IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12706 OF 2017

Sadu (Sahadeo) Aba Kamble (Deceased)
Through Legal Heirs:
Smt.Salubai Sahadeo (Sadhu) Kamble .. Petitioner

V/s.

State of Maharashtra & Ors. ... Respondents

Mr.Ramdas Sabban for the Petitioner

CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.

DATED : APRIL 24, 2018

P.C. :

1 Heard.

2 Advocate for the Petitioner filed praecipe dated 24.04.2018 for for speaking to minutes of order dated 09.04.2018.

3 In cause title ***"Ladu"*** be substituted by ***"Sadu".***

4 On page 7 paragraph 13d line 4 ***"06.05.2016"*** be substituted by ***"05.12.2016".***

5 Rest of the order remains as it is.

6 The original order shall stand corrected accordingly.

(B. P. COLABAWALLA, J.) **(K.K. TATED, J.)**

CORRECTED ORDER DATED APRIL 9, 2018 READS THUS:

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Sadu (Sahadeo) Aba Kamble (Deceased)
Through Legal Heirs :
Smt. Salubai Sahadeo (Sadhu) Kamble … Petitioner

V/s.

State of Maharashtra & Ors. … Respondents

Dr. R. P. Sabban for the Petitioner
Mr. V. N. Sagare, AGP for Respondent Nos.1 to 3.

CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.

DATED : APRIL 9, 2018

P.C. :

1 Heard. By consent of the parties, the matter is taken up for final hearing at the stage of admission.

2 By this petition under Article 226 of the Constitution of India, the Petitioner challenges the action taken by the Respondent thereby deducting 10% amount from the compensation payable in respect of the land on the basis of the Government Resolution dated 11.01.2017 issued by the State Government.

3 In the present proceedings, the Petitioner's land was acquired by the State Government by issuing Notification u/s.4 of the said Act. Thereafter the individual notices were issued along with the Notification u/s.6 of the said Act. Thereafter the Special Land Acquisition Officer has passed the Award u/s.11 of the said Act. That was accepted by the Petitioner without filing any Reference u/s.18 of the said Act. Thereafter the Petitioner had made an Application u/s.28A of the Land Acquisition Act, 1894 (said Act) for redetermination of the amount of compensation on the basis of the Award passed by the Court in another matter arising from the same Notification u/s.4 of the said Act. That Application was decided by the Land Acquisition Officer and passed the Award dated 31.03.2016 holding that the Petitioners are entitled to additional compensation in respect of the acquired land. Thereafter the Petitioner learnt that at the time of making payment of the compensation, the Respondent had deducted 10% amount towards royalty (Najrana). Hence, the Petitioner, by letter dated 11.01.2017 (Exhibit-F) had requested the Special Land Acquisition Officer No.1, Solapur to refund the said 10% amount with interest. The Petitioner has also claimed interest under section 34 of the said Act from the date of the Award i.e. 31.03.2016 passed u/s.28A of the said Act till the date of payment i.e. 05.12.2016.

4 The learned counsel submits that thereafter the Petitioner again, by letter dated 25.07.2017 called upon the Special Land Acquisition Officer to refund the said amount immediately stating that the Government Resolution is not applicable in the facts and circumstances of the present case. Thereafter the Petitioner wrote another letter dated 22.09.2017 to the Special Land Acquisition Officer reminding him to take immediate steps for refund of the said amount. The Special Land Acquisition Officer, by his letter dated 29.07.2017 rejected the Petitioner's Application dated 25.07.2017 on the ground that they have instructions from the Government vide Government Resolution dated 11.01.2017 to deduct 10% from the compensation if the land comes under Class-II.

5 Being aggrieved by the letter dated 29.07.2017 issued by the Special Land Acquisition Officer rejecting their Application dated 25.07.2017 for refund of 10% amount which was deducted towards royalty amount and interest u/s.34 of the said Act for the period from 31.03.2016 (date of award) to 05.12.2016 (date of payment), filed the present Writ Petition under Article 226 of the Constitution of India.

6 The learned counsel for the Petitioner submits that the Special Land Acquisition Officer has erred in coming to the conclusion that on the basis of the letter dated 02.07.2009 and Government Resolution dated 11.01.2017, they are entitled to deduct 10% royalty amount from the compensation payable to the Petitioner under the said Act. He submits that the said Government Resolution dated 11.01.2017 is applicable only to Mahar Watan Land and not at all applicable to the

cases under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (BTLR Act) and other occupants of Class-II land. He submits that on the basis of the letter dated 02.07.2009 and/or Government Resolution dated 11.01.2017 the Respondent has no right to deduct 10% royalty amount from the amount payable towards the compensation. He submits that in any case, the Government Resolution dated 11.01.2017 is not applicable to the facts of the present case because the Award was passed by the Special Land Acquisition Officer on 31.03.2016 i.e. before issuing Government Resolution dated 11.01.2017.

