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

904 CIVIL APPLICATION NO.226 OF 2020
IN FA/3536/2019

BHUSHAN DATTATRAYA CHINCHORE
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

WITH
CA/223/2020 IN FA/3533/2019

SHAKUNTALA SURESH PORWAL
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

WITH
CA/224/2020 IN FA/3534/2019

RAMRAO NATU PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

WITH
CA/225/2020 IN FA/3535/2019

SURESH PUNDLIK PATIL & ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

...
Mr A. B. Kale, Advocate for applicants;
Mr Y. P. Deshmukh, Special Counsel a/w Mr S. B. Yawalkar,
A.G.P. for respondents/State

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

DATE : 28th September, 2021

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PER COURT:

1. All these applicants are the claimants, who are praying for disbursement of the amounts, deposited under the orders passed by this Court. They are the original claimants who have lost their lands, either agricultural parcels or NA-44 parcels, in the acquisition process.
2. The original appellants have filed affidavit-in-reply to the civil applications opposing the withdrawal of amounts.
3. We have extensively heard the learned Counsel for the claimants and the Special Counsel appointed on behalf of the Public Works Department – the acquiring body. With their assistance, we have gone through the applications and the affidavit-in-reply.
4. The learned Advocate for the claimants has put forth synoptical points for consideration so as to avoid any misrepresentation. For the sake of brevity, we are reproducing verbatim the sequence of events as are narrated in the synoptical points by the claimants, here under :

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“Date and Events of Acquisition for Mhasavad Railway Flyover

<i>Sr. No.</i>	<i>Date</i>	<i>Events</i>
1.	19.04.2010	<i>Proposal is moved by the Executive Engineer, Jalgaon for acquisition for Railway Over Bridge-144 of village Mhasavad of total 6792.50 sq. meter land.</i>
2.	23.04.2010	<i>Authorization u/s 52 (A) was given to S.L.A.O.-1, Jalgaon for acquisition of lands by the Collector.</i>
3.	24.05.2010	<i>For the said acquisition land from Gat No. 252 :- 250 sq. meter Gat No. 251 :- 1030 sq. meter Gat No. 68 :- 2070 sq. meter Gat No. 269 :- 1462.50 sq. meter Gat No. 69 :- 1140 sq. meter Gat No. 167 :- 840 sq. meter Sent for joint measurement.</i>
4.	09.12.2010	<i>Joint measurement conducted by Taluka Inspector of Land Record, Jalgaon in presence of acquiring agency.</i>
5.	16.10.2011	<i>Joint measurement report submitted to Land Acquisition Officer.</i>
6.	16.12.2011	<i>Executive Engineer by his letter confirm the joint measurement report.</i>
7.	18.07.2012	<i>Section 4 notice was published.</i>
8.	19.06.2012	<i>Inquiry u/s 5 (A) is conducted.</i>
9.	07.08.2012	<i>Notice of personal hearing and conclusion of S.L.A.O. that land is having N.A. potential.</i>
10.	08.08.2012	<i>Section 6 declaration is made.</i>
11.	31.12.2012	<i>Award was drawn by granting N.A. rates for the properties N.A. rate of rupees 600/- per sq. meter is awarded.</i>

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12.	07.01.2013	Notice u/s 12(2) payment is issued.
13.	23.05.2013	Reference u/s 18 was filed by the claimants.
14.	16.02.2017	Written Statement is filed. No ground of fraud nor any other ground regarding non acquisition of property is taken. No dispute regarding acquisition. Only denial of the claim of claimants for enhancement of compensation is made.
15.	12.03.2014	W.P. 2112/2014 was filed for remaining land which was not shown by acquisition but it is not in use because it falls within the Periphery of 50 meter from the State Highway. This Hon'ble Court opined that petitioner can claim compensation in respect of the area which is rendered unfit for development.
16.	22.04.2019	R.D. is filed by the claimant for Execution of Jud. delivered by Learned Reference Court which are numbered as 570/2019 etc.
17.	03.06.2019	Notice was issued to the respondent/judgment debtor
18.	04.07.2019, 30.07.2019, 18.09.2019, 20.09.2019, 30.09.2019, 4.10.2018	The dates were given for appearance & for argument.
19.	11.10.2019	Application was filed for calling Affidavit of assets of judgment debtor. Judgment Debtor No. 3 was asked to file particulars of assets.
20.	19.10.2019	No response from the judgment debtor therefore application was filed for civil prison order.
21.	08.11.2019	Case is adjourned
22.	11.11.2019	Order passed below Exh. 16 thereby warrant is issued against Judgment Debtor No. 3 for his arrest & detention as per order 21, Rule

