

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

WRIT PETITION NO. 10346 OF 2022

YUGANDHARA
SHARAD
PATIL

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Maruti Ganu Supnekar (Since Deceased)	]	
through Legal Heirs,	]	
1a. Ananda Maruti Supnekar	]	
aged about 74 years, Occ. Nil	]	
1b. Bhagwan Maruti Supnekar	]	
(Since Deceased) through Legal Heirs,	]	
1b(i) Smt. Indumati Bhagwan Supnekar	]	
aged about 66 years, Occ. Nil	]	
1b(ii) Vinod Bhagwan Supnekar (deceased)	]	
through Legal Heirs,	]	
1c. aged about 68 years, Occ. Nil	]	
All resident of Post Mahind, Taluka	]	
Patan, District Satara.	]	..Petitioners

Versus

1. The State of Maharashtra	]
2. The Divisional Commissioner	]
Division Pune, at Pune	]
3. The Collector, Rehabilitation Branch,	]
Satara District Satara	]
4. The District Resettlement Officer,	]
District Satara	]
5. The Sub Divisional Officer,	]
Sub Division Patan at Patan	]
6. The Tahasildar,	]
Patan, Taluka Patan, District Satara	]

7. The Special Land Acquisition Officer-12]
Satara District Satara] ..Respondents

Mr. G.T. Kanchanpurkar for the Petitioner.

Mrs. M.S. Bane AGP for Respondent Nos. 1 to 7-State.

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

DATE : 8th DECEMBER 2022

ORAL JUDGMENT [PER :R.D.DHANUKA,J.]

1. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for writ of mandamus for holding and declaring that Petitioners are entitled for a residential plot and alternate land from the benefited zone of Mahind Pond (Talav) project. Petitioners have also prayed writ of mandamus against respondents to issue notice under section 16(2)(a) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

2. It is an admitted position that petitioners' lands had been acquired by the State Government since the same were

submerged under the Mahind Pond (Talav) project in the year 1996-99. The Special Land Acquisition Officer issued notice under Section 4(1) of the Land Acquisition Act and after following procedure, acquired the land. After making an Award, the Special Acquisition Officer issued notice under Section 12(2) of the Land Acquisition Act, 1894 to the Petitioners for receiving payment of compensation, sometime in the year 2000.

3. The case of the petitioners now is that since no notice under Section 16(2)(a) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 for deposit of 65% of the amount was issued, the Petitioners did not deposit the said amount to enable the State Government to allot residential plot of their choice. He submitted that time to pay such amount did not commence and thus directions be issued to the respondents to issue such notice under section 16(2)(a) at the first instance and to give opportunity to the petitioners to deposit 65% amount. In support of this submissions, learned counsel for the petitioners relied upon on the Judgment of this Court delivered

on 7th February 2017 in Writ Petition No. 8988 of 2013 in case of **Dadabhau Pandurang Agarkar Vs. State of Maharashtra and Others** and connected Writ Petitions.

4. Learned counsel invited our attention to the Sankalan Register for the year 2019 and more particularly Sr. No. 237 which clearly state that the petitioner is ineligible to get any land.

5. Perusal of the averments made in the writ petition and more particularly paragraph no. 6 of the petitioner clearly indicates that it is case of the petitioners that the petitioner and her husband did not deposit 65% amount as they were not aware about the same. Even officers of respondent no. 1 did not apprise petitioners about the said facts. It is case of the petitioners that petitioner and her husband received entire compensation of land and did not deposit 65% of the amount. Petitioners were not considered for rehabilitation under the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

6. It is thus clear beyond reasonable doubt that petitioners had accepted 100% compensation amount in the year 2000 itself and did not express any desire to get land or plot or both under the Scheme under Section 15 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

7. Section 16(1) and 16(2) of the said Act read thus:-

16. Grant and assignment of land and payment of special grant-

(1) An eligible affected person who is desirous of getting land or plot or both in the area shown for the purpose in the scheme published under section 15 may make an application to the Collector in the prescribed form for grant of land or plot, and subject to such rules as may be prescribed, it shall be lawful for the Collector

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(a) to grant land acquired under section 14 to such affected person with the occupancy status on the land held by him earlier;

