land entails the loss of earning by way of cultivation of crops and if such

possession is taken over without instituting the acquisition proceedings as contemplated under the Act, the land owner must be compensated for such loss immediately. If such rental compensation has been paid belatedly, the land owner is entitled to receive interest thereon. The amended provisions of the Act, as relied upon by the learned Additional Government Pleader do not envisage and cover, in their ambit, the cases of such acquisitions by consent or by private negotiations except as contemplated under section 17 of the Act. We have, therefore, no hesitation to hold that when the land/property is acquired by consent or by private negotiations, the owner concerned is entitled for the payment of rental compensation as well as interest thereon. The absence of such provision regarding payment of compensation would certainly defeat the protection guaranteed by Article 21 of the Constitution, which states that no person shall be deprived of his life or personal liberty, except according to the procedure established by law.

15-A. It would be appropriate for the Government, to review its policy for acquisition of land before the notification under section 4(1) of the Act is issued. By incorporating sub-section (3-A) in section 17, the Parliament has recognised the land owners right to receive eighty percent of the compensation amount at the time of possession taken over under the said section. Whenever the State Government decides to take possession by private negotiations or by consent, the owner of such land/property must be paid eighty percent of the compensation amount as envisaged under the provisions of section 17(3-A) of the Act and if such payment is made, all other benefits under the Act would be available to such owners. In case such amount of 80% compensation is not paid at the time of taking over the possession, the landowners are entitled for rental compensation as well as interest thereon and it ought to be at the rates as provided under sections 23 and 28 of the Act. The land acquisition officer or the reference Court would have

powers to deal with the claimants right for rental compensation and interest thereon while passing the award. It would be imperative that such a remedy is available to the claimants at the first instance rather than dragging him to knock the doors of this Court under Article 226 of the Constitution. The State Government may be better advised to derive a new policy on these lines, in case it wishes to continue with its intentions to take possession of the land/property, in exceptional cases or as a matter of course in future, before issuing a notification under section 4(1) of the Act."

. After elaborate discussion in para 16, it is observed thus :-

"16. In the result, we allow the writ petitions and direct the State authorities to pay the rental compensation and interest thereon at the rates prescribed in the Government Resolution dated 24-3-1988 and the payment shall be released as

expeditiously as possible and in any case within the period of six months from today by the Collector concerned. We also hold that the land owners will be entitled to raise the demand of rental compensation as well as the interest thereon before the Collector, when he would be passing the award under section 11 of the Act or before the reference Court, as the case may be. In case the concerned owner has not been paid 80% of the compensation as calculated by the Collector while taking possession of such land/property without issuing notice under section 4(1) of the Act, we direct the Government to review its policy for higher rate of rental compensation as well as the interest thereon, in the light of the provisions of sections 17(3-A), 23(1-A) and section 28 of the Act"

9. Keeping in view the aforesaid settled position of law, in our opinion, the Special Land Acquisition Officer is justified in passing the impugned order, thereby holding that the private Respondents are entitled for rental compensation

and interest thereupon from 22nd August, 2000 to 10th August, 2005. However, it appears that, in the impugned order, the Special Land Acquisition Officer has mentioned the date of taking possession on 1st March, 2001. He has mentioned two dates i.e. 22nd August, 2000 and 1st March, 2001 about taking over the possession. Be that as it may, once again the Special Land Acquisition Officer can verify from the record the correct date of taking possession and accordingly do the needful.

10. In the light of foregoing paragraphs, we are not inclined to interfere in the impugned order. Hence the Petition stands rejected.

11. On 9th January, 2013, the Division Bench of this Court (Coram : R.M. Borde & U.D. Salvi, JJ) directed the petitioner to deposit the amount towards rental compensation, as directed by the Special Land Acquisition Officer (excluding the

amount of interest) in the Registry of this Court within a period of six weeks. It appears that, the said amount was not deposited for considerable period, however, lastly, it has been deposited on 30th January, 2014. Be that as it may, the private Respondents will be entitled to withdraw the said amount as per their entitlement, unconditionally, from the Registry, however after establishing their identity. So far as the interest part is concerned, it will be open for the Special Land Acquisition Officer to calculate the same, if already not calculated, and ensure the payment of said amount to the concerned respondents, expeditiously.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

sga/