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		<i>41 (3) of C.P.C.</i>
23.	12.11.2019	<i>Civil prison warrant is dispatched.</i>
24.	13.11.2019	<i>J.D. No. 3 was produced in civil prison warrant by bailiff. Exh. 24 & 25 was filed for cancellation of warrant and application below Exh.26 was filed for review. The same is rejected. Application below Exh.30 was filed and at about 9.00 p.m. the order detention of the J.D. was stayed.</i>
25.	15.11.2019	<i>This Hon'ble Court issued notice and granted stay on condition of depositing 50% of the award amount.</i>
26.	10.12.2019	<i>Letter issued by Executive Engineer to Tahsildar Jalgaon calling upon information regarding the lands of petitioner. Executive Engineer wrote a letter to the District Collector for cancelling the award. Execution Engineer wrote a letter to the Deputy Collector, Revenue to cancel the N.A. Order.</i>
27.	20.12.2019	<i>Another letter for cancellation of N.A. order to the Deputy Collector, Jalgaon. Letter to the Tahsildar by Executive Engineer for providing the maps of Gat No. 251. Another letter to the District Collector for cancellation of award pointing out that the Railway Over bridge can be constructed on the government land and therefore the amount of government will be saved and requested for cancellation of award.</i>
28.	February 2020	<i>Collector Ask the Secretary of Revenue Department about cancellation of acquisition of lands of Gat No. 168, 251, 167, 68, 69, 70 and 252.</i>
29.	19.08.2020	<i>Government rejected the said proposal since</i>

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		<i>the award is already passed and possession is already taken. Therefore Section 48 cannot be exercised.</i>
30.	15.03.2021	<i>N.A. order granted to Gat No. 251 is cancelled by Assistant Collector (Sub Divisional Officer), Jalgaon.</i>
31.	28.04.2021	<i>The said order was challenged by filing appeal before Additional Collector and in Appeal the authority has granted status quo order and matter is pending.</i>
32.	27.08.2021	<i>The effect of the order granting permission to exercise revisional jurisdiction after 34 years and order passed was challenged by filing Writ Petition No. 9500/2021. This Hon'ble Court has directed to respondents not to take further steps pursuant to the said order and the matter is pending before this Hon'ble Court.</i>

5. The learned Special Counsel submits as under :

- (a) The original compensation amounts, by treating the acquired lands as being agricultural fields, were computed at Rs.70,00,000/- and they have been withdrawn by the claimants;
- (b) The applications, for enhancement in compensation, were filed, which led to an increase in the compensation from Rs.70,00,000/- to about Rs.25,00,00,000/-;
- (c) This Court, while admitting the appeals and having extensively heard the parties, passed an order on

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15/11/2019, thereby directing the appellants to deposit an amount of Rs.11,00,00,000/- in this Court, which is equivalent to approximately 40% of the awarded amount;

(d) About 34 years ago, the Tahsildar has illegally granted NA-44 permission on 17/08/1987 with regard to Gut No.251 (partly) in village Mhasavad, Tq. and Dist. Jalgaon;

(e) The Special Counsel fairly states that this Court, by the order dated 15/11/2019, had directed the appellant to deposit 50% of the awarded amount and if the records are checked, there may be a deficit in depositing the amount upto 50%;

