

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

938 WRIT PETITION NO.6796 OF 2021

- 1) Bhimrao s/o Dagdu Kothare,
Age 60 years, Occ. Agriculturist,
R/o. Chandai Thombri, Tq.
Bhokardan, Dist. Jalna.
- 2) Sharda w/o Balaji Teple,
Age 30 years, Occ. Agriculturist,
R/o. Chandai Thombri, Tq.
Bhokardan, Dist. Jalna.
- 3) Chaya Bhagwan Rawalkar,
Age 35 years, Occ. Agriculturist,
R/o. Chandai Thombri, Tq.
Bhokardan, Dist. Jalna.
- 4) Omprakash Shivdas Dethe,
Age 40 years, Occ. Agriculturist,
R/o. Chandai Thombri, Tq.
Bhokardan, Dist. Jalna.
- 5) Nandkishor Gajanan Pungale,
Age 30 years, Occ. Agriculturist,
R/o. Chandai Thombri, Tq.
Bhokardan, Dist. Jalna.
- 6) Bhujangrao Daulat Thombare,
Age 55 years, Occ. Agriculturist,
R/o. Chandai Thombri, Tq.
Bhokardan, Dist. Jalna.

... **Petitioners**

VERSUS

- 1) State of Maharashtra,
Through Secretary, Revenue Department,
Mantralaya, Mumbai.
- 2) Collector, Jalna,
Administrative Complex, Sy.No. 482,
Jalna 431203.

- 3) Executive Engineer, Jalna Minor Irrigation Division, Jalna, Near Sambhaji Udyan, Old Jalna, Jalna.
- 4) Sub Divisional Officer, Land Acquisition Officer, Bhokardan, Tq. Bhokardan, Dist. Jalna.

... Respondents

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Advocate for the Petitioners : Mr. P.R. Katneshwarkar
 A.G.P for the Respondent Nos. 1, 2 & 4 : Mr. A.S. Shinde
 Advocate for Respondent No. 3 : Mr. S.P. Sonpawale

CORAM : **MANGESH S. PATIL & SANDEEP V. MARNE, JJ.**

DATE : **24.08.2022.**

ORAL JUDGMENT :

We have heard both the sides.

2. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for the respondents/State and the learned advocate Mr.Sonpawale waives service for the acquiring body/respondent No. 3. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioners are the owners of lands at village Chandai Thombri, Tq. Bhokardan, Dist. Jalna. Some of their lands were acquired for an irrigation project. A proposal was forwarded by the respondent No. 4/Land Acquisition Officer for purchasing the remaining lands by direct purchase according to the government resolution dated 12.05.2015. However, the respondent No. 2-Collector refused the proposal and directed to go for acquisition in terms of the regular mode of acquisition prescribed under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter 'the Act'). It is this order which is the subject matter of challenge in this petition.

4. The learned advocate Mr. Katneshwarkar for the petitioners would point out that by virtue of provision of Section 108 of the Act, an option is given to the owners of the lands to opt for a better method of acquisition which would be beneficial to them. He would point out that as per the State Government's policy, the petitioners would get 25% more compensation than that would be payable in the normal course of acquisition. He would submit that though the acquiring body had sent up a proposal which ought to have been forwarded to the committee constituted in terms of the policy of the Government under the Chairmanship of the Collector, the Collector without assigning any reason has refused the proposal for direct purchase. The order is illegal and may be quashed and set aside.

5. The learned advocate for the acquiring body submits that pursuant to the request of the petitioners a proposal was forwarded for direct purchase.

6. The learned A.G.P. submits that though the proposal was received from the acquiring body, the Collector has rightly refused to accept it. The option contemplated under Section 108 of the Act is not available for the petitioners. The government resolution only is an administrative instruction between the government and its offices. The petitioners have no right to resort to it and claim compensation by way of direct purchase.

7. There is no dispute about the fact that the petitioners' lands are affected by back waters of the irrigation project for which already the acquisition had taken place.

8. There is also no dispute rather the fact has been specifically admitted by the respondents in their affidavits in reply that a proposal for direct purchase was duly forwarded to the Collector. There is a policy of the State Government which prescribes the modalities in which such direct purchases can take place. Section 108 of the Act apparently gives an option to the affected families to avail *inter alia* better compensation under the State law or the policy of the State.

9. There can be no dispute about the fact that the policy of the State Government as depicted in the resolution dated 12.05.2015 entitles the owners to have better compensation than which they would get if the normal process of acquisition is resorted to.

10. We cannot approve of one line order passed by the Collector ignoring the proposal submitted by the acquiring body as also his subordinates for going for the direct purchase by saying that the process should be undertaken for acquisition under the Act. We cannot make out any reasons as to why the Collector must have declined the proposal. Though an affidavit in reply has been filed by the State, apart from the fact that no subsequent grounds can be allowed to be added to support the order, even no concrete reasons are forthcoming as to on what grounds the Collector has rejected the proposal.

11. In view of the above state of affairs, we deem it appropriate to set aside the order of the Collector and relegate the matter to him for taking decision afresh in the light of the above observation.

12. The Writ Petition is partly allowed. The impugned order is set aside. The Collector shall now reconsider the matter and shall pass appropriate order in the light of the above observations. The decision shall be taken within twelve weeks from today.

13. The Rule is made absolute accordingly.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

mkd/-