

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2652 OF 2019

1. Eknath Harichandra Thvali,
Age 72 years, Occ.- Agriculturist.
R/o. Sawarkhed, Tq./ Morshi,
District Amravati.

2. Sandeep Eknath Thvali,
Age-42 years, Occ. Agriculturist,
R/o. Sawarkhed, Tq. Morshi,
District Amravati.

... PETITIONERS

-versus-

1. State of Maharashtra through its Secretary
(Revenue Relief and Re-habilitation)
Revenue and Forest Department, Mantralaya, Mumbai.

2. State of Maharashtra,
through its Secretary Water Resources Department,
Mantralaya Main Building,
3rd floor, Madam Cama Road, Mumbai.

3. Divisional Commissioner,
Amravati Division, Amravati.
Tq. and District Amravati.

4. Collector, Amravati.
Tq. and District Amravati

5. Zilla Parishad, Amravati.
Through Chief Executive Officer,
Amravati, Tq. and District Amravati.

6. Executive Engineer,
Minor Irrigation Department (Laghusinchan Vibhag)
Zilla Parishad, Camp, Amravati,
Tq. and District Amravati.

... RESPONDENTS

Shri P.S.Patil, Advocate for petitioners.

Smt. Sangita S.Jachak, Assistant Government Pleader for respondent Nos. 1 to 4.

Shri S.A.Mohta, Advocate for respondent Nos. 5 and 6.

CORAM : DIPANKAR DATTA, C.J. AND A. S. CHANDURKAR, J.
DATE ON WHICH THE ARGUMENTS WERE HEARD : 23.07.2021
DATE ON WHICH THE JUDGMENT IS PRONOUNCED : 28.07.2021

Judgment : (Per : A. S. Chandurkar, J.)

Rule. Heard finally with consent of learned counsel for the parties.

The petitioners who are agriculturists have approached this Court with a prayer that the respondent Nos.1 and 2-State Government as well as respondent Nos.5 and 6-Zilla Parishad, Amravati be held jointly and severally responsible to pay them compensation of an amount of Rs.7,92,450/- on account of damage caused by water entering their agricultural fields, the same having overflowed from the percolation tank constructed by the respondent Nos.5 and 6. It is the case of the petitioners that the petitioner No.1 is the owner of field Survey No.232 while the petitioner No.2 who is the son of petitioner No.1 is the owner of field Survey No.233 situated at village Sawarkhed, Taluka Morshi, District Amravati. The Zilla Parishad under the Employment Guarantee Scheme constructed a percolation tank at the said village after which it was handed over to the Warud Sub-Divisional Office of the Zilla Parishad for its maintenance. In the year 2007 on account of excessive rains there was continuous outflow of water from the said percolation tank. The water entered the agricultural fields of the petitioners and damaged the standing orange trees. On the complaint made by the petitioners there was a spot inspection of the

petitioners fields on 17/09/2007 by the Deputy Engineer of the Zilla Parishad, other officials as well as the land owners. It was noticed that in the land admeasuring 4½ acres owned by the petitioners about 250 orange trees as well as other crops grown therein had been damaged due to excess water. This panchanama was signed by the officials of the Zilla Parishad as well as the agriculturists. Thereafter on 05/11/2007 the Executive Engineer of the Irrigation Department of the Zilla Parishad also inspected the lands of the petitioners. He directed the Deputy Engineer to submit a proposal to the Tahsildar, Morshi as well as the Agriculture Officer, Warud by quantifying the loss sustained by the petitioners. The Tahsildar on 28/04/2009 submitted a report in that regard to the Collector quantifying the damage caused at Rs.7,92,450/-. The Collector in turn on 08/07/2010 issued a communication to the Divisional Commissioner seeking release of the aforesaid amount for being paid to the petitioners as compensation. The Divisional Commissioner Amravati Division thereafter on 11/05/2011 issued a communication to the Zilla Parishad directing it to take appropriate steps for compensating the petitioners. The Chief Executive Officer then on 12/03/2013 entered into communication with the State Government in its Water Conservation Department, Mantralaya Mumbai. Subsequent thereto various requests were made to the State Government by the Divisional Commissioner for releasing the aforesaid amount and the matter was followed up by the Collector also. On 29/04/2017 the State Government

