

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

WRIT PETITION NO. 2152 OF 2017

1. Shashikant s/o. Bhanudas Shelke,
Age-56 years, Occu. Agril.
2. Ashok s/o. Bapurao Waghmode,
Age-61 years, Occu. Agri.,
3. Narayan s/o. Deorao Bhagwat,
Age-65 years, Occu. Agri.,
4. Pralhad s/o. Deorao Bhagwat,
Age-62 years, Occu. Agri.,
5. Madhukar s/o. Deorao Bhagwat,
Age-60 years, Occu. Agri.,
6. Bhaskar s/o. Deorao Bhagwat,
Age-58 years, Occu. Agri.,
7. Satyawar s/o. Trimbak Shelke,
Age-65 years, Occu. Agri.,
8. Kashinath s/o. Vitthalrao Shelke
Age-50 years, Occu. Agri.,
9. Sham s/o. Pandharinath Shelke,
Age-50 years, Occu. Agri.,
10. Sudhir s/o. Madhavrao Shelke,
Age-45 years, Occu. Agri.,
11. Trimbak s/o. Bapurao Waghmode,
Age-65 years, Occu. Agri.,

12. Jagnnath s/o. Bapurao Waghmode,
Age-65 years, Occu. Agri.,
13. Arjun s/o. Bapurao Waghmode,
Age-63 years, Occu. Agri.,
14. Bhimrao s/o. Bapurao Waghmode,
Age-61 years, Occu. Agri.
15. Rambhau s/o. Nivrutti Ughade,
Age-61 year, occu. Agri.
16. Vitthal s/o. Nivrutti Ughade,
Age-45 years, Occu.Aгри.
17. Sudam s/o. Nivrutti Ughade,
Age-43 years, Occu.Aгри.
18. Gangabai Arun Ughade,
Age-40 years, Occu.Aгри.,
19. Khandu s/o. Raoji Ughade,
Age-70 years, occu. Agri.
20. Baban s/o./ Laxman Keskar,
Age-50 years, Occu.Aгри.
21. Laxman s/o. Tukaram Keskar,
Age-70 years, Occu.Aгри.,

All R/o. Pimpalwadi, Tq.Paithan,
Dist. Aurangabad.
22. Raghunath s/o. Deorao Galande,
age-60 year, Occu. Agril.
23. Sahebrao s/o. Banduji Sonawane,
Age-61 years, Occu. Agril.

24. Sau. Tarabai Raghunath Galande,
Age-55 years, Occu. Agril.,
25. Sau. Sarswati Bhagwan Galande,
age-50 years, Occu. Agril.
26. Neelabai Sahbrao Sonawane,
Age-59 years, Occu. Agri.
27. Raju s/o. Sahebrao Sonawane,
Age-40 Years, Occu. Agri.
28. Baburao s/o. Banduji Sonawane,
Age-60 years, Occu. Agri.
29. Kantabai Baburao Sonawane,
Age-55 years, occu. Agril.
30. Nagsen Eknath @ Natha Chabukswar,
Age-39 years, Occu.Agril.
31. Kaduba s/o. Mohan Chabukswar,
Age-62 years, Occu.Agril.
32. Bhanudas s/o. Sona Chabukswar,
Age-65 years, Occu.Agril.
33. Bhagwan s/o. Yashwant Chavan,
Age-60 Years, Occu. Agri.

Nos.22 to 33, R/o. Isarwadi,
Tq. Paithan, Dist. Aurangabad. .. **PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Water Resources Department,
Mantralaya, Mumbai-32.

2. The Chief Engineer,
(Water Resources Division),
Sinchan Bhavan, Jalna Road,
Aurangabad.
3. Godawari Marathwada Irrigation
Development Corporation,
Aurangabad,
Through its Managing Director
4. The Executive Engineer,
Minor Irrigation Division No.1,
Aurangabad.
5. The Collector, Aurangabad.
6. The Tahsildar, Paithan,
Tq.Paithan, Dist. Aurangabad. ..RESPONDENTS

...
Mr.P.R. Katneshwarkar h/f Mr.A.P. Avhad, advocate
for the petitioner.

Mr. P.K. Lakhotiya, AGP for respondent nos.1, 5
and 6.

