

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5081 OF 2019

Smt. Banabai Bajrang Rajput
Age : 56 years, Occu. : Agri.,
R/o Jangipura, Shendurni,
Tal – Jamner, Dist. - Jalgaon

.. Petitioner

Versus

1] The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai

2] The Collector, Jalgaon

3] The Special Land Acquisition Officer,
Minor Irrigation Division,
Jalgaon

4] The Executive Engineer,
Tapi Irrigation Development Corporation,
Minor Irrigation Division,
Jalgaon

.. Respondents

...

Advocate for petitioner : Mr. A.B. Kale
AGP for the respondent – State : Mrs. M.A. Deshpande
Advocate for the respondent no. 4 : Mr. Subhash S. Chillarge

...

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

**RESERVED ON : 17 AUGUST 2022
PRONOUNCED ON : 20 AUGUST 2022**

ORDER (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents no. 1 to 3. Mr. S.S. Chillarge waives service for respondent no. 4. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is challenging the order passed by the respondent no. 3 - Special Land Acquisition Officer (SLAO) dated 04-09-2018 rejecting her application seeking rental compensation from 01-11-1998 on which date, according to her, actual possession of the land acquired for a dam was taken by private negotiation even before issuance of the notification under section 4(1) of the Land Acquisition Act, 1894. The petitioner is also claiming solatium and special component on the land value, fruit bearing trees and a well, from that day.

4. The learned advocate Mr. Kale for the petitioner would submit that since possession was taken with private negotiation even before issuance of the notification under section 4(1), the petitioner is entitled to claim rental compensation from the date of taking over possession till passing of the award, in terms of the Government resolution and as held consistently by this Court in the matter of *Bhagwat Nattu Patil V. State of Maharashtra; 2009 (3) Mh.L.J. 413* and *Mahadu Shivram Rimale Vs. State of Maharashtra; 2015(4) Mh.L.J.*

818. He would, therefore, submit that entitlement of the petitioner to receive rental compensation cannot be in dispute.

5. Mr. Kale would submit that however, there is a serious dispute as to the actual date of taking over possession. He would submit that the respondents are treating that it was taken on 10-05-2005 when, in-fact, there is ample correspondence indulged into by the respondents inter se which would point out that even they admit that possession was taken not on 10-05-2005 but on 11-01-1998. He would refer to the calculations made by the respondents and produced at page 29A mentioning therein the date of taking over possession as 11-01-1998. He also points out the letter dated 18-06-2016 addressed by the respondent no. 4 to his superior admitting the fact that petitioner's land was under submergence since 1998. He also points out that it also mentioned that the petitioner was claiming rental compensation since 1998 and it recommended that her claim for rental compensation deserved to be accepted with effect from 1998. He would, therefore, submit that the respondents are alive to the fact that the petitioner's land has actually been affected since 1998 and she is entitled to rental compensation as well as calculation of solatium and special component from that date.

6. The learned AGP and the learned advocate Mr. Chillarge would submit that since inception the petitioner is aware that the date

of handing over possession is 10-05-2005. She had accepted that position and had never raised any dispute since the day of passing of the award under section 11A of the Land Acquisition Act, 1894. The petition, therefore, suffers from delay and laches and is liable to be dismissed on this sole count.

7. They would further submit that the documents being relied on by the petitioner to demonstrate that respondent no. 4 had accepted the fact of submergence since 1998, was merely in the form of a proposal and cannot be taken as an admission regarding the date of taking over possession. They would, therefore, submit that the petitioner is entitled to claim rental compensation only from the date of actual possession i.e. 10-05-2005 which has rightly been awarded to her.

8. They would then submit that the respondents never admitted the fact that the petitioner's land has been under submergence since 1998. The entire record demonstrates that possession was taken with private negotiations on 10-05-2005 and she had never raised any objection about it till filing of the petition. They would point out that even in the application submitted by her and produced by her on the record, she claimed rental compensation only from 10-05-2005. They would, lastly, submit that even claim of the

petitioner in respect of the rental compensation regarding fruit bearing trees and well is not legally tenable.

9. As can be gathered, the issue falls in narrow compass and revolves around the date on which possession of the petitioner's land was taken. There is no dispute about the fact that it was taken over even before issuance of notification under section 4(1) of the Land Acquisition Act, 1894 and consequently, she was entitled to claim rental compensation. However, she is claiming such rental compensation from the year 1998 on the ground that her land was submerged since then whereas the respondents claim that the possession was taken on 10-05-2005. There is also no dispute about the fact that she has already been paid rental compensation from that day i.e. 10-05-2005.

10. It is necessary to observe that the date of actual possession is clearly a disputed question of fact and this Court has inherent limitation in indulging into any fact finding.

11. True it is that the respondent no. 4 had apparently accepted the stand of the petitioner and forwarded the proposal to his superior - the Superintending Engineer with his communication dated 18-06-2016 (page 52A). However, as has been rightly pointed out by the learned AGP and advocate Chillarge, this correspondence was

merely in the form of a submission and cannot be treated as a statement of admission of a fact regarding submergence since 1998.

12. There is no dispute about the fact that the award and the subsequent orders passed from time to time clearly indicate that actual possession of the petitioner's land was taken over on 10-05-2005. The petitioner's own document in the form of letter addressed by her to the respondent no. 2 - Collector dated 21-11-2011 (Exhibit - C), a letter addressed by the respondent no. 3 - SLAO to the respondent no. 4 dated 02-12-2011 (Exhibit - D) pursuant to her former application, a copy of which was also addressed to her, her another letter dated 02-12-2011 once again addressed to the respondent no. 3 - SLAO (Exhibit - E) would clearly indicate that even she was claiming rental compensation from 10-05-2005 and not from any earlier date. In spite of such a long correspondence and till passing of the order under challenge, she had never raised any objection regarding actual date of possession.

13. So far as the fruit bearing trees and well is concerned, in view of the Government resolution dated 26-12-2003 (Exhibit - R-1), no rental compensation is payable in that respect and which is payable only in respect of land.

14. In view of the above circumstances, in our considered view, the petitioner is not entitled to the relief.

15. The petition is dismissed. Rule is discharged.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/