

Vidya Amin

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

WRIT PETITION NO. 4321 OF 2021

Maruti Balu Dongare ... **Petitioner**

V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

WITH

WRIT PETITION NO. 4325 OF 2021

Tukaram Balu Patil & Ors. ... **Petitioners**

V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

WITH

WRIT PETITION NO. 4326 OF 2021

Chandu Govind Dongare ... **Petitioner**

V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

WITH

WRIT PETITION NO. 4319 OF 2021

Krishna Appa Patil ... **Petitioner**

V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

WITH

WRIT PETITION NO. 5441 OF 2021

Dhanaji Tatoba Tejam ... **Petitioner**

V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

**WITH
WRIT PETITION NO. 7823 OF 2021**

Bayabai Bala Hebbalkar (Decd.) through
her legal heirs

... **Petitioner**

V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors.

... **Respondents**

**WITH
WRIT PETITION NO. 7829 OF 2021**

Raghunath Gopal Jadhav

... **Petitioner**

V/s.

The State of Maharashtra & Ors.

... **Respondents**

**WITH
WRIT PETITION NO. 7830 OF 2021**

Dattu Laxman Patil (Decd.) through LRs
Prakash Dattu Patil & Ors.

... **Petitioners**

V/s.

The State of Maharashtra, through Collector,
Kolhapur & Ors.

... **Respondents**

**WITH
WRIT PETITION NO. 7821 OF 2021**

Pandurang Babaji Parit (Decd.) through LRs
Baban Pandurang Parit & Ors.

... **Petitioners**

V/s.

The State of Maharashtra, through Collector
Kolhapur & Ors.

... **Respondents**

**WITH
WRIT PETITION NO. 7822 OF 2021**

Bhiku Rama Mude (Decd.) through LRs & Ors. ... **Petitioners**

V/s.

The State of Maharashtra, through Collector
Kolhapur & Ors.

... **Respondents**

**WITH
WRIT PETITION NO. 7828 OF 2021**

Rama Bhiku Patil (Decd.) through LRs. & Anr. ... **Petitioners**
V/s.

The State of Maharashtra, through Collector
Kolhapur & Ors. ... **Respondents**

**WITH
WRIT PETITION NO. 7824 OF 2021**

Pandurang Laxman Madbhagat & Ors. ... **Petitioners**
V/s.

The State of Maharashtra & Anr. ... **Respondents**

**WITH
WRIT PETITION NO. 7844 OF 2021**

Smt. Droupadi Arjun Patil ... **Petitioner**
V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

**WITH
WRIT PETITION NO. 7845 OF 2021**

Smt. Ambu Krishna Ilage (Decd.)
Smt. Shakuntala Shamrao Ilage & Ors. ... **Petitioners**
V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

**WITH
WRIT PETITION NO. 7846 OF 2021**

Smt. Laxmibai Joti Gurav (Decd.) through
LRs Sou. Sushila Shankar Gurav & Ors. ... **Petitioners**
V/s.

The State of Maharashtra, through Collector
Office, Kolhapur & Ors. ... **Respondents**

Mr. Pratik Kothari a/w. Ms. Nandini Chittal for the petitioner.
Mr. S.H. Kankal, AGP for the State.

**CORAM : G.S.KULKARNI, J.
DATE : 22 November, 2021**

P.C.:

1. Admit. Taken up for final hearing with the consent of the parties as a short issue falls for decision in these petitions.
2. The challenge in these batch of petitions is to similar orders passed by the learned District Judge-1, Gadhinglaj by which the applications as filed by the petitioners seeking modification of an award passed under Section 18 of the Land Acquisition Act, praying that a benefit under Section 23(1A) and under Section 23(2) of the Land Acquisition Act be granted, has been rejected by the impugned order.
3. The facts are not in dispute. The land of the petitioners was acquired by the respondent for the purpose of rehabilitation of project affected persons. The award as made by the Land Acquisition Officer was challenged by the petitioners in proceedings under section 18 of the Land Acquisition Act, 1894 seeking enhancement in the award of compensation. It is not in dispute that the Reference Court accepted the petitioner's case for enhancement and has partly allowed the Reference Application.
4. As the amount of enhanced compensation is bound to be

