

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

WRIT PETITION NO. 5305 OF 2022

Shivaji Tatyaba Sanap and Anr. ... Petitioners

Versus

The Additional Collector & Ors. ... Respondents

Mr. Atul Damle, Senior advocate i/b Mr. S.M. Sabrad a/w Mr. A.C. Sawant, Neha Parte, for the Petitioners.

Mr. A.I. Patel Addl. GP a/w Mr. A.P. Vanarase AGP for Respondent Nos. 1 to 3-State.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 6th DECEMBER 2022

PC. :-

1. Rule. Learned Additional G.P. waives service for the respondents. Rule is returnable forthwith.

2. A short question that has arisen for consideration by this Court in this Petition is whether petitioners are liable to pay nazrana at the rate of 50% of the market value on the date of the application made by the petitioners i.e. from 09.07.2013 or at the rate of 75% as per the market value on the date of the order.

3. We have perused the order passed by the appellate

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authority and the contentions raised by the petitioners before the appellate authority. The impugned order of the appellate authority has referred to 50% whereas the operative order has directed 75% of nazarna in the sum of Rs.1,65,53,808/-.

4. We are of the view that all the issues raised by the petitioners are not considered by the appellate authority in the impugned order. There appears to be inconsistency in the impugned order.

5. At this stage, Mr. Damle, learned senior counsel for the petitioners, on instructions, states that his client would deposit 50% of the nazrana on the basis of market value on the date of the application without prejudice to the rights and contentions of the petitioners within eight weeks from today. Statement is accepted. Petitioners have made out case for quashing and setting aside the order passed by the appellate authority on 1st August 2019 and for remanding matter back for deciding the matter afresh.

6. We accordingly pass the following order.

- (i) The impugned order dated 1st August 2019, passed by the Deputy Collector, Malegaon annexed as Exhibit K on page 59 of the Writ Petition is quashed and set aside.
- (ii) Appeal No. 165 of 2015 filed by the petitioners is

restored to file for deciding the matter afresh in accordance with law without being influenced by the observations made and the conclusions drawn in the impugned order dated 1st August 2019 for granting personal hearing to the petitioner and after considering all the contentions to be raised by the petitioners orally and in the memorandum of appeal within eight weeks from the date of depositing the amount by the petitioners.

(iii) It is made clear that if the petitioners fail to deposit 50% of the said amount, order passed by the appellate authority to stand restored and the appeal preferred by the petitioners to stand dismissed.

(iv) Order that would be passed by the appellate authority shall be communicated to the petitioners within one week from the date of passing such order.

(v) If there is any shortfall, adverse action should not be taken against the petitioners for a period of four weeks from date of communication of the said order.

(vi) If there is any surplus made by the petitioners,

amount shall be refunded to the petitioners within four weeks from the date of passing order.

(vii) Factum of deposit of amount shall be communicated to the appellate authority by the petitioners for fixing date of hearing. The appellate authority shall give 72 hours notice to the petitioners for hearing.

7. The Writ Petition is disposed of in the aforesaid terms. Rule is made absolute. No order as to costs.

8. Parties to act on the authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]