IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 4823 of 2013

1) Urmila w/o Sanjay Pawar,
Age 40 years,
Occupation : Agriculture,
R/o. Zodgaon, Taluka Sailu,
District Parbhani.

2) Swati w/o Sanjay Pawar,
Age 35 years,
Occupation : Agriculture,
R/o. Zodgaon, Taluka Sailu,
District Parbhani. .. **Petitioners.**

Versus

1) The State of Maharashtra.

2) Special Land Acquisition
Officer, Marathwada Krishi
Vidyapeeth, Parbhani.

3) Assessing Officer,
Income Tax Department,
Parbhani. .. **Respondents.**

Shri. S.S. Ambore, Advocate, for petitioners.

Shri. M.M. Nerlikar, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. Alok Sharma, Standing Counsel, for respondent No.3.

Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.

Date: 1 MARCH 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule, rule made returnable forthwith. Heard both sides for final disposal.

2) The petition is filed under Articles 226 and 227 of the Constitution of India for giving direction to the respondents to release 10 per cent amount deducted from the compensation amount awarded to the petitioners under the provisions of the Land Acquisition Act by the Special Land Acquisition Officer. This amount is deducted as income tax deducted at source.

3) Agricultural land of the petitioners admeasuring 2H 60 R is acquired for irrigation project. Respondent No.2, Special Land Acquisition Officer delivered the award in respect of this agricultural land and awarded total amount of compensation of Rs.4,33,649/-. From this amount, 10 percent amount which is Rs.48,183/- is deducted by the Special Land Acquisition Officer as income tax payable at source. The remaining amount is accepted by the petitioners under protest. They have also filed Land Acquisition Reference for getting enhanced amount of compensation.

4) It is the case of the petitioners that they were not liable to pay income tax as the land acquired is agricultural land but the tax is deducted by respondent No.2. It is contention of the petitioners that certificate of tax deducted at source is issued in their favour and they have filed income tax return for claiming refund/return of the amount wrongly deducted from their compensation amount. It is contended that the Income Tax Officers are saying that they have not received instructions to refund this amount and further they have not received the amount by on-line process from other respondents.

5) The petitioners have produced record which was supplied to the Income Tax Department like copy of Form No.13 (prepared under rules 28 and 37G), application given under section 197 of the Income Tax Act, certificate which was signed by respondent No.2 showing that the aforesaid deduction was made at source, 7/12 extracts and other certificates of revenue authorities showing the location of the land situated from the city, village area. The return was filed for the year 2011-2012. Along with the application for refund given to the Income

Tax Department the petitioners had supplied copy of decision given by this Court at this Seat in Writ Petition No.2115/2011 in which this Court had made it clear that in respect of agricultural land such deduction is not possible. They have also produced copy of representation showing that the Income Tax Officer had informed to them that they have not received income tax in the present matter by one-line process from the Special Land Acquisition Officer.

6) The Special Land Acquisition Officer has filed reply affidavit and he has contended that the aforesaid tax was deposited by him in the Treasury as income tax and copy of challan along with the list of the persons from whose amount, the amount was deducted is produced. He has admitted that he has given certificate of aforesaid nature in favour of the petitioners.

7) During arguments, learned counsel for the Income Tax Department submitted that the aforesaid amount is not received by the Income Tax Department. The respondent No.3-Income Tax Officer has not filed

reply affidavit to rebut the contentions made by the petitioners.

8) The petitioners are heavily relying on the decision given by this Court in **Writ Petition No.2115/2011 (Shamrao Sitaram Adhe v. The State of Maharashtra)** dated 20-9-2011. This Court has referred to the case decided by Kerala High Court reported as **294 ITR 0423 (Ker.) 2007 (Nalini v. Deputy Collector, Land Acquisition)**. This Court has held that if the amount is in respect of agricultural land, it is not assessable to the income tax. It is held that such deduction is not possible as the land was agricultural land. This Court has observed that it is not desirable that poor farmers are required to spend huge amount for hiring the services of Chartered Accountant for filing the proceeding in Income Tax Department and that will be more harassment to them.

9) The learned counsel for the petitioners has placed reliance on some observations made by the Andhra Pradesh High Court in the decision given in Writ Petition No.7874/2016 (C. Nanda Kumar v. Union of India).

The Andhra Pradesh High Court considered the provision of section 96 of the Act No.30 of 2013 (Land Acquisition Act). The provision of section 194LA of the Income Tax Act was also considered. The Andhra Pradesh High Court considered the circulars issued by the Department in the past and the recent circular issued by the Central Board of Direct Taxes (CBDT) dated 25-10-2016. The decision is rendered in view of the provision of 2013 Land Acquisition Act viz section 96 showing that income tax cannot be deducted on the awarded amount. Even prior to incorporation of section 96 in the Land Acquisition Act, the provision of section 194LA of the Income Tax Act provided that if compensation is payable in respect of agricultural land which is compulsorily acquired, the authority is not expected to deduct 10% amount from the compensation amount from the owner of the agricultural land. Thus the income tax is not payable on that compensation amount.

10) In the present matter, admittedly agricultural land was acquired and the relevant record in that regard is produced. The learned counsel for the Income Tax

Department submitted that such amount is not received by it and in view of that circumstance the other possible defences available to the Income Tax Department need not be considered in the present matter. The learned counsel for the Income Tax Department has placed reliance on the observations made by the Apex Court in the case reported as **AIR 1964 SC 1878 (Dr. Sham Lal Narula v. The Commissioner of Income Tax)** and he submitted that at least on the interest amount income tax is deductable. As the income tax was not credited in the account of the Income Tax Department as per the submissions made and as there is new provision showing that on the awarded amount no tax is payable, this Court holds that direction needs to be given to respondent Nos.1 and 2 to refund the amount as they have allowed deduction of 10% amount from the total compensation amount which was payable to the petitioners. Under the Land Acquisition Act the petitioners are entitled to get 15% interest on the compensation amount and in view of the aforesaid circumstances this Court holds that the respondents need to be made liable to pay interest at the rate of 15% per annum on the amount which is wrongly deducted by them from the compensation amount which was payable to the petitioners. In the result, following order :-

11) The writ petition is allowed. The amount deducted by the Special Land Acquisition Officer from the compensation amount shown in the award prepared by the Special Land Acquisition Officer as income tax is directed to be returned by the respondent Nos.1 and 2 to the petitioners with interest at the rate of 15 per cent per annum and the interest will be chargeable from the date of deduction i.e. 20-7-2010 till the date of realisation. The amount is to be returned within three months from the date of this order. Liberty to the State to go against Income Tax Department if the state has paid the amount to Income Tax Department for recovery of the amount which the State is required to pay under this order. Rule is made absolute in those terms.

Sd/-	Sd/-
(SUNIL K. KOTWAL, J.)	**(T.V. NALAWADE, J.)**

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