different in each of these petitions, I need not go into the figures of enhancement as granted in each of the proceedings, suffice it to observe that in each of the 'References' as decided by the learned District Judge, admittedly an enhancement of different amounts has been granted. Illustratively, the observation as made by the learned District Judge in deciding one of the Reference Application is required to be noted, namely, of the orders passed by the learned District Judge subject matter of Writ Petition No. 4321 of 2021 in Maruti Balu Dongare vs. State of Maharashtra & Ors. The Reference Court while accepting the petitioner's case granted an enhancement by directing compensation be paid at Rs. 65,800/- for land admeasuring 40 Are as acquired land, excluding the compensation already received. The relevant observations are paragraphs 17, 18, 20 (sic 19), which reads thus:

"17. Be that as it may, on going through copies of sale deeds, the proposed loss of productive landed property of applicants, and also the fact that from initiating acquisition procedure till acquisition, in my view there must be at least increase at 50% of the actual awarded compensation in case of jirayat land while 100% in case of bagayat acquired land. It is needless to say that in this particular case, the acquired land is bagayat land. Admittedly, compensation amount is decided at Rs.1,62,000/- per hectare land in this case. As such adding 100% of the said amount it would come to Rs.3,24,000/-. It is important to note that out of four sale deeds only one sale deed is within the period of one year of passing final award and that too it was purchased by the Grampanchayat for the purpose of construction of school building as there was no land available with the Grampanchayat for building of school. Here in the instant case, the land is acquired for the purpose of rehabilitation of project affected persons. Thus, considering overall pleadings and evidence in the case at

hand, in my view, it is just and proper to award additional compensation at 100%, i.e., Rs.65,800/- for 40 Are acquired land to the applicant excluding the compensation already received.

18. It is needless to say that as per Section 23(2), the applicants would be entitled to 30% for the period of one year from 04.01.2010 the date of publication of notification under Section 4 of the Land Acquisition Act, 1894. Further, as per Section 23(1-A) of the Land Acquisition Act, 1894, 12% of the said amount needs to be granted to the applicants till the date of award. In this particular award is dated 11.09.2012. As said earlier, applicant is already held to be entitled for Rs.1,000/- towards mes-sticks in acquired land. Thus, the applicant is entitled to get total enhanced compensation of Rs.65,800/- with interest at 9% for one year from the date of taking actual possession of the land and thereafter at 15% till entire compensation is paid to the applicants.

20. Considering the aforesaid discussion, it can be seen that the applicant is successful in demonstrating that he are entitled for enhanced compensation towards his acquired land. On the contrary, the opponents have failed in their attempt to demonstrate the correctness of the earlier compensation amount paid to the applicant. The reference therefore deserves to be partly allowed. Accordingly, I answer point No. 1 and pass the following order:

ORDER

Reference is partly allowed.

2. Opponent nos. 1 to 3 are directed to jointly and severally pay enhanced total compensation of Rs.65,800/- (Rupees Sixty Five Thousand Eight Hundred one only) to applicant with interest at Rs.9% for the period of one year from the date of taking actual possession of the land, and thereafter at Rs.15% till entire compensation is paid to applicant.

3. Both parties to bear their respective costs.

4. Award be drawn up accordingly."

(emphasis supplied)

5. It is not in dispute that the orders as passed by the learned

District Judge are similar except with the variation in the figures, including the observation as made in paragraph 18 (as emphasized) by which the learned District Judge recognized the entitlement of the claimants to the benefits of additional compensation in terms of Section 23(1A) and Section 23(2) of the Act.

