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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1482 OF 2018

1. Bhagirathi Vitthal Gavali and Ors.

Age 64 Yrs, Occ. Household, R/o. Miraj, Tal.
Miraj, District : Sangli

...Petitioners

Versus

**1. The Sangli Miraj Kupwad City
Corporation and Anr.**

Thru. Its Commissioner, Rajwada Chowk,
Sangli, District – Sangli.

...Respondents

Mr. Kuldeep U. Nikam, for the Petitioners.
Mr. Shivaji Annappa Masal, for Respondent No.1.
Mrs. R.A. Salunkhe, AGP for Respondent No.2.

**CORAM: A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 17TH JULY, 2018

JUDGMENT PRONOUNCED ON 14TH AUGUST, 2018

O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)

Jitendra
Shankar
Nijasure

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1. The Petitioners by the present Petition are seeking directions against Respondent No.1 Corporation to handover the outstanding entire compensation amount including 100% solatium amount as resolved in Resolution No. 31 in General Body meeting dated 19th May, 2016 of the Respondent No.1 – Corporation in

respect of mutual consent acquisition of the Petitioners land which is the the subject matter of the present Petition.

2. The Petitioners are the original owners of the agricultural land in Gat No. 935/2B admeasuring area of OH, 67.9R out of total land of 2H, 15R and *pot kharaba* 0H-01R situate within the Corporation limits of the Respondent No.1 Corporation (for short "said land"). The Respondent No.1 Corporation in their development plan had proposed reservation of land for construction of road of 30.48 mtrs in survey no. 935 situate at Miraj within the territorial limits of Respondent No.1 - Corporation. The Survey no. 935/2B consisted of total land admeasuring 2H, 15R out of which an area of 6247.38 Sq. mtrs is the affected land in respect of the reservation in the development plan for the purpose for construction of road. The Petitioners by their letter dated 7th October, 2015 requested the Respondent No.1 – Corporation for payment of compensation amount in respect of the said land affected due to construction of load. The administrative sanction in respect of construction of road had been granted on 27th February, 2014 and work tender was issued on 3rd March, 2014. The Deputy Commissioner of Respondent No.1 – Corporation vide its communication dated 11th May, 2016 directed

the City Secretary / Nagar Sachiv of the Respondent No.1 – Corporation to propose a resolution in respect of compensation amount payable to the Petitioners before General Body meeting of the Respondent No.1 – Corporation. The acquisition proceedings of the said land was as per mutual settlement talks and the Respondent No.1 – Corporation decide to give compensation to the Petitioners in respect of their affected said land as contemplated under the provisions of the Right to Fair Compensation and Transferring in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (for short “Act of 2013”). The Petitioners received a notice on 11th May, 2016 from the Respondent No.1 – Corporation, wherein they were requested to handover possession of the said land as the Petitioners were ready to give consent for acquisition of the said land by mutual consent. The Respondent No.1 – Corporation offered either additional FSI or TDR or compensation and the Petitioners were called upon to submit their application for the same. On 11th May, 2016, the Petitioners by their communication requested the Respondent No.1 – Corporation to immediately disburse the amount of compensation in respect of acquisition of the said land. The Respondent No.1 – Corporation vide its resolution No.31 passed on 19th May, 2016 gave sanction in its General Body

Meeting for granting and disbursing an amount of Rs.69,56,784/- towards compensation to the Petitioners in respect of the affected said land. It was further resolved in the said resolution that solatium amount in respect of the said acquisition would be 100% as contemplated under the Act of 2013.

3. The Petitioners have accordingly handed over their affected said land on 23rd May, 2016 to the Respondent No.1 – Corporation and physical acquisition was carried out of the said land. The Petitioners received a cheque of Rs.62,61,105/- (after deducting necessary TDS) which cheque is dated 25th May, 2016 issued by the Respondent No.1 – Corporation towards the compensation amount in respect of the Petitioners affected said land. However, the Petitioners have not received the solatium amount / entire compensation amount in respect of the acquisition of their said land. The Petitioners despite several requests have not been paid the solatium amount by the Respondent No.1 – Corporation. There is an office note dated 24th May, 2016 made by the concerned Branch Engineer of the Respondent No.1 – Corporation reiterating the fact that the Petitioners had agreed to handover their affected said land only on the condition that they would be compensated for the same as agreed. It is further

mentioned that in light of reservation passed in general body meeting dated 19th May, 2016 of the Respondent No.1 – Corporation the Petitioners are entitled for solatium amount of 100% of the actual compensation amount. The Petitioners having not received 100% solatium amount, filed this Petition.

4. The learned counsel appearing for the Petitioners has submitted that the Petitioners had handed over their affected said land on 25th May, 2016 and despite which they have till date not been paid the agreed 100% solatium amount payable to them as resolved by the Respondent No.1 – Corporation in their general body meeting dated 19th May, 2016. He has submitted that under the Act of 2013 which came into force on 1st January, 2014, it is obligatory for the acquirer of the land to pay 100% solatium amount for the acquisition. He has submitted that the Respondent No.1 – Corporation was statutorily obligated to pay 100% solatium amount to the Petitioners for the acquisition of their said lands. The Petitioners have been deprived of the said 100% solatium amount despite the Respondent No.1 – Corporation agreeing to pay the same and passing a resolution in their general body meeting to that effect. He has, therefore, submitted that the Respondent No.1 – Corporation be directed to pay the agreed

outstanding 100% solatium amount which is part of the entire compensation amount for the acquisition of the Petitioners said land.