through its Revenue and Forest Department informed the Divisional Commissioner as well as the Collector that it was the Water Conservation Department which was responsible to take necessary steps and hence a proposal was directed to be made to that department. Since there was no further progress in the matter the petitioner No.1 issued a legal notice and the petitioners have thereafter filed this writ petition under Article 226 of the Constitution of India seeking release of the amount of compensation.

2. Shri P. S. Patil, learned counsel for the petitioners submitted that having quantified the amount of compensation of Rs.7,92,450/- on account of water entering the petitioners' agricultural fields as a result of it overflowing from the percolation tank constructed by the Zilla Parishad, the petitioners were entitled to be duly compensated. The amount of compensation was determined after a joint inspection was carried out by the officers of the Zilla Parishad in presence of the affected agriculturists on 17/09/2007. A panchanama was duly prepared in their presence. Yet further inspections were carried out on 05/11/2007 and 29/11/2008 by the Executive Engineer of the Zilla Parishad as well as the Agriculture Officer respectively. Various communications issued by the Chief Executive Officer of the Zilla Parishad, Collector as well as the Divisional Commissioner to the State Government recommending release of the aforesaid amount towards compensation had not been acted upon by the State Government. It was his

contention that since it was the Zilla Parishad which had constructed the said percolation tank and it was being maintained by it, the primary responsibility to pay the amount of compensation was that of the Zilla Parishad. Despite passage of about fourteen years the petitioners had not received the amount of compensation as quantified. The spot inspection having been carried out in the presence of officers of the Zilla Parishad it was not permissible for the Zilla Parishad to disregard the observations in the reports prepared during such inspection. There was no justifiable reason to deny grant of compensation to the petitioners. He submitted that if at all the Zilla Parishad was not in a position to pay the amount of compensation as determined, the State Government should be directed to make the aforesaid payment. The compensation was due and payable in the year 2009 and the same not having been paid for all these years the petitioners were entitled to receive interest on the same also. He referred to the decision in *Surya Constructions Vs. State of Uttar Pradesh (2019) 16 SCC 794* and submitted that the petitioners were entitled for the reliefs claimed in the writ petition.

3. Smt. Sangita Jachak, learned Assistant Government Pleader for respondent Nos.1 to 4 submitted that it was the primary responsibility of the Zilla Parishad to pay the amount of compensation in view of the fact that the percolation tank in question fell within the purview of the Zilla Parishad and that the damage as caused was also assessed by it. The State Government

was not responsible for the damages sustained by the petitioners on account of the percolation tank having overflowed.

4. Shri S.A.Mohta, learned counsel for the respondent Nos.5 and 6-Zilla Parishad opposed the prayers made in the writ petition. He submitted that there was no basis to quantify the amount of compensation as done by the petitioners at Rs.7,92,450/-. Referring to the revenue records of field Survey Nos.232 and 233 he submitted that the same indicated absence of orange trees in the said field during the relevant period. In the light of the said revenue records the inspection notes prepared on 17/09/2007 and 05/11/2007 could not be relied upon. The claim made by the petitioners was disputed and as there was no material on record to determine the amount of compensation it would not be permissible to grant the prayers as made in the writ petition especially since the same would involve adjudication of disputed questions of facts. It was thus submitted that the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have also perused the material placed on record by them. At the outset, we may refer to the objection raised by the learned counsel for the Zilla Parishad that since the claim as made by the petitioners involves various disputed questions of fact, the same may not be adjudicated in exercise of writ jurisdiction under Article 226 of the Constitution of India. In this

regard, it may be stated that a writ petition is not liable to be summarily dismissed merely because some disputed questions are likely to arise for determination. The writ Court would be slow to entertain a claim involving disputed questions of fact under Article 226 of the Constitution of India. However, at the same time, if the material facts on record are undisputed and the prayers made in the writ petition can be adjudicated on the basis of such undisputed facts, there is no reason not to entertain the writ petition merely because the respondents contend that disputed questions could arise for adjudication. We thus propose to adjudicate the prayers made in the writ petition on the basis of admitted and undisputed facts that have been placed on record. We may thus refer to these undisputed facts.