Mr. B.R. Survase, advocate for respondent nos.2
to 4.

...
CORAM : RAVINDRA V. GHUGE
AND
S.G. DIGE, JJ.

RESERVED ON : 6th MAY, 2022
PRONOUNCED ON : 1st JULY, 2022

JUDGMENT (PER S.G. DIGE, J) :

1. By this petition, the petitioners are
praying for issuance of writ of mandamus against
the respondents directing them to complete the
land acquisition proceedings in respect of the
lands needed for the second phase of Bramhagavhan

Lift Irrigation Scheme and pay compensation on declaring the award to the petitioners as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. (Hereinafter referred to as "Act of 2013").

2. The petitioners also prays to quash and set aside the impugned notification/notice dated 31st August, 2019 issued by the Executive Engineer, Irrigation Department, Aurangabad whereby the respondents have taken a decision to acquire the lands as per section 9(1) and (2) of the Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018 (Hereinafter referred to as "the Act of 2018").

3. Respondent no.1 is the State of Maharashtra. Respondent No.2 is the Chief Engineer of Water Resources Division, Aurangabad. Respondent no.3 is the Corporation established by the State Government to develop irrigation facilities in the Marathwada region. Respondent nos.4 to 6 are the authorities of the State.

4. The brief facts of the case are as under :-

a) The petitioners are farmers having their agricultural lands in village Pimpalwadi

and Isarwadi, Tq. Paithan, Dist. Aurangabad. The petitioners have no other source of income except farming. The petitioners have been cultivating their lands and maintaining themselves and their families. The Government of Maharashtra through its Irrigation Department undertook a scheme named as Bramhagavhan Lift Irrigation Scheme to make available irrigation facilities to some of the villages from Paithan Tahsil by laying down a pipeline from the Jayakwadi Dam and also for construction of canals at villages Shekta, Lohgaon, Bramhagavhan, Gadhegaon etc. The work of the first phase of the project was started sometime in the year 1987. The respondents acquired the lands for the said project and paid the compensation to the farmers vide the award dated 05.02.1990.

(b) Respondent nos.1 to 4 decided to undertake the work of the second phase of the project. For the second phase of the project, the lands situated at village Pimpalwadi and Isarwadi are affected. The advance possession of the lands were taken by private negotiations. It was agreed to make the payment of rental compensation till the acquisition is finalized by declaration of award. Accordingly, the petitioners have handed over the possession of the lands to respondent nos.1 to 4, so also respondents started paying annual rental compensation to the petitioners

since the year 2010 onwards.

(c) Respondent nos.1 to 3 caused the joint measurement of the lands belonging to the petitioners through respondent no.4 sometime in November, 2010. It is a matter of record that the respondents changed it's earlier decision to lay down the pipeline of 35 meters to 13 meters and for that purposes again joint measurement was carried out in the year 2011. On both occasions, after receipt of the joint measurement reports, respondent no.3 invited the claims and objections from the concerned land owners and thereafter further steps of acquisition have been taken.

(d) Respondent Nos.3 and 4-acquiring body have determined the rates at which the compensation is to be paid to the petitioners for the acquired lands and submitted a report to the office of respondent no.2 on 2nd May, 2014.

(e) Respondent nos.1 to 4 made certain changes in the proposal of the size of the pipeline and a revised administrative sanction was accorded to lay down the pipeline by digging a channel in the width of 13 meters. The petitioners consented to the acquisition of their lands for the area which the respondents needed for laying down the pipelines as per revised proposal. On 15th March, 2016, respondent no.1

declared the revised proposal of the State Government in the meeting with the farmers, whose lands are being affected in the second phase of the project.

(f) Respondent nos.1 to 6 in furtherance of the project submitted the proposal for acquisition to respondent no.5, who in turn, appointed his subordinate officer as Special Land Acquisition Officer as per the Land Acquisition Act, 1894. The notification under section 4 and declaration under section 6 have been published. The possession of the lands, have been taken by private negotiations and the rental compensation was being paid in lieu of the deprivation of the use and enjoyment of land by the land owners. The market value of the acquired lands is also determined. The acquiring body has been consulted while determining the market value of the lands proposed to be acquired. As such, except declaration of award and making payment of compensation, entire process has been completed in accordance with the Land Acquisition Act.

