

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

WRIT PETITION NO.1089 OF 2022

DHONDABAI RAMCHANDRA DHOTARKAR AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners:

Mr. V. D. Sapkal, Senior Advocate i/b. Mr. L. C. Patil

AGP for Respondent Nos.1&2: Mr. A. R. Kale

Advocate for Respondent Nos.3,4&6: Mr. R. A. Tambe

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CORAM: RAVINDRA V. GHUGE

AND

ARUN R. PEDNEKER, JJ.

Reserved for Orders on:	23.09.2022
Order Pronounced on:	20.10.2022

ORDER (Per Arun R. Pedneker, J.):

1. By way of the present Writ Petition, the Petitioners are challenging the communication dated 10.03.2021, issued by Respondent No.4 / the Sub-Divisional Engineer [Law Department], directing Respondent No.5 / the Superintending Engineer, not to issue no objection for getting compensation amount from the State Government / Respondent No.2. The impugned communication, directs the Maharashtra Krishna Valley Development Corporation to make the requisite funds available for deposit in Court proceedings although the

Corporation does not have the financial capacity to pay the compensation or to deposit enhanced compensation.

2. We have heard Mr. V. D. Sapkal, learned Senior Advocate for the Petitioners, Mr. A. R. Kale, learned AGP for the Respondent Nos.1 and 2, and Mr. R. A. Tambe, learned Advocate for Respondent Nos.3, 4 and 6.

3. The facts leading to the filing of the Writ Petition can be summarized as under:

a) The land of the Petitioners was acquired by the Respondents for the purpose of Storage Tank Tamalwadi, Taluka - Tujapur, District - Osmanabad. In the said acquisition proceedings, the Petitioners are awarded compensation for the said acquisition. Dissatisfied with the award, the Petitioners have filed land acquisition references. The said references were allowed by the Civil Judge Senior Division, Osmanabad and enhanced the compensation at the rate of Rs. 4444/- per Are for non irrigated, Rs.5866/- per Are for seasonal and and Rs.8887/- per Are for irrigated lands with all consequential benefits.

b) Respondent Nos.3 to 6 (R/3-The Executive Director, R/4-The Sub-Divisional Engineer[Law Department], R/5-The Superintending Engineer & R/6-The Executive engineer) have preferred appeals before the learned Single Judge of the High Court in the year 2020 i.e. after 5 year of the Judgment of the Reference Court. The said appeals are filed with applications for condonation of delay which were allowed on the condition that the entire amount of compensation should be deposited within 12 weeks. However, the said amounts are not deposited till today.

c) By virtue of the internal communication the State has directed the Respondent Nos.3 to 6 (R/3-The Executive Director, R/4-The Sub-Divisional Engineer, R/5-The Superintending Engineer & R/6-The Executive engineer) to make the above deposit from their own funds. However, the said direction is contrary to it's own policy. Hence, this Petition.

4. The Petitioners point out that the State of Maharashtra has issued a Circular dated 12.08.2014, under the heading of, 8674-compensation for fulfillment of a judgment or judgment of a court or tribunal coming under

a security deposit held by the Government. By the Government Circular dated 12.08.2014, the State has taken policy decision towards deposits to be made in courts. The said Circular indicates that, when the Government has filed an appeal in the High Court and any amount is required to be deposited, when ordered by the Court of appeal, in such cases, the expenditure is made available under the heading of '8674 secured deposits of Government'. Pursuant to this, all the Administrative Departments were notified by the said Circular that, the department should send such proposals to the finance department.

5. The Petitioners further submit that in view of the above Circular Respondent No.4 / the Sub-Divisional Engineer [Law Department] issued a communication dated 17.03.2017 to Respondent No.5 / the Superintending Engineer and informed that as per the Circular dated 21.10.2016 the Godawari Marathwada Irrigation Department, Aurangabad (GMIDC) is issuing no objection certificates to the claimants for getting compensation from the Government. In view of the communication of Respondent No.5/ the Superintending Engineer dated 08.05.2018,

requested Respondent No.2 / the District Collector for making available amount of compensation from the Government to avoid the consequences of not depositing the amount within time.