6. While undertaking works under the Employment Guarantee Scheme, the Zilla Parishad constructed a minor percolation tank in the year 1980. The management of this percolation tank was entrusted to the Warud Sub-Division of the Zilla Parishad which can be gathered from the inspection note dated 13/11/2007 prepared by the Executive Engineer of the Zilla Parishad. In the year 2007 on account of excessive rains the percolation tank started overflowing and the excess water entered the adjacent lands and especially Survey Nos. 232 and 233 owned by the petitioners. On the directions of the Executive Engineer, the District Agriculture Officer, Morshi visited the fields of the petitioners for assessing the damage caused to the

orange trees standing there on account of such overflow of water. On inspecting the same he assessed the damage caused to the orange trees from Survey No.232 to Rs.2,38,050/- and from Survey No.233 the damage was assessed at Rs.5,54,400/-. This is clear from his visit to the said fields on 29/11/2008 as reflected in the communication dated 03/02/2009. It is on the basis of this assessment that the Tahsildar on 28/04/2009 informed the Collector, Amravati about the same after which the Collector on 08/07/2010 forwarded this information to the Divisional Commissioner, Amravati. In both these communications a request has been made to treat the aforesaid as a case of damage having been sustained due to overflow of the water from the percolation tank as a special case. The Divisional Commissioner on 11/05/2011 issued direction to the Chief Executive Officer of the Zilla Parishad that the amount of compensation as determined be disbursed at the level of Zilla Parishad itself. The Chief Executive Officer hence on 12/03/2013 made a request to the State Government through its Water Conservation Department to release appropriate funds as the same were not available with the Zilla Parishad. After various reminders in that regard ultimately on 29/04/2017 the State Government through its Revenue and Forest Department (Relief and Rehabilitation) informed the Divisional Commissioner as well as the Collector that since the damage was not caused due to any natural calamity, no relief could be granted by the said department and the matter would lie with the Water Conservation

Department. The Executive Engineer of the Zilla Parishad then again made a request to the Collector to release the aforesaid amount to facilitate the payment of the damage as assessed. The Collector as Member Secretary of the District Planning Committee informed the Zilla Parishad on 15/09/2017 that it was the Zilla Parishad who had control over the said percolation tank and it was its responsibility to ensure that no damage was caused due to overflow of the water therefrom. It was stated that the matter did not fall within the purview of the District Planning Committee and that the Zilla Parishad itself should take necessary steps to raise the said amount for being paid to the petitioners. Despite the aforesaid there was no further progress in the matter which has compelled the petitioners to approach this Court. It is in these facts that we have entertained the writ petition for adjudicating the prayers made therein.

7. According to the learned counsel for the Zilla Parishad, the number of trees as stated to have been affected by the discharge of excess water in the year 2007 was not correct in view of the revenue records of the said lands. It was stated that since in the revenue records the exact number of trees shown to be standing were less than the number of trees as reflected in the inspection report, the petitioners could not be compensated in the aforesaid manner. We are unable to accept this contention for the simple reason that when the inspection of Survey Nos. 232 and 233 was conducted,