(g) In the year 2010, respondent nos.1 to 4 started digging a channel to lay down a pipeline from the field belonging to the petitioners at village Pimpalwadi and Isarwadi. But the said work is not completed. The petitioners are not in a position to cultivate the lands suitably. The

work of digging channel is completed at some places where the concerned land owners are facing serious hardship to have access to their pieces of lands. Respondents have not paid the amount of rental compensation since 1st April, 2013. In view of this, the petitioners have been made to suffer serious hardship and inconvenience by respondent nos.1 to 4. Though, the respondents did not make the payment of rental compensation, still the petitioners did not object or cause obstruction to the work as the petitioners have been made to believe that the respondents were acquiring the lands for the project in accordance with the Land Acquisition Act. The petitioners have mainly replied the notices issued under sections 49 and 50 of the Maharashtra Land Revenue Code and requested the respondents to acquire the lands of the petitioners under the Land Acquisition Act. Rental compensation for the period of 20th July, 2011 to 13th March, 2013 has been paid.

(h) The lands of the petitioners are abutting to village Pimpalwadi and Isarwadi Gaothan area. Some of the lands of the petitioners are included in the residential zone. The land survey no.26 has been already converted into non-agricultural use as per the order passed by the Collector.

(i) The lands acquired in the first phase

of the lift irrigation scheme is by way of land acquisition proceedings. During pendency of the petition, the respondents have issued notification/notice dated 31st August, 2019, whereby the decision was taken to acquire the lands of the petitioners under sections 9(1) and (2) of the Act of 2018. The petitioners by way of amendment challenged the said notification/notice.

5. Heard Mr.P.R. Katneshwarkar h/f Mr.A.P. Avhad, the learned counsel for the petitioners, Mr.P.K. Lakhotiya, the learned A.G.P. for respondent nos.1, 5 and 6 and Mr.B.R. Survase, the learned advocate for respondent nos.2 to 4.

6. It is contention of the learned counsel for the petitioners that, lands were needed for underground pipeline for the scheme known as "Bramhagavhan Lift Irrigation Scheme, phase second. On 27.10.2010, the possession of the petitioners lands were taken, prior to that joint measurement was done and the respondents started construction over the lands taken in possession. The rent was paid to the petitioners for some period. The Superintending Engineer has given proposal to the Chief Engineer requesting that the proposal be accepted for purchase of land, directly from the agriculturists and proposed rate be given to them. The consent was given by

the Chief Engineer to the said proposal. Meanwhile, respondent no.6 – Tahsildar, Paithan prepared a note and stated that the lands need not be acquired.

7. The purpose of acquisition of petitioners' land is for laying down the underground pipeline, which would carry water from Jaikwadi Dam to the fields of agriculturist. It is not a small pipeline, and therefore, the respondents would need to excavate pipeline, if there is damage, leakage, maintenance etc. It became clear that the lands become unbuildable. The land owners would not be permitted to excavate for the purpose of well, tank, borewell, etc. Section 9(4) of the Act of 2018 mandates that if the land become unbuildable then, the provisions of the Act of 2013 would be invoked. Hence requested to allow this Petition.

8. It is the contention of the learned counsel for respondent nos.2, 3 and 4 that the competent authorities decided to undertake the work of second phase of the scheme and carried out the work by way of private negotiations from the village Pimpalwadi, Isarwadi, Wahegaon, Shahapur, Taluka Paithan. Total 33 petitioners/land owners agreed and consented for laying down underground pipelines. The learned counsel further submits that the corporation had

decided to utilize the land having width of 5.10 meters for laying underground pipeline. However, the petitioners/ land owners stopped the work and demanded to acquire the land having width of 20 meters. The competent authorities have also paid rental compensation to the petitioners/claimants. The Water Resources Department, Government of Maharashtra opined that the payment of compensation may be made as per the provisions of Section 9(1) and (2) of the Act of 2018.

9. The learned counsel submits that the competent authorities of the Corporation submitted the proposal before the Collector, Aurangabad for initiating the process as per the provisions of Act of 2018 and as per the scheme of the Act, the acquiring body corporation is ready to pay the amount of compensation determined by the competent authority. The petitioners/land owners are cultivating their agricultural land after laying down pipelines. The petitioners are entitled for the damages sustained for laying down underground pipes as determined by the authority. The petitioners are having remedy to raise grievances before the competent authority as per provisions of the Act of 2018. The question whether the petitioners lands would become permanently unbuildable or not, would be decided by the Competent Authority.