(b) to grant a plot of land to such affected person in a new gaothan or extended part of the existing gaothan with the occupancy status on the land held by him earlier and rupees ten thousand as a special grant for construction of house on such plot, in such manner, as far as possible, according to the provisions of parts III and IV of the Schedule and on such terms and conditions as may be prescribed:

Provided that -

(i) if the allottee of the land under sub-clauses (a) and (b) of sub-section (1) is an

occupant Class II, he shall be entitled to conversion of the land to occupant Class I after a period of ten years on payment of premium as may be prescribed;

(ii) the affected person referred to in sub-clause (d) of clause (2) of section 2 shall be eligible to a constructed house on the basis of the Indira Awas Scheme of the State Government;

(iii) the affected person referred to in sub-clause (e) of clause (2) of section 2 shall be eligible only for grant of a plot under clause(b);

(iv) subject to the provisions of sub-sections (2) and (3), the occupancy price of the land or plot, as the case may be, granted under clause (a) or (b), except under sub-clause (ii) above, shall be determined and paid in the manner as may be prescribed.

(2) An affected person eligible for the grant to land or plot under sub-section (1) shall forfeit his right to get the same if -

(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of forty-five days from the date of receipt by him of a notice in that behalf from the Collector;or

(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five per cent of the amount of compensation which he has received for his land which is acquired from him in the affected zone or, of the likely cost of the land to be granted to him under sub-section (1), whichever is less, at the time of payment of such compensation to such affected persons.

8. Perusal of Section 16(1) clearly indicates that an eligible

affected person who is desirous of getting land or plot or both in the area shown for the purpose in the scheme published under section 15 may make an application to the Collector in the prescribed form for the grant of land or plot, and subject to such rules as may be prescribed. Such application can be made only if the person is eligible or affected and desirous of getting land.

9. In this case, the petitioners were not desirous to get land or plot after getting compensation for last 20 years. Only upon making such application by the person who is eligible and is an affected person, inquiry has to be made by the collector under Section 16(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. Section 16(2) provide that an affected person eligible for the grant of land or plot under sub section (1) shall forfeit his right to get the same if he fail to communicate his willingness to accept the grant of land or plot made to him to the collector within a period of 45 days from the date of receipt by him of a notice in that behalf from the Collector.

10. In our view, stage for issuance of notice under Section 16(2) of the Act, to deposit the amount would arise only if the application under Section 16(1) of the Act is made by an eligible affected person who has a desire to get land or plot or both in the area shown for the purpose in the scheme published under Section 15 of Maharashtra Project Affected Persons Rehabilitation Act, 1999. There is no automatic entitlement of the land or plot under the said Scheme. No notice under Section 12(1) of the Land Acquisition Act, 1894 is issued. Such application by the eligible person is at the option of such person.

11. The petitioners have accepted 100% of compensation and did not desire to apply for plot or land or both under the Scheme published by the Government by making an application under Section 16(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. Question of issuing notice under Section 16(2) of Maharashtra Project Affected Persons Rehabilitation Act, 1999, for depositing amount thus did not

arise. There is no substance in the submissions made by learned counsel for petitioners that obligation to deposit 65% amount would commence from the date of issuance of such notice though no application is made for allotment of such plot under section 16(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999

12. In so far as Judgment of this Court relied upon by learned counsel for the petitioners in case of **Dadabhau Pandurang Agarkar Vs. State of Maharashtra and Others** (supra) is concerned, this Court in the said Judgment did not consider the effect of not making any application under Section 16(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999. The said Judgment is thus clearly distinguishable on facts and would not assist the case of the petitioners.

13. We are inclined to accept the submissions made by learned AGP that notice under Section 16(2) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999,

could not have been issued unless an application under Section 16(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 was made by the petitioners. Section 16(2) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 cannot be read in isolation and has to be read with Section 16(1)(a). Notice under Section 16(2) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, is dependent upon the outcome of application under Section 16.1 and not independently. Be that as it may, claim of the Petitioners is already shown as ineligible in Sankalan Register produced by the petitioners themselves.

14. The Writ Petition is currently misconceived and is accordingly dismissed. No order as to costs.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]