5. The learned counsel for the Respondent No.1- Corporation has relied upon an Affidavit of Shri Vivek Hari Pendse, the Assistant Director of Town Planning of the Respondent No.1 – Corporation dated 3rd July, 2018. He has submitted that the Respondent No.1 – Corporation has not paid the 100% solatium amount to the Petitioners as they were awaiting the response from the office of Secretary Town Planning, State of Maharashtra and once the Respondent No.1 – Corporation received guidelines from the said office, they will take a decision in respect of payment of solatium amount as per the availability of the funds with the Corporation. He has submitted that a complaint had been received by one Shri Gautam Pawar on 27th June, 2016 in respect of payment of compensation of the Petitioners and this complaint had been sent to the Commissioner of the Respondent No.1 – Corporation as well as the Chief Minister of the State of Maharashtra. The Commissioner of Respondent No.1 – Corporation gave necessary directions to the Deputy Commissioner, Miraj for submitting report on the complaint. He

has submitted that the Respondent No.1 – Corporation had forwarded a detail report to the said office of the Principal Secretary, Town Planning Department, State of Maharashtra and the response was awaited. Hence, the solatium amount has not been paid.

6. The learned AGP appearing for the Respondent No.2 has supported the impugned action of the Respondent No.1 – Corporation in not paying the 100% solatium amount to the Petitioners.

7. We have considered the submissions. The Petitioners have handed over physical possession of the affected said land for construction of a road to the Respondent No.1 – Corporation on 11th May, 2016. Thereafter, the Petitioners have received a cheque of Rs.62,61,105/- dated 25th May, 2016 towards compensation amount in respect of the affected said land of the Petitioners. However, the Petitioners have till date not received the agreed 100% solatium amount.

8. Section 30 of the Act of 2013 provides for the award of solatium. The Explanation in the Section explains the solatium amount to be in addition to the compensation payable to any

person whose land has been acquired and that the solatium amount is equivalent to 100% of the compensation amount. The Respondent No.1 – Corporation has passed resolution dated 19th May, 2016 in their General Body Meeting, wherein it resolved to grant compensation of Rs.69,56,784/- and in addition 100% solatium amount in respect of the said land which they were statutorily obliged to provide. The only reason for non-payment of solatium amount stated in the Affidavit in Reply of Shri Vivek H. Pendse, Assistant Director, Town Planning of Respondent No.1 – Corporation is a complaint made by one elected councillor Shri Gautam Pawar on 27th July, 2016 in respect of payment of compensation of the Petitioners. A Report appears to have been made by the Deputy Commissioner of the Respondent No.1 – Corporation in respect of the complaint of the Corporator and forwarded to the office of the Principal Secretary, Town Planning Department, State of Maharashtra. It appears from the said Affidavit that only when the Respondent No.1 – Corporation received guidelines from the said office, regarding the complaint they would take a decision in respect of the solatium amount and that too dependant upon the availability of funds with the Respondent No.1 – Corporation. This is contrary to the earlier part of the said Affidavit where it is stated that a letter had been

addressed on 3rd September, 2016 by the Director Town Planning, State of Maharashtra to the Respondent No.1 – Corporation, in which it is contended that in respect of the solatium amount Respondent No.1 – Corporation may take its own decision and if it needs then the Respondent No.1 – Corporation may communicate its decision with the Revenue Department.

9. The Respondent No.1 – Corporation has a statutory obligation to make payment of the 100% solatium amount to the Petitioners. Moreover, the Respondent No.1 is bound by its General Body Resolution of 19th May, 2016 which has become final. Only in view of the said Resolution that the Petitioners handed over the possession of their affected land on 23rd May, 2016 to the Respondent No.1 – Corporation. Therefore, now the Respondent No.1 cannot decline to implement its own Resolution. We find that it has been over two years since the physical acquisition of the Petitioners said affected land had been taken by the Respondent No.1 – Corporation. The solatium amount should have been paid together with the compensation amount which was paid on 25th May, 2016 by the Respondent No.1 – Corporation for acquisition of the affected said land. The

Respondent No.1 – Corporation has failed to furnish any satisfactory explanation as to why they had for over two years not paid the 100% solatium amount to the Petitioners. The non-compliance with the statutory provision to pay 100% solatium amount cannot be merely on the premise of a complaint by a Councillor in respect of payment of compensation of the Petitioners. We are, therefore, inclined to direct the Respondent No.1 – Corporation to make payment of 100% solatium amount to the Petitioners as resolved to do so in Resolution No. 31 in General Body Meeting on 19th May, 2016 of the Respondent No.1 – Corporation.

10. We, therefore, pass the following order:-

- (i) We order and direct the Respondent No.1 – Corporation to pay the entire outstanding compensation amount which includes 100% solatium amount as resolved in Resolution No. 31 in General Body Meeting dated 19th May, 2016 to the Petitioners within a period of three months from today;
- (ii) The Petition is made absolute on the above terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)