10. The learned counsel submits that during the pendency of this petition, some developments occurred namely, some of the petitioners/claimants demanded to settle the matter and pay the compensation to them. Accordingly, damages/exgratia amount are paid to them as a special case. The authorities have paid rental compensation from the year 2010 to year 2013 on certain terms and conditions, namely the claimants are not entitled to the compensation as per the provisions of the Land Acquisition Act.

11. The learned counsel submits that 9 petitioners/land owners consented and accepted ex-gratia compensation. The competent authorities of the Corporation issued the letter to land owners whether they are ready to accept the ex-gratia amount or not, but the rest of the land owners/petitioners did not communicate their stand or say. Therefore, the competent authority requested the Collector, Aurangabad to initiate proceedings as per the Maharashtra Act of 2018.

12. The learned counsel submits that, the petitioners' land is utilized for work of laying down the underground pipelines below 1 ½ meters from the surrounding ground level. The possession was taken as per private negotiations agreed and consented by the petitioners/land owners. No land acquisition process was initiated, no possession

was taken as per the provisions of the Land Acquisition Act. Therefore, the ownership vests with the land owners only.

13. The learned counsel submits that, the land is required only to lay down the pipelines. After the work is completed there is no need of the land. If any damages are sustained, petitioners are entitled to claim damages only. Therefore, looking into the larger interest of the State, the petitioners' land cannot be acquired permanently. The respondent authorities are ready to pay the compensation as per provisions of the Act of XLIX of 2018. Hence, requested to dismiss the petition.

14. The learned A.G.P. supports the arguments of the learned counsel for respondent nos.2 to 4.

15. The issue involved in this petition is whether petitioners' lands can be acquired as per the SECTION 9(1) and (2) of the Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018 or not ?

16. Section 9(1)(2) of the Act of 2018 reads as under :-

"9. (1) Where in exercise of the powers conferred under sections 5, 6 or 7, any damage, loss or injury is sustained by any person interested in the land, in respect of which notification under sub-section (1) of section 4 has been issued, the State Government or the Corporation or Urban Local Body shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the Competent Authority within thirty days of notification under sub-section (1) of section 4. While determining such compensation, it shall have due regard to the damage or loss sustained by reason of-

(i) the removal of trees or standing crops, if any, on the land;

(ii) the temporary severance of the land under which underground pipelines have been laid or underground ducts have been created, from other lands belonging to, or in the occupation of such person; or

(iii) any damage to any other property, whether movable or immovable, of such person, caused

in any manner.

(2) Where the right of user of any land has vested in the State Government or the Corporation or Urban Local Body, as the case may be, it shall be liable to pay such compensation in addition to compensation payable under sub-section (1) calculated as per rules made by the State Government in this behalf."

17. Admittedly, the possession of petitioners' lands have been taken in the year 2010 for laying down pipeline. Rents are being paid to the petitioners after taking possession of the lands. It is the contention of the respondents that the work of laying down underground pipes have been completed and the petitioners/land owners are cultivating their agricultural lands. Therefore, the petitioners are entitled for the damages sustained for laying down underground pipes. As per provisions of the Act of XLIX of 2018, the petitioners have remedy to raise grievance before the Competent Authority, whether the petitioners' lands would become permanently unbuildable or not, would be decided by the competent authority.

18. In our view the petitioners lands have been taken in possession since year 2010.

Initially respondent no.6 had issued notices to petitioners under section 49 r/w section 50 of the Maharashtra Land Revenue Code, 1966. The Division Bench of this Court by order dated 1st August, 2019 has suggested that section 49 of the M.L.R. Code may not apply to the case. Thereafter, the notification dated 31.08.2019 was published regarding acquisition of lands of petitioners under section 9(1) and (2) of Act of 2018. After perusal of this notification, it would show that it is not as per the provisions of sections 3 and 4 of the Act of 2018, as publication of notification regarding intention to acquire right of user in such land, any objection for such acquisition is not called.

