

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9367 OF 2021

Prabhakar Govind Mundale & Ors. ... Petitioners
Versus
The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION NO. 9363 OF 2021**

Eliza Paolu D'souza & Ors. ... Petitioners
Versus
The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION NO. 9378 OF 2021**

Subhash Mahadev Chavan
All Petitioner Agriculturists & Project
Affected Persons of Nardave Medium ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION NO. 9383 OF 2021**

Lahu Anant Palambe & Ors. ... Petitioners
Versus
The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION NO. 9364 OF 2021**

Macchindranath Mahadev Gosavi & Ors.

... Petitioners

Versus

The State of Maharashtra & Ors.

... Respondents

**WITH
WRIT PETITION NO. 9362 OF 2021**

Louis Bastiyav D' souza & Ors.

... Petitioners

Versus

The State of Maharashtra & Ors

. ... Respondents

**WITH
WRIT PETITION NO. 9365 OF 2021**

Hanuman Shivram Shinde & Ors.

... Petitioners

Versus

The State of Maharashtra & Ors.

... Respondents

**WITH
WRIT PETITION NO. 9361 OF 2021**

Manvel Motes D'souza & Ors.

... Petitioners

Versus

The State of Maharashtra & Ors.

... Respondents

.....

Mr. Sanjeev Sawant with Mr. B. K. Barve, Mr. Sandeep Barve, Mr. Santosh Wagh, Mr. Vijay Hamare i/b. B. K. Barve & Co. for the Petitioners in all Petitions.
Mr. V. S. Gokhale, 'B' Panel Counsel for the State.

CORAM : NITIN JAMDAR &

SHARMILA U. DESHMUKH, JJ.

DATED : 10 NOVEMBER 2022.

P. C. :

Heard learned counsel for the parties.

2. The Petitioners in these petitions are project affected persons of Nardave Medium Irrigation Public Project at Dist. Sindhudurg. Their lands have been acquired for the public purpose for implementing irrigation project in the year 2001. Their grievance is that till date they have not been allotted any land, which is their right under section 16 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 and therefore they have filed these petitions.

3. The Konkan Irrigation Development Corporation proposed irrigation project called Nardave Medium Irrigation Project on Gad river near village Nardave, Taluka-Kankavli, District-Sindhudurg. By notification dated 27 February 2016 issued under section 11 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 dated 27 February 2016, the provisions of the Act were made applicable in respect of Nardave Mahmawadi Medium Irrigation Project (renamed as Nardave Medium Irrigation Project) to 38 villages specified in the said notification. Thereafter proceedings for acquisition of land were conducted and awards were declared on

various dates. In respect of lands in question for villages viz., Nardave, Jambhalgaon, Durga Nagar, Bhairavgaon and Yavteshwar, the dates of awards range from the year 2001-2016.

4. Under section 16 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 which is applicable to the cases at hand, the eligible affected persons who are desirous of getting land/plot in the area shown under the scheme published under the Act have to make an application and the Collector has to then allot said lands to the affected persons with certain terms. The affected persons eligible for grant of land or plot forfeits their right if they fail to communicate their willingness to accept grant of land/plot within a period of forty-five days from the date of receipt of the notice.

5. The Petitioners in these petitions have asserted that they have not been offered or granted land/plot as envisaged under section 16 of the Act. This specific assertion has not been controverted in the common reply filed and it is accepted position before us that the Petitioners have not been given any notice to exercise right under section 16 of the Act. The Division Bench of this Court in *Ram Shankar Deshmukh & Ors. vs. State of Maharashtra and Ors.*, Writ Petition No.8385 of 2010 and other dated 2 May 2011 had considered the implication of non service of notice under Section 16 of the Act to the eligible affected persons. The Division Bench had observed thus:

"4. The statutory provisions are very clear and therefore limitation stipulated in sub-section (2) of section 16 of the Act will begin to run only after the Collector serves a notice upon the land losers as provided in section 16(2)(a). The learned AGP sought to contend that 65% amount is required to be deposited at the time when the land loser received compensation as provided under clause (b) of section 16(2). It is not possible to accept the above contention for the simple reason that the land loser will come to know about the entitlement to get alternate land only when he receives the notice in that behalf from the Collector as specifically provided under clause (a) of sub-section (2). Hence, it has to be held that for a land loser to forfeit his right to get alternate land under the provisions of the above Act, mere non deposit of 65% of the compensation at the time of receiving the compensation is not sufficient unless the land loser was given the notice under section 16(2)(a) by the Collector in the first place. In view of the above discussion, the petitions are allowed."

Thus, it is held by this Court that if notice is not received then affected eligible person does not forfeit his right to get land. Therefore, even though the awards in the present case have been declared several years ago, in view of non issuance of notice under section 16 of the Act, the Petitioner's right to get the land/plot as eligible affected person is not lost. This decision is followed in *Sitaram Ramchandra Bhogle & Ors. vs. The Collector and Deputy Director for Rehabilitation, Sindhudurg District, Writ Petition No.3680 of 2019* by the Division Bench of this Court. This decision arose from the very same Nardave project to which the present petitions are concerned. In this decision also the

Division Bench after following the decision in case of *Ram Shankar Deshmukh (cited supra)* has issued certain directions.

