

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5827 OF 2018

**NANASAHEB RANGNATH WAYASE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioners : Shri Shelke Manoj U.
AGP for Respondents 1 and 2 : Shri S.S. Dande
Advocate for Respondents 3 and 4 : Shri Ram B. Deshpande
Advocate for Respondents 6 and 7 : Shri Santosh S. Dambe

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 04th October, 2021

Per Court :-

1. After hearing the learned counsel for the respective sides on 03.08.2021, we had passed the following order:-

“1. *A peculiar situation emerges from the contentions of the parties before us. The petitioners contend that they have lost about 7 Hectors of land in Gut Nos.6, 8, 14, 95, 96 and 97 in village Hingane (Bk.), Taluka and District Beed, because of the construction of a percolation tank. This is said to have occurred in 2003. Respondent Nos.3, 4 and 5 categorically state that they have neither acquired the said land nor they have constructed any tank of any nature whatsoever as alleged by the petitioners. The learned advocate representing respondent Nos.6 and 7 submits on specific instructions that these respondents have nothing to do with the purported percolation tank, muchless,*

have acquired the land and constructed the tank of any nature whatsoever.

2. *We find from the photographs that there is no R.C.C. structure for constructing a ground water storage tank. So also, it does not appear to be a 'Bhumigat Bandhara'. However, a water storage earthen pond appears from the photographs. The petitioners categorically claim that their land has been acquired by either of the respondents for the construction of a percolation water storage tank for the benefit of the villagers. No compensation has been paid to them.*
3. *In view of the above, we direct the District Collector, Beed to cause a proper investigation into the above peculiar factors and trace out as to whether any authority has constructed a tank of any nature whatsoever, as alleged by the petitioners. The investigation should be done independently and the District Collector need not be guided by the pleadings of the parties. We wish to know the truth about the accumulation of water in a storage tank like formation, that appears in the two colour photographs on page No.41 of the petition paper book.*
4. *We expect the District Collector, Beed to tender his report to this Court on 09.09.2021.*
5. *Stand over to 09.09.2021."*

2. Pursuant to our order dated 03.08.2021, the District Collector, Beed initiated steps and submitted the confidential report in a sealed envelope. The envelope was opened in the Court and after hearing the learned counsel for the respective sides, we have passed the following order on 09.09.2021 :-

- "1. *Pursuant to our order dated 03.08.2021, the District Collector, Beed clearly appears to have acted*

swiftly and with promptitude. He issued necessary directions to the Deputy Collector, Land Acquisition, Jayakwadi Project, Beed; Executive Engineer, Minor Irrigation, Zilla Parishad, Beed; Deputy Executive Engineer, Beed Irrigation Department, Beed the Deputy Superintendent of Land Records and representative of the Water Conservation Officer, Beed who visited the spot on 09.08.2021 for inspection of the tank. Petitioner nos.1 and 2 were present on the spot.

2. *Pursuant to our order dated 03.08.2021, the District Collector, Beed has submitted a confidential report in a sealed envelope. We have opened the envelope in the Court and we both have perused the single copy of the report. The entire compilation of the documents (11 pages) are taken on record and collectively marked as "X-1" for identification.*
3. *After spot inspection of Gat Nos.6, 8, 14, 95, 96 and 97 of village Hingani (Bk), Taluka Beed, it was noticed that there is an RCC construction carried out in the year 2003-2004 by the Executive Engineer, Minor Irrigation Department, Beed, head office Ambajogai. At present the said Department is not in existence and all records have been transferred to the office of Executive Engineer, Beed Irrigation Department, Beed. About 70% construction of the walls of the tank has been completed. One road has been constructed bisecting the storage tank which is now found in two pieces. The total area of the tank is about 7 Hectares. At present, barring 2 Acres of land, the remaining entire land within the said 7 Hectares is under cultivation. There is one house constructed in the land of the tank. No water has accumulated in the tank as on 09.08.2021.*
4. *The litigating sides are at liberty to approach the learned Registrar of this Court by tendering requisite fees for taking a copy of the entire report "X-1".*
5. *We expect the learned Advocates representing the respondents to inform us as to which of these respondents have merged into the Beed Irrigation Department, Beed. Based on such instructions, the*

petitioners would have to amend the cause title of the petition so as to implead the authorities who have today assumed the charge of the erstwhile Minor Irrigation Department, Beed.

6. *List this petition on 29.09.2021, at 2.30 p.m.”*

3. In view of the above, a disputed issue has been raised. 70% construction of the walls of the percolation tank has been completed. Earlier Department of Executive Engineer, Minor Irrigation Department, Beed, Head Office at Ambajogai, has been transformed into the office of the Executive Engineer, Irrigation Department, Beed, which has already been arrayed in the petition. The report of the District Collector indicates that out of 7 hectores of lands, 02 acres of lands have been utilized for partial construction of the percolation tank. There is one house constructed in the land of the petitioners. Rest of the land is purportedly utilized for the agricultural purposes. The petitioners had never consented for gifting of the lands for the percolation tank.

4. We have perused the Government Resolution dated 19.09.2006, which pertains to such schemes under the “Rojgar Hami Yojana” (Employment Guarantee Scheme) for construction of percolation tanks. If the land is to be acquired, the District

Collector has to initiate steps as are prescribed in the Land Acquisition Act and accordingly, process the papers so as to quantify the compensation to be paid through an award.

5. Presently, as the Land Acquisition Act, 1894 has been replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it would be appropriate to direct the District Collector, Beed, to initiate steps under the 2013 Act.

6. We expect the District Collector to follow the procedure as is prescribed and complete the acquisition process upto the stage of proclamation of the award, as expeditiously as possible and in any case, on or before 31.12.2022. We would not entertain a request for extension of time keeping in view that the percolation tank has been partially constructed in the agricultural lands of the petitioners in 2002.

7. The Writ Petition is, therefore, disposed off with the above directions.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)