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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6733 OF 2018

Sitaram Raoji Gaikwad & Ors.

.. Petitioners

Versus

The State of Maharashtra & Ors.

.. Respondents

Mr. Uday P. Warunjikar for Petitioners.

Mr. Y. S. Khochare, AGP for Respondent Nos.1 and 2.

Mr. N. P. Deshpande for Respondent No.3.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

DECEMBER 06, 2019.

P.C.

1. Heard learned counsel for the parties.

2. It is not disputed by the respondents that the petitioners are project affected persons when agricultural lands belonging to the petitioners were acquired for Tarali Irrigation Project. The first award under which some parcels of land were acquired is dated 30.11.1999. Further lands were acquired when an award was published on 31.07.2009.

3. Without having any powers to do so, while offering the compensation, 65% of the compensation assessed was deducted towards rehabilitation.

4. Entitlement of the petitioners for being allotted compensatory land has got mired in bureaucratic inefficiency.

5. The first affidavit filed by the Special Land Acquisition Officer on 26.07.2018 admits the claim of the petitioners without any stand taken as to why inspite of stand of the petitioners being accepted compensatory land was not allotted. In the second affidavit filed on 17.09.2018 it is pleaded that the petitioners desired allotment of land in village Suryachiwadi. It is pleaded that the land which the petitioners desired had already been allotted to some other project affected persons. It is pleaded that this fact was conveyed to the petitioners. It is thereafter pleaded that land in village Suryachiwadi and village Banpuri was available. It is pleaded that if petitioners offer preference for the land referred to in paragraph 7 of the said affidavit, needful would be done.

6. In the next affidavit filed on 26.06.2019, it is pleaded that some petitioners refused to accept the land referred to in

paragraph 3 of the said affidavit with further pleading that said land has now been allotted to other persons.

7. The Maharashtra Project Affected Persons Rehabilitation Act, 1989, vide Sub-section (2) of Section 16 stipulates as under :

16. Grant and assignment of land. -

(1) xxxx

(2) An affected person eligible for the grant of land or plot under sub-section (1) shall forfeit his right to get the same if,-

(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of 45 days from the date of receipt by him of a notice in that behalf from the Collector; or

(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five per cent of the amount of compensation which he has received for his land which is acquired from him in

the affected zone, or of the likely cost of the land to be granted to him under sub-clause (a) of sub-section (1), whichever is less, at the time of payment of such compensation to such affected person.

8. Suffice it to state, as per Sub-section (1) of Section 16 an eligible affected person desirous of getting compensatory land has to make an application to the Collector for allotment of the compensatory land. Thereafter, the Competent Authority has to determine the eligibility and the extent of compensatory land which has to be allotted and identify a parcel of land which can be allotted. The same has to intimate the applicant. Thereafter, as per Clause (a) of Sub-section (2) of Section 16 the applicant has to communicate his willingness to accept the compensatory land within 45 days and in said period has to deposit in the treasury 65% of the compensation assessed and received by him.

9. Meaning thereby, it is the choice of the project affected person to accept or not accept the compensatory land once it is offered. Only if the offer is accepted, then 65% of the sum awarded for acquired land has to be re-deposited in the Government treasury.

10. Noting that the respondents could not have suo motu deducted 65% of the compensation assessed to the petitioner when their agricultural lands were acquired and noting further that it is the duty of the State to identify the compensatory land which can be allotted to the petitioners requiring the petitioners thereafter to express their willingness and along with the same deposit 65% of the compensation received by them, we dispose of the Petition issuing the following directions :-

(a) Within four weeks from today, 65% of the sum awarded to the Petitioners which has illegally being retained by the State shall be paid to the petitioners together with interest @ 12% per annum from the date when said amount had to be paid to the Petitioners till date of payment of said amount.

(b) Within six weeks from today, the Competent Authority shall identify compensatory land which the State wants to offer to the Petitioners and communicate the same to the Petitioners.

(c) Within 45 days of the receipt of said

communication, if the Petitioners accept the compensatory land, they shall intimate the same to the Competent Authority and deposit 65% of the compensation received by them.

(d) In said eventuality the compensatory land shall be given possession of to the petitioners and entry made in the revenue records.

(e) Should the Petitioners refused to accept the compensatory land that will be end of the matter.

Pravin
D.
Pandit

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by Pravin D.
Pandit
Date: 2019.12.06
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SMT. BHARATI DANGRE, J.

CHIEF JUSTICE