6. In the reply affidavit, eligibility of the Petitioners to receive land is not in dispute and therefore it is not necessary for us to direct that the Petitioners eligibility should be first checked and thereafter methodology laid down in the decision in the case of *Sitaram Ramchandra Bhogle (cited supra)* should be followed. Paragraph Nos.4 and 5 of the reply affidavit filed by Respondent Nos.2 to 5-State Government, Executive Engineer, Minor Irrigation Division, Oros, Dist. Sindhudurg is as under:

"4. I state that relevant facts in the present Writ Petition are as follows:

A. I state that the State Government has decided to undertake Mahamadwadi Medium Irrigation Project which is subsequently known as Nardave Medium Irrigation Project Tal. Kankavali, Dist. Sindhudurg on 27th February 1996 a notification was issued under Section 11 of the Maharashtra Project Affected Persons Rehabilitation Act 1999. Hereto annexed and marked as **Annexure-A** is the copy of Notification dated 27th February, 1996.

B. I state that pursuant to the aforesaid notification land acquisition procedures were initiated in respect of several

*lands situated village Durganagar, Bhairavgaon, Nardave, Yevateshwar, Jambhalgaon; were acquired by passing 18 awards from time to time for the purpose of Submergence & dam sheet line on the said project, which is called as Affected Zone of the project. Hereto annexed and marked as **Annexure-B** is the copy of list of these 18 Awards. I state that in all about 5786 land holders are covered by the said awards. Land holders admeasuring about 3549 have accepted the amount of compensation. In respect of rest of the land holders, regarding few land holder the amount of compensation is deposited in the Court as the said land holders claimed enhanced compensation and for remaining land holder there are dispute regarding the apportionment of the amount of compensation. Land holder having no dispute regarding apportionment of amount, distribution is under process by Land Acquisition Officer, Sindhudurg.*

C. I state that in addition to the lands mentioned in aforesaid para, the Government has obtained other lands from the said villages by way of private negotiations.

D. I state that to resettle the Project Affected Persons from the said project, the survey is carried out to found the availability of the alternate agricultural land from the

benefitted zone of the project, for that purpose study is made regarding land holders holding the agricultural land more than 8 Acres, the notices were issued to these land holders and their say and the objections were invited, I state that these land holders opposed the acquisition of their land. In view of strong opposition by the said land owners, the further process for acquisition of these lands were not initiated.

E. I state that in this background, there is a demand for allotment of alternate land by the Project Affected Persons and the non-availability of the lands for allotment, the several Project Affected Persons made representation to various authorities asking for adequate monetary compensation in view of alternate land, as the lands for allotment are not available and to initiate procedure for the acquisition of the said lands from the benefitted zone against the wishes of land owners from the benefitted zone will consume a lot of time and there will be a uncertainty regarding allotment of the land.

5. I state that aforesaid facts were brought to the notice of the State Government. Several joint meetings were held by Hon. Guardian Minister for Sindhudurg in presence of Hon. M.P. and M. L. A. along with District Administration and

*other concerned officers with project affected people, regarding either payment of additional amount of compensation or the allotment of the alternate land was discussed and it was decided to resolve the issue by paying additional compensation to the Project Affected Persons. Nardave Dharan Sangharsh samanvay Vikas samitee communicated to Collector, Sindhudurg vide letter dated 18/12/2020 regarding compensation in lieu of alternate land. Hereto annexed and marked as **Annexure C.**"*

This stand taken in the affidavit is reiterated before us by the learned counsel for the State.

7. Learned counsel for the State submits that though it is correct that the Petitioners are entitled to receive land/plots under section 16 of the Act, agricultural lands from the benefited zone are not available for allotment and there is a resistance for acquisition of new lands, and in these circumstances the State Government is contemplating to pay additional compensation to such project affected persons such as the Petitioners. The learned counsel for the Petitioners states that there are alternate lands available, however, considering the fact that the Petitioners are waiting for a long period of time without land or compensation they are not averse for payment of additional compensation. The learned counsel for the Petitioners submits that

however except taking meetings no further progress is taking place.

8. The details of meeting held from 13 March 2020 to 1 May 2022 are placed on record by way of affidavit. We agree with the submission of the learned counsel for the Petitioners that the meetings cannot progress at leisurely pace and must conclude into effective action at the earliest. State cannot overlook the fact that the Petitioners who have lost their lands are without alternate land, which is their right under the Act. It is doubtful whether right of the Petitioners to receive land under the Act can be substituted in a monetary compensation in law, however, it is not necessary for us to venture into that arena as the Petitioners are not averse for receipt of additional compensation in view of peculiar facts of the case. We also agree with the submission of the Petitioners that a time bound direction should be issued to the State to take action.

9. Learned counsel for the State submits that for arriving at the quantum of compensation, individual cases will have to be examined as to the lands which were held by them and this process would require some time. The status of the Petitioners as eligible affected persons is not in dispute before us.

10. In view of the above the Petitions are disposed of directing that Respondent-State shall within five months from today will either

pay compensation as specified in the affidavit in reply or to allot suitable land to the Petitioners.

11. It is expected that since we have laid down this time limit, the Respondent-State will commence process for implementing the order at the earliest.

12. The writ Petitions are disposed of in above terms.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)