

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

WRIT PETITION NO. 3252 OF 2006

Madhavrao Bhagwatrao Rajebahadur	]
Since deceased Through His Legal Heirs	]
and Representatives	]
1-a Smt. Madhavi Madhavrao Rajebahadur,	]
1-b Mrs. Radhika Trigun Gosavi	]
1-c Mrs. Deviyani Vaibhav Chitral	]
 2. Shri Narayanrao Bhagwantrao	]
Rajebahadur since deceased through	]
His Legal Heirs and Representatives	]
2-a Smt. Uma Narayan Rajebahadur	]
2-b Smt. Dhanashri Niranjana Kotwal	]
2-c Smt. Gauri Prashant Joshi	]
All residing at Malegaon,	]
Taluka Malegaon, District Nashik	]...Petitioners

Vs.

1. State of Maharashtra	]
2. The Collector	]
Nashik District,	]
Having his office at Collector's Office	]
Compound, Nashik City,	]
District : Nashik	]
3. The Special Land Acquisition Officer	]
Scarcity No. 2,	]
Having his office at -	]
Collector's Office building	]
At Nashik, District Nashik.	]
4. The Municipal Commissioner,	]
Malegaon Municipal Corporation	]
Having his office at-	]
Malegaon, Taluka Malegaon,	]
District Malegaon.	]

5. The Malegaon Municipal Corporation,]
 Having its office at]
 Malegaon, Taluka Malegaon, District]
 Malegaon.]...Respondents

**ALONGWITH
 CIVIL APPLICATION NO. 2039 OF 2017
 IN
 WRIT PETITION NO. 3252 OF 2006**

Madhavrao Bhagwatrao Rajebahadur
 (since deceased Through LRS) and Ors. ...Applicants

vs.

The State of Maharashtra and Ors. ...Respondents

Mr. Pramod N. Joshi - Advocate for the Petitioners and Applicants in
 CAW and Interim Application.

Mr. Rajan S. Pawar - AGP for the Respondent Nos. 1 to 3

Mr. S. S. Patwardhan – Advocate for the Respondent Nos. 4 and 5.

**CORAM : R. D. DHANUKA AND
 S. M. MODAK, JJ.**

**DATE : 12th JANUARY, 2022
 (Through Video Conference)**

ORAL JUDGMENT :-

. Rule.

2. The learned counsel for the Petitioners, on instructions of the
 Petitioners seeks liberty to delete the names of Respondent Nos. 4
 and 5 from the cause title of the petition. Leave to amend is granted.
 Amendment to be carried out within four days from today. Re-
 verification is dispensed with.

3. By this petition filed under Article 226 of the Constitution of India, the Petitioners seek writ of mandamus for a direction to delete and dereserve the lands of the Petitioners bearing Survey No. 237/1 and land measuring about 892 sq.mtrs. out of Survey No. 230/1 situated at Malegaon, within the limits of Municipal Corporation which is referred under Reservation bearing No. 60 of the Final Development Plan duly published by the said Municipal Corporation.

4. Mr. Pramod N. Joshi, the learned counsel for the Petitioners invited our attention to the interim order passed by this Court on 05/12/2006, in this Writ Petition under Civil Application No. 2995 of 2006. He also invited our attention to the award subsequently made by the Respondent Nos. 1 to 3, bearing No. 54 of 1995 in respect of the said land in question. Apart from the Petitioners, Vishwas Namdeo Deore was also one of the claimant who filed Writ Petition bearing No. 430 of 2009 in this Court inter-alia challenging the legality and validity of the said Award No. 54 of 1995 dated 29/03/2007 passed by the learned Special Land Acquisition Officer (Scarcity No. 2) in respect of final Plot No. 95, Gat No. 237/2 situated at Sangmeshwar, Taluka Malegaon, District Nashik.

5. Learned counsel invited our attention to the judgment delivered by this Court in the said Writ Petition on 28/02/2019 and more particularly paragraph nos. 14 and 15 thereof. He submits that the said Award bearing no. 54 of 1995 passed by the learned Special Acquisition Officer has been quashed and set aside by the said

judgment. However in paragraph no. 15 of the said judgment, this Court noticed that the user department had already utilized the land of the Petitioner for the purpose of construction of the building for District Court. This Court directed the Respondent Nos. 1 to 3 to initiate fresh acquisition proceedings under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This Court accordingly directed the Respondents to initiate fresh inquiry for assessment of compensation on the basis of provisions of the said Act of 2013 by taking the date of that order as the date of notification under Section 19 of the said Act 2013 and to pay compensation to the Petitioners as expeditiously as possible and in any case within a period of 12 months from the date of receipt of the copy of the said judgment. This Court granted liberty to the Respondents therein to set off the amount of compensation of Rs. 35,96,675/- with interest at the rate of 8 % p.a. which was already received by the Petitioner on 02/11/2007, from the total amount of compensation. This Court disposed of the said writ petition and also the Reference pending before the Reference Court under Section 18 of the Land Acquisition Act 1894 as infructuous.

6. Mr. Pramod N. Joshi, learned counsel for the Petitioners states that similar order be passed by this Court in so far as this Writ Petition is concerned. He invited our attention to the averments made in the additional affidavit filed by Petitioners in this Court on 29/03/2019 and he would submit that the statements made by the

Petitioners in the said affidavit be accepted. The statement is accepted.

7. Learned AGP for the Respondents does not dispute that the Award made in pursuance to the interim order passed by this Court was in respect of the Petitioner's land also.

8. In our view, no prejudice would be caused to the Respondents if the similar order is passed by this Court in this writ petition that was passed by this Court on 28/02/2019 in Writ Petition No. 430 of 2009 in respect of the same award.

9. We accordingly pass the following order:-

ORDER

(i) The Respondents shall initiate the fresh inquiry for assessment of compensation on the basis of provisions of the said Act of 2013 by taking the date of 28/02/2019 as the date of Notification under Section 19 of the Act 2013 and to pay compensation to the Petitioners as expeditiously as possible and in any case within a period of 12 months from the date of receipt of an Authenticated copy of the said judgment.

(ii) The Respondents are at liberty to set off the amount of compensation already paid to the Petitioners with interest at the rate of 8% p.a. from the total amount of compensation that would arise.

(iii) The statement in this regard made by the Petitioners in the additional affidavits are accepted.

(iv) The Reference filed by the Petitioners under Section 18 of the Land Acquisition Act 1894 is rendered infructuous, in view of that order and in view of the statement made by the Petitioners in the additional affidavit.

10. Rule is made absolute in aforesaid terms.

11. Parties to act an authenticated copy of this order.

12. In view of the disposal of Writ Petition pending Civil Applications alongwith Interim applications, if any, stand disposed of.

13. It is made clear that the Respondents are at liberty to call for the amount of deposits if not deposited from the acquiring body.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]