

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11780 OF 2022

Bhimrao Siddhu Patil & Ors.

..... Petitioners

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Chetan G.Patil, a/w. Mr.M.G.Bagkar for the Petitioners.

Mr.A.P.Vanarase, A.G.P. for the State.

Mr.Shakti Kadam, Deputy Collector, Land Acquisition present.

Mr.Pradip Shinde, Avval Karkoon, Rehabilitation Officer, Kolhapur present.

CORAM: R. D. DHANUKA AND

M.M. SATHAYE, JJ.

DATE : 13TH DECEMBER, 2022

P.C:-

Rule. Learned A.G.P. waives service for all the respondents.

Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek writ of certiorari for quashing and setting aside the communication/order dated 17th January, 2022 issued by the

respondent no.3. The petitioners also pray for writ of mandamus for order and direction forthwith to accept the proposal of the petitioners thereby paying 35% of the total compensation amount after deducting balance 65% of the total compensation and allotting an alternate suitable land as against the provisions of Maharashtra Project Affected Rehabilitation Act, 1999 (for short the said Resettlement Act).

3. The petitioners have filed writ petition bearing Writ Petition (Stamp) No. 26572 of 2019 in this Court for various reliefs. This Court disposed off the said petition and directed the Deputy Collector (Resettlement), Kolhapur to examine the case of the petitioners with a view to ascertain whether they are project affected persons as claimed by them and whether they are entitled to allotment of lands under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and whether they are entitled under the provisions of the Rule. The petitioners were thereafter directed to appear before the Deputy Collector (Resettlement), Kolhapur and to produce necessary documents.

4. It was directed that if the Deputy Collector (Resettlement),

Kolhapur is satisfied that the petitioners are the project affected persons or legal representatives of the project affected persons and/or otherwise are entitled to the allotment of a land, the State shall ensure that the Collector or appropriate authority of the State immediately issues a notices to the petitioners under section 16(2)(a) of the said Resettlement Act.

5. This Court also granted liberty to the petitioners to communicate their willingness to accept the grant of a land within a period of 45 days from the date of receipt of such notices from the Collector/Competent Authority. It is not in dispute that the said order dated 6th December, 2019 passed by this Court has not been impugned by the State Government before the Hon'ble Supreme Court.

6. In pursuance of the said order, the petitioners made an application on 1st January, 2020 and various applications thereafter for allotment of the land.

7. Our attention is invited to the order dated 17th January, 2022 passed by the Deputy Collector (Resettlement) Kolhapur dispossessing off

the said application on the ground that the petitioners have not deposited 65% of the total compensation for the allotment of such land.

8. In our view, the reasons recorded by the learned Deputy Collector for rejecting the application on the ground that the petitioners have not deposited the balance 65% of the total compensation amount within 45 days from the date of compensation is perverse. It is common ground that the compensation under section 12(2), has not been paid to the petitioners till date. The amount of 65% could be deducted from such compensation payable to the petitioners for acquiring the land and balance 35% could be paid to the petitioners. Such payment of 65% could be appropriated by the authority for allotting the land in view of the application already having been made by the petitioners under section 16(1)(a) of the said Act.

9. The impugned order passed by the Deputy Collector (Resettlement), Kolhapur rejecting the application filed by the petitioners on the ground that the petitioners have not deposited 65% of the amount of the compensation within 45 days is quashed and set aside. The entitlement of the petitioners to the alternate land under

section 16(1)(a) is not disputed by the Deputy Collector (Resettlement) by the said order.

10. It is thus clear that since the petitioners are held eligible for the alternate land under the said Government scheme and are not paid the compensation till date. We accordingly pass the following order :-

(a) The respondents would be at liberty to deduct 65% amount of the compensation held payable to the petitioners and to pay the balance amount of 35% to the petitioners within four weeks from today. The respondents would be at liberty to adjust the said 65% as price for the land that would be allotted to the petitioners.

(b) Mr.Vanarase, learned A.G.P. for the State on instruction from the respondent nos. 3 and 4 states that the petitioners are at liberty to identify the plots which according to the petitioners are available and can be allotted to the petitioners.

(c) The Deputy Collector (Resettlement) to consider whether those plots are available or not and that whether the petitioners can be allotted such plots subject to availability and shall communicate the decision within two weeks thereafter.

(d) It is made clear that if the plots identified by the petitioners are not available or in respect of such plots though available, the petitioners are not eligible for any reasons, the respondents shall allot any other suitable land as may be available within four weeks thereafter.

11. Writ petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No order as to costs. The parties to act on the authenticated copy of this order.

12. Place the matter on board for reporting compliance after eight weeks.

[M. M. SATHAYE, J.]

[R. D. DHANUKA, J.]