

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.390 OF 2019

Irrappa Machanna Naragude,
deceased through L.Rs.:

1 Janabai wd/o Pramnath Naragude
and others

Petitioners

Versus

The State of Maharashtra & another

Respondents

Mr.Balasaheb Deshmukh, advocate holding for Mr.S.B.Madde,
advocate for petitioners.
Mrs.P.V.Diggikar, A.G.P. for Respondents.

**CORAM : PRASANNA B. VARALE &
NITIN W. SAMBRE, J.
DATE: 14th March, 2019.**

P.C. :

Heard Shri Deshmukh, advocate assisted by Shri S.B.Madde, advocate for petitioners and learned A.G.P. for Respondents.

2 The petitioners have prayed for issuance of writ of mandamus directing the respondents to carry out joint measurement of land S.No.94/B/2 (Gat.No.378) of *Mouze* Chikhli and prayed for return of excess land acquired by Respondent No.2 for Sonkhed Minor Irrigation Project or in the alternative, has prayed for issuance of directions to pass an award acquiring land admeasuring 2 hectares 8 *gunthas* of the petitioner under the Right to Fair Compensation And Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013').

3 The petitioners claim to be owners of land admeasuring 7 hectares 36 Ares bearing S.No.94/2, situate at Chikhli, Tq. Ahmedpur, District Latur.

4 According to the petitioners, the land to the extent of 4 hectares 4 Ares, out of the aforesaid land, was acquired for the purpose of construction of a Dam known as Sonkhed Water Tank. It is claimed by the petitioners that entire S.No.94 was shown to be affected because of the aforesaid Sonkhed Minor Irrigation project.

5 The petitioners then claimed that remaining land of the petitioners than the one, which was acquired, is on the banks of the channel, to which water from the dam flows and because of regular flow of the water for long time, the remaining land of the petitioners came to be affected resulting into the land getting submerged thereby causing loss/damage to the petitioners.

6 As such, according to the petitioners, they are entitled for the compensation towards acquisition of the remaining/balance land out of the aforesaid survey number.

7 So as to substantiate their contentions, the petitioners have relied upon the judgment of the Apex Court in the matter of **Syed Maqbool Ali Vs. State of U.P. & another**, reported in 2011 (15) SCC 383, particularly paragraphs no.5, 6 and 7 thereof.

8 *Per contra*, the learned A.G.P., appearing for the Respondents, submits that the petition, at the behest of petitioners, is not maintainable, particularly in view of their alleged claim for joint measurement of land out of S.No.94/B/2, as, it is always open for the petitioners to approach the competent authority with such prayer, which the competent authority can deal with on its own merit.

9 The learned A.G.P. then submits that even otherwise, prayer of the petitioners is liable to be rejected as same suffers from inordinate delay and laches, particularly in the background of the fact that the acquisition took place more than forty-two years back. The learned Assistant Government Pleader then would urge that because of the alleged regular flow of water from the dam, if the channel of canal has changed its direction resulting into present petitioners suffering any damages at any point of time, remedy to the petitioner lies elsewhere and not under the extraordinary jurisdiction of this Court.

10 Having appreciated the submissions, what is noticed is that part of the major chunk of the land from the holding of the petitioners was acquired way back in 1975/1977 and it is, after a period of forty years, the petitioners are seeking joint measurement without explaining the belated act of coming before this Court seeking joint measurement.

11 Apart from above, it is always open for the petitioners to pursue their remedy before the competent authority at individual level seeking measurement of the land and the

petitioners cannot take help of the crunches by seeking a direction from this Court to allow the joint measurement.

12 Apart from above, claim of the petitioners that award needs to be passed under the Act of 2013 for remaining area of 2 hectares 8 *gunthas* land of the petitioners, same having been damaged because of regular flow of water from the dam is concerned, in our opinion, it is always open for the petitioners to approach the competent court and demonstrate the alleged damage suffered by them so as to seek compensation. Neither any documentary evidence is produced before this Court, so as to *prima facie* infer the alleged damage suffered by the petitioners nor the petitioners have alleged any such claim before any of the authorities in the past.

13 As such, for the aforesaid reasons, we hardly notice any convincing reason, which warrants interference in extraordinary jurisdiction.

14 Petition fails and as such, stands dismissed.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

adb