7 The learned counsel for the Petitioner submits that the Apex Court, in the matter of ***State of Maharashtra Vs. Babu Govind Gavate & Ors. 1996(1) SCC 305*** held that section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 does not give power to the Government, when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owners of the land as determined u/s.23(1) of the said Act. Paragraph 3 and 4 of the said judgment read thus:

> *"3. A reading thereof clearly indicates that Section 43 was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil to perpetuate the object of the Tenancy Act. As its scheme previous sanction is a condition precedent for any transfer except when the land is being mortgaged to a cooperative bank or a lending institution envisaged in sub-section (1AA) and the Explanation appended thereto amplifies such institutions so as to enable him to obtain loans for improving the land for better cultivation and to augment economic empowerment. The consideration mentioned thereunder was also to protect the tiller from exploitation, indigence or compelling dire necessity to alienate the loans and under a fictitious and colourable transaction*

or for inadequate consideration. That, under no circumstance, gives power to the Government, when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under Section 23(1) of the Act."

"4. The sanction required under Section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee etc. as envisaged under Section 43(1). But when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 43 does not arise. Section 23(2) of the Act off sets the unwillingness on the part of the owner paying time scheme. The question, therefore, is whether the Government under the aforestated notification is entitled to deduct 1/3rd from the compensation determined under Section 23(1) of the Act. We have seen the notification and we are unable to accept the validity of the said notification. When the Collector exercises the power to grant sanction under Section 43(1), he does it as a statutory authority to protect right, title and interest of the erstwhile tenant who subsequently became the owner to see that he remains to be the owner and continues to be in possession and enjoyment of the same. But that condition to grant sanction is not headed with any right to the Government to deduct 1/3 when it exercises its power of element domain for a public purpose. The owner under Section 23(1) is entitled to the full compensation of the market value prevailing as on the date of publication of the notification under Section 4(1). Therefore, the circular relied on is clearly ultra vires of the power of Section 43 or any other power."

8 The learned counsel for the Petitioner submits that though the Award under section 28A of the said Act was passed by the Land Acquisition Officer on 31.03.2016 they paid the compensation on 05.12.2016. He submits that in view of section 34 of the said Act, the Petitioner is entitled to interest from 01.04.2016 till the date of payment, on the amount which was deducted by them, with interest as per section 34 of the said Act. He submits that if the present petition is

not allowed irreparable loss will be caused to them.

9 On the other hand the learned AGP for the Respondent has vehemently opposed the Writ Petition. He submits that because of Government restrictions on the said land, the Government has a right to deduct some amount towards royalty. He submits that whenever there is restriction on sale and/or purchase of a land and if they have to take prior permission of the Government, in that case the Government is entitled to charge the premium/royalty. Hence, as per Government Resolution dated 11.01.2017, the Special Land Acquisition Officer has rightly deducted the amount towards royalty. Therefore, there is no question of allowing the Writ Petition.

10 We heard both the sides at length. It is to be noted that admittedly, in the present proceedings, the Special Land Acquisition Officer has passed the Award dated 31.03.2016 u/s.28A of the said Act. At the time of deducting 10% amount towards royalty, the Special Land Acquisition Officer has relied on the Government Resolution issued by the Revenue Department, Government of Maharashtra dated 11.01.2017. Nowhere, it is stated in the said Government Resolution that the same is applicable retrospectively. Apart from that the Supreme Court, in the matter of Babu Govind Gavate (Supra) held that if there is compulsory acquisition, then there is no question of deducting any amount towards royalty and/or Government premium. Therefore, we are of the opinion that the letter issued by the Special Land Acquisition Officer dated 29.07.2017 rejecting the Petitioner's Application dated 25.07.2017 is liable to be set aside, holding that the Respondent has no right to deduct 10% amount towards royalty from

the compensation payable to the Petitioner as per Award dated 31.03.2016 u/s.28A of the said Act.

11 Apart from that, admittedly, the Special Land Acquisition Officer has passed the Award u/s.28A of the said Act on 31.03.2016 and made a payment to the Petitioner on 05.12.2016. There was delay on the part of the Respondent to make the payment immediately. Hence, the Petitioners are entitled to interest u/s.34 of the said Act for that period.

12 In view of these facts, we are of the opinion that the Petitioner has made out a case for allowing this Writ Petition.

13 Hence, following order is passed.

a. Letter dated 29.07.2017 issued by the Special Land Acquisition Officer No.1, Solapur (Exhibit-G to the petition) is set aside, holding that 10% deduction i.e. Rs.7,25,468/- is not according to law.

b. The Petitioner is entitled to said amount of Rs.7,25,468/- towards the compensation in respect of the acquired land.

c. The Petitioner is entitled to interest u/s.34 of the Land Acquisition Act, 1894 on delayed payment.

d. The Respondents are directed to pay interest u/s.34 of the Land Acquisition Act, 1894 to the Petitioner on delayed payment from 01.04.2016 i.e. date of Award u/s.28A of the Land Acquisition Act, 1894 till payment i.e. 05.12.2016.

e. The Respondents to calculate the amount due and payable to the Petitioner within three months from the date of receipt of copy of this order and make the payment to the Petitioner, thereafter.

f. The Writ Petition stands disposed of accordingly.

g. No order as to costs.

(B. P. COLABAWALLA, J.) **(K.K. TATED, J.)**