6. The common grievance of the petitioners in applications as filed by them post the award of the Reference Court was to the effect that although an observation was made by the learned District Judge in deciding the Reference in paragraph 18 of the judgment, as noted above, and although the petitioners were held entitled to benefit under section 23(1A) and Section 23(2), in addition to the award of the market value of the land, the Reference Court, however, in the operative order, had inadvertently failed to provide such benefit to the petitioners.

7. On the above backdrop, all the petitioners moved substantive applications for modification of the said orders passed by the learned District Judge praying that the benefit of the entitlement under Section 23(1A) and Section 23(2) be incorporated in the final orders passed on their Section 18 applications. By the impugned order, such applications as filed by

the petitioners were rejected by the learned District Judge and quite peculiarly by the following observations, which are common in all the proceedings:

"4. Resultantly, while passing the said award, amount claimed by the applicants in this application is not considered by this Court. In fact, for the reasons best known that the applicants have relied upon statement based on Section 23(A) and Section 23(2) of the Land Acquisition Act, 1894. Applicants have safely ignored that the said para 18 clearly states that in the said reference, the applicants are entitled for total enhanced compensation of Rs.65,800/-."

8. At the first instance, it is difficult to clearly gather as to what the learned District Judge meant when he made such observations in paragraph 4. It is clear that on one hand, the learned District Judge had recognized the entitlement of the petitioners to the benefit of Section 23(1A) and Section 23(2) of the Act, however, it appears that the learned District Judge has held that such amount is included in the amount of enhanced compensation as awarded by him in determining the real market value of the land. In my opinion, certainly this could not have done by the learned District Judge as this was in the teeth of the provisions of Section 23 of the Act, which reads thus:

23. Matters to be considered on determining compensation. -

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -

first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person

interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;
 thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;
 fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
 fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and
 sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. - In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition."

9. On a plain reading of Section 23 as noted above, in determining the amount of compensation to be awarded for the land acquired under the Act, the Court is required to take into

consideration the ingredients as provided in Sub-section (1). In addition to the determination of the market value and the damage sustained by the person interested, sub-section (1A) clearly provides that the Court shall in every case award an amount calculated at the rate of 12%p.a. on such market value for the period commencing on and from the date of publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. Further, sub-section (2) of Section 23 provides that in addition to the market value of the land, the Court shall in every case award a sum of thirty percent on such market value, in consideration of the compulsory nature of the acquisition, being the solatium. The object and intention behind such statutory provision is thus clear that the benefit under sub-section (1A) and sub-section (2) are in addition to the benefits of compensation as would be awarded under sub-section (1) of Section 23.

10. The above discussion would show that there is an *ex facie* error of law in the approach of learned District Judge in passing the impugned order inasmuch as he has failed to appreciate that the enhancement of compensation as awarded in the reference filed under section 18, was an exercise undertaken by him under sub-section (1) of Section 23, which stood independent of the

benefits which were accrued to the owners of the land by virtue of the provisions of Section 23(1A) and Section 23(2) of the Act.

11. Thus, in my opinion, necessarily the benefit under section 23(1A) read with section 23(2) ought to have been granted to the petitioners, as it was a statutory mandate and entitlement of the petitioners. Learned District Judge has clearly failed to appreciate the purported consequences brought about by Section 23(1A) and Section 23(2) of the Act.

12. In view of the above discussion, the writ petitions need to succeed the impugned orders passed by the learned District Judge in each of these proceedings are required to be set aside, with a direction that the petitioners shall be entitled to the benefit of Section 23(1A) read with Section 23(2) of the Act. The learned District Judge is accordingly directed to modify the awards so as to include the statutory benefits entitled to the petitioners under the provisions of Section 23(1A) and Section 23(2) of the Act. Learned District Judge shall issue modified awards in each of the proceedings within a period of four weeks from the petitioners presenting a copy of this order. Ordered accordingly.

13. Writ Petitions are allowed in the above terms. No costs.

(G.S.KULKARNI, J.)