the representatives of the Zilla Parishad were present which is clear from the panchanama dated 17/09/2007 and 29/11/2008. The statement of valuation as prepared by the Taluka Agriculture Officer clearly refers to the existence of 90 orange trees in Survey No.232 and 180 orange trees in Survey No. 233. This report was prepared pursuant to the directions issued by the Executive Engineer on 13/11/2007. The assessment of damages as made by the Taluka Agriculture Officer on 03/02/2009 on the basis of his visit on 29/11/2008 has been the basis of all subsequent communications by the Tahsildar, Collector and thereafter the Divisional Commissioner. At no point of time has any grievance been raised that the report of the Taluka Agriculture Officer was either incorrect or that the number of trees mentioned therein were on a higher side. It is only for the first time in the submissions filed on behalf of the Zilla Parishad before this Court that the said contention is sought to be raised. In the light of the aforesaid communications issued by various officers as well as by the Zilla Parishad, there is no basis to raise the contention that the number of trees for which the compensation is being sought did not exist on the lands in question. Hence we are not in a position to accept the said submission made on behalf of the Zilla Parishad. It would not be permissible for the Zilla Parishad to go beyond its own documents especially since the inspection took place in the year 2007 and the matter proceeded on the basis of said reports since then.

8. From the aforesaid undisputed facts which are again reiterated in the recent communication of the Executive Engineer of the Zilla Parishad on 13/11/2017 it is clear that in the year 2007 on account of water overflowing from the percolation tank constructed by the Zilla Parishad, damage was caused to the orange trees standing in Survey Nos. 232 and 233 to the extent of Rs.7,92,450/-. Under the provisions of Section 129(1) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 work done by the Zilla Parishad either from the district funds or with government assistance or through public participation vests in the Zilla Parishad. As stated above, it was the Zilla Parishad which got the percolation tank constructed under the Employment Guarantee Scheme in the year 1980. The Warud Sub-Division of the Zilla Parishad was thereafter entrusted with the management of the same. It is thus clear that since the percolation tank vests with the Zilla Parishad, it is the primary responsibility of the Zilla Parishad to satisfy the claim as made by the petitioners. This aspect is also clear from the various communications on record and the direction issued by the Divisional Commissioner on 11/05/2011. It appears that considerable time was spent in the communications between the Chief Executive Officer, the Collector and the Divisional Commissioner as to the responsibility of making the payment towards compensation. Once it is clear that the percolation tank vests in the Zilla Parishad, there can be no doubt that it is the Zilla Parishad

alone who would be responsible to compensate the petitioners. It appears that though the Zilla Parishad was seeking to put forth its financial condition as a ruse for not paying the compensation, the same cannot be a ground for disallowing the claim of the petitioners. The damage having been assessed at Rs.7,92,450/- and it being clear that such damage to the orange trees standing in the lands of the petitioners was caused due to water overflowing from the percolation tank which vests in the Zilla Parishad, it would be the responsibility of the Zilla Parishad to pay the amount of compensation.

9. In that view of the matter we find that from the undisputed position on record which includes various communications exchanged between the parties, it is the Zilla Parishad which would be responsible to pay the amount of Rs.7,92,450/- to the petitioners. This is the only conclusion that can be drawn from the documentary material on record. Though the petitioners have prayed for grant of interest on the amount of compensation, in the facts of the case we are not inclined to grant that prayer in these proceedings. We accordingly proceed to pass the following order :

- (a) Zilla Parishad, Amravati through its Chief Executive Officer shall pay the petitioner No.1 an amount of Rs.2,38,050/- for the damage caused to 90 orange trees standing in Survey No. 232. It shall also pay the petitioner No.2 an amount of Rs.5,54,400/- for

the damage caused to 180 orange trees standing in Survey No. 233.

- (b) The aforesaid amounts be paid to the petitioners within a period of eight weeks from today failing which the aforesaid amount would carry interest @ 6% per annum on the expiry of the period of eight weeks till realisation.
 - (c) It would be open for the Zilla Parishad to seek reimbursement of the aforesaid amount from the other respondents, if the same is permissible under any policy/scheme in force.
10. Rule is made absolute in aforesaid terms leaving the parties to bear their own costs.

(A. S. CHANDURKAR, J.)

(CHIEF JUSTICE)