6. Respondent No.6 – The Executive Engineer vide communication dated 23.01.2020 issued a no objection to Respondent No.2 / the District Collector in 12 groups of land acquisition references. The Petitioners further submit that not only the above 12 groups but many more claimants have received compensation from Respondent No.2/ the District Collector and thus the Petitioners vide application dated 27.02.2021, requested Respondent Nos.5 and 6 (R/5-The Superintending Engineer & R/6-The Executive Engineer) for issuing no objection in favour of them for getting the compensation amount from Respondent Nos.1 and 2 (R/1-The State of Maharashtra & R/2-The District Collector). Respondent Nos.5 and 6 (R/5-The Superintending Engineer & R/6-The Executive Engineer) upon receipt of the said application forwarded the same to Respondent Nos.3 and 4 (R/3-The Executive Director & R/4-The Sub-Divisional Engineer[Law Department]) for getting necessary permission.

7. Vide the internal communication dated 08.05.2018, Respondent No.5/ The Superintending Engineer asked the Respondent No.2 / The District Collector to make available the funds from the Government to avoid the consequences of not depositing the amount within time. However, it is pertinent to note that many other claimants have received compensation from Respondent No.2. But in the instant case, the State directed the Corporation to make payment of the Petitioners or make available the funds to be deposited in the Court. The Petitioners submit that the approach of the State in not releasing the funds and discriminating against the Petitioners as compared to the other claimants, is violative of Article 14 of the Constitution of India.

8. The Petitioners further submit that the Corporation does not have funds and even if the interim order granted by the Single Judge while admitting the appeal is vacated, the Petitioners would not be able to execute the reference award without the funds being made available. The Petitioners have lost their land from the year 2000 and are awaiting their dues and thus the duty of the State in not releasing the funds to be deposited

in the Court is unlawful. The Petitioners, therefore, pray that the impugned communication dated 10.03.2021, be set aside and they be treated similar to the other claimants and the State should act in terms of their own Circular dated 12.08.2014 by making the funds available to the Corporation to enable the Corporation to deposit the same in the Court.

9. The Respondents in their reply submit that the Petitioners should pray for vacating the interim order in the First Appeal pending before the Single Judge and in the event of non deposit the consequences would automatically follow and that the Respondents further submits that the internal communication is between the State and the Corporation and it does not create a vested right in favour of the Petitioners to challenge the same.

10. Barring the legal nicety the fact of the matter remains that the Respondent State has by virtue of its own Circular dated 12.08.2014 has made available funds to all the other claimants for the same project whereas in the case of the Petitioners by the internal communication between the State and the Corporation the State has directed the Corporation to make available the funds for

payment / deposit of the compensation amount in Court. Admittedly, the Corporation does not really have the funds to make deposit and thus frustrating the dues of the Petitioners at least in near future.

11. Although the impugned communication is merely an internal communication, the said communication divests the rights of the Petitioners to get it's dues expeditiously as other similarly placed claimants. The State has also not withdrawn it's Circular dated 12.08.2014 and continues it's Policy of making the funds available in the cases which are pending in the Court so as not to lose the rights over the acquired land.

12. The Petitioners cannot be treated separately from the other similarly situated persons, and thus we hold that the internal communication between the State and the Corporation asking the Corporation to make available the funds when it does not have any amounts immediately available infringes the rights of the Petitioners in getting it's compensation.

13. The Writ Petition is partly allowed. We accordingly direct the State to follow it's own Circular

dated 12.08.2014, and make available the funds for depositing the same in the Court. The Petitioners should not be made to run from pillar to post to get their rightful claim amounts.

14. We understand that the amount to be deposited in the Court is only an enhanced compensation by the Reference Court. However, ordinarily the first appellate Court would permit the applicant in the First Appeal to withdraw 50% of the amount at the outset and the Petitioners are deprived from getting that amount. The Petitioners would also not be able to execute the Reference award in near future. Thus, the impugned communication dated 10.03.2021, is set aside and the State is directed to act in terms of its Government Circular dated 12.08.2014.

15. Writ Petition is partly allowed with above direction.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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