IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

168 WRIT PETITION NO.10324 OF 2022

NIRANJAN OMPRAKASH AGRAWAL
VERSUS
THE COMPETENT AUTHORITY LAND ACQUISITION

WITH
172 WRIT PETITION NO.10328 OF 2022

PUSHPABAI OMPRAKASH AGRAWAL
VERSUS
THE COMPETENT AUTHORITY LAND ACQUISITION
...
Advocate for Petitioner : Mr. D.S. Bagul
Advocate for Respondent No.1 : Mr. R.B. Bhosle
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CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 13th OCTOBER, 2022.

PER COURT :-

1. In both these matters, the petitioners are identically situated. The issue is of the competent authority deducting 10% of the compensation amount as Nazrana while passing an award dated 15.12.2018. This was being done in pursuance to the Government Resolution dated 15.07.2010.

2. We have heard the learned advocates for the respective sides. The issue of deduction raised in these petitions, was before the Hon'ble Supreme Court in the ***State of Maharashtra vs. Babu Govind Gavate and others, 1996 (1) SCC 365,*** with reference to a Circular dated 26.04.1972. This issue was recently considered by

this court at the Principal Seat in writ petition No. 3545 of 2020, filed by Diksha Dilip Pawar and others vs. The Competent Authority and Sub Divisional Officer and others. It has been concluded in paragraph Nos. 14, 15, 16, 17 and 18, as under:-

> “14. Though the impugned Circular states that endeavour is to be made to give maximum compensation to the tribals, the said object would not be fructified if 10% from the compensation amount is deducted by the Government. Only because the land given to the tribals is Occupancy Class II land, that itself would not empower and/or authorize the State to deduct 10% from the compensation amount payable to the petitioners on account of compulsory acquisition. The same does not stand to any reason and erodes upon the occupancy rights of the petitioners.
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> 15. The state has the authority to take policy decisions under Article 162 of the Constitution. The Government Resolution dated 15/07/2010 is an executive instruction issued by the Government. The decision should not be unreasonable and arbitrary. The arbitrariness is antithesis to the rule of law, justice, equity, fair play and good conscious. The MLRC, the Act, 2013 nor any Statute authorizes the State to deduct and/or retain part of the compensation amount. The provisions of the Act, 2013 do not authorize the State to deduct 10% amount from the amount of compensation payable to tribals. If 10% amount is deducted by the Government, then the tribals will not get the true market value of the lands.
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> 16. The Apex Court in the case of State of Maharashtra Versus Babu (supra) had an occasion to consider the similar issue of deducting 10% from the compensation amount

payable on account of compulsory acquisition of restricted land held by tenant under the provisions of B.T. & A.L. Act. In the said case, the Government Circular dated 26/04/1972 mandated deduction of 1/3rd of the market value of the land towards the interest of the Government. The Court held that the said Circular is invalid. The requirement of prior sanction of Collector for transfer of land does not apply to the compulsory acquisition of land by the Government.

17. The Division Bench of this Court in the case of Salubai Sahadeo (Sadhu) Kamble (supra) also considered the similar issue wherein as per the Government Resolution dated 11/01/2017, 10% of the amount towards royalty was directed to be deducted. The lands acquired therein were also restricted lands. Similar view was taken by the Division Bench of this Court in the case of Kamgar Mahar Nadur (supra).

18 In view of the aforesaid discussion, the impugned Government Resolution dated 15/07/2010 being violative of Article 14 of the Constitution is set aside. It is held that the respondents do not have authority to deduct 10% from the amount of compensation payable to the petitioners on account of compulsory acquisition."

3. In view of the above, both these petitions are allowed. The impugned decisions dated 26.8.2022 at Annexures "C" page 34 and 33 of the respective petitions, are quashed and set aside. The respondent competent authority would ensure that the amount deducted towards Nazrana shall be refunded to the petitioners, as expeditiously as possible and in any case on or before 30.12.2022. A request for extension of time would not be entertained. If the payment is delayed, the same shall carry

interest at the rate of 6% p.a. from the date of deduction until its actual payment.

(SANJAY A. DESHMUKH, J.) **(RAVINDRA V. GHUGE , J.)**

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