19. In the notification dated 31.08.2019, it is mentioned that petitioners' lands are acquired for Bramhagavhan project. The compensation to the land owners mentioned in notification are being given under section 9(1) and (2) of Act of 2018. If any one has a right on the acquired land, shall file objections by 20.09.2018. This notification would show that it is not as per sections 3 and 4 of Act of 2018 as objections were not called from the land owners for laying down pipeline.

20. The Act of 2018 came into force on 9th May, 2018. As per section 1(3) of 2018 Act, nothing in the Act shows that it would apply retrospectively. As per section 3 of this Act, there is provision for publication of notification regarding intention to acquire right of user in lands. As per section 3(2), 3(3) and 3(4), the procedure is prescribed. Section 4 deals with declaration of acquisition of right of user in land. Section 7 deals with power to enter upon land for maintenance, inspection etc. In this section, it is also mentioned that where an emergency exists, no such notice shall be necessary. Section 8 deals with restrictions regarding the use of the land. There is proviso to sub-section (1) that such owner or occupier shall not after the declaration under sub-section (1) of Section 4 (i) construct any building or any other structure or, (ii) construct or excavate any tank, well, reservoir or dam or, (iii) plant any tree on that land.

21. Section 9, more particularly sub-section 4, reads as under :

“Where the land became unbuildable by virtue of the right of user vesting in the State Government or Corporation or Local Body, as the case may be, the land may be acquired under the provision of the Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013."

22. In the present case, the purpose of acquisition for laying down the underground pipeline is to carry water from Jaikwadi Dam to the fields of agriculturist. The respondents would be compelled to excavate pipeline if there is any damage, leakage, maintenance etc. The land owners would not be permitted to excavate for the purpose of well, tank, bore-well etc. The order dated 03.08.1988 passed by Tahsildar, Paithan (page 115 of petition) shows the land of Pimpalwadi has non-agricultural potential. It shows that the lands of the petitioners has come in the vicinity of city area. They may make construction over the land and may sell the land for the purpose of construction. If their lands are used for underground pipelines, the petitioners would not be in position to make construction on the land. If some petitioners' lands remain as an agricultural land, even then the land owners cannot plant trees or excavate land for purpose of well, tank etc. So petitioners' land would become permanently unbuildable. Section 9(4) of 2018 Act mandates that if the land becomes unbuildable then the provisions of Act of 2013 would be invoked. Moreover, possession of petitioners' lands

have been taken in the year 2010. Hence, in our view, the provisions of Act of 2018 would not be applicable in the present case.

23. The lands acquired in the first phase of the Bramhagavhan lift irrigation scheme are by way of land acquisition proceedings. The petitioners' are farmers and their source of income is farming. Since last couple of years they are pleading the respondents' to acquire their lands as per provisions of Land Acquisition Act. Initially, it was decided to acquire the lands of petitioners under Land Acquisition Act, but it was not done. Thereafter, respondents issued notices to petitioners under Provisions of Maharashtra Land Revenue Code. When this Court suggested that Section 49 of the Maharashtra Land Revenue Code may not apply to the situation, then the respondents issued notice's under Section 9(1) and (2) of the Act of 2018.

24. If we see the approach of the respondents' towards the petitioners' who are farmers and their lands are taken for Bramhagavhan project, it would show that respondents' are avoiding to pay compensation to the petitioners' for which they are entitled. We do not agree with the contention of learned Counsel for the respondents that,

the petitioners are entitled for damages only as the pipeline is underground. It is our view petitioners lands are near the city area. Such petitioners land can't remain as agricultural land, forever.

25. We have gone through the case law cited by the learned counsel for respondent nos.2 to 4. The facts of the cited cases are in respect of Government being at liberty to withdraw from acquisition process from any land of which possession has not been taken. In the present case, the possession of the petitioners' lands has already been taken in the year 2010. The underground pipeline is laid in the land of the petitioners. Hence the facts in the cited cases and the case at hand are different.

26. In view of the above, we pass the following order :-

ORDER

(i) The Writ Petition is allowed.

(ii) The notification dated 31.08.2019 issued by Executive Engineer, Irrigation Department, Aurangabad is hereby quashed and set aside.

(iii) The respondents are directed to complete the land acquisition proceedings of petitioners' lands as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

27. Rule is made absolute in the above terms.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

SGA