(f) The conditions on which the NA-44 permission was granted, utilizing the lands for non-agricultural purpose within one year, was violated;

(g) The spot inspection panchanama of the NA-44 lands, bearing mutation entry No.2787, was carried out in Revision Appeal No.1/2021 and it was found that the said erstwhile agricultural land was never put to use for non-agricultural purpose;

(h) After the revision proceedings were initiated by notice

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dated 11/12/2020, the NA-44 permission was cancelled by the competent authority (Assistant Collector), on 15/03/2021;

(i) The basis of the enhancement in compensation was a sale deed which was a frivolous sale instance.

(j) The new purchaser has still not got his name entered in the revenue records;

(k) The new purchaser is not before the Court to withdraw the amount;

(l) The erstwhile owners/claimants, who are the actual sellers, are the persons who are before the Court for withdrawing the amount;

6. There is no dispute that barring these applicants seeking withdrawal of the amounts, the rest of the claimants who are the beneficiaries of similar enhancement in compensation and are respondents in first appeals filed by the acquiring authority before this Court, have been permitted to withdraw the compensation amounts that were deposited in this Court.

7. We are also informed by way of a recent development that after the concerned authority filed Revision Appeal No.1/2020

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before the Assistant District Collector, Jalgaon, for seeking cancellation of the NA-44 permission granted to land in Gut No.251 (partly), which has then led to the cancellation order dated 15/03/2021, the applicants approached this Court in Writ Petition No.9500/2021 and by order dated 27/08/2021, this Court directed the revenue authorities not to proceed with the Revision Appeal proceedings. However, since by this time, the cancellation of NA-44 was ordered on 15/03/2021, the applicants approached the Appellate Authority under Section 247 of the Maharashtra Land Revenue Code, 1966 and the Appellate Authority has directed status-quo to be maintained by order dated 28/04/2021. As such, all further developments that have occurred would naturally be subject to the result of the said petition.

8. The applicants have strenuously contended that the then Executive Engineer, P.W.D. Shri. Vilas Brijlal Patil, was practically sent to civil jail, as is evident from the dates and sequence of events at Sr. Nos.22 to 24 reproduced above. A serious allegation is made by the applicants that this gentleman was aggrieved by the steps taken by these applicants for the recovery of their amounts in Regular Darkhast proceedings, which

almost reached him to the doorsteps of the civil prison, has antagonized him and upon developing antipathy towards the applicants, he has been instrumental in approaching the Government so as to acquire the permission to cancel the NA-44 permission granted more than 34 years ago.

9. Considering the above and as other co-claimants have also been permitted to withdraw the amounts deposited in this Court and keeping in view that, *prima facie*, there appears a stink of *mala fides* behind the initiation of reopening of the grant of NA-44 permission, which is now subject matter of adjudication before this Court as well as the Revenue Authorities and as these applicants are protected under the order passed by this Court and the authorities, we do not find that the rigours faced by these applicants should be further perpetuated by refusing permission to withdraw the amounts as they have prayed for. Of course, to balance the equities, considering the various orders passed by the Hon'ble Apex Court in the matters of withdrawal of amounts, we would follow the same guidelines while granting permission for withdrawal of amounts.

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10. In view of the above, these applications are partly allowed with the following directions :

(a) The identity of the applicants, while seeking withdrawal, shall be verified by the learned Registrar (Judicial) of this Court as per the routine practice;

(b) Out of Rs.11,00,00,000/-, 50% can be withdrawn by tendering surety to the satisfaction of the learned Registrar (Judicial) and 50% of the said amount shall be withdrawn by tendering a simple affidavit undertaking by the applicants, declaring that, if eventually they are held to be dis-entitled for any portion of the said amount, they would re-deposit the said amount in the Court within ten weeks from the date of the adverse order, if any.

11. The request for staying this order for four weeks is refused, keeping in mind that these applicants have been litigating before this Court for their amounts ever since the appeal was filed and though the enhancement has been granted four years ago.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)