

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 6042 OF 2019

Doma Ramaji Mendhule & others vs. The State of Maharashtra & others
WITH

WRIT PETITION NO. 6043 OF 2019

Deepak Manohar Shende & others vs. The State of Maharashtra & others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P. S. Kshirsagar, Advocate for petitioners.
Mr. H. D. Dubey, AGP for respondent Nos.1 to 3.
Ms. Ujjwala Patil, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 30/03/2022

In both these petitions similar orders passed by the respondent Collector, Wardha, under Section 28A of the Land Acquisition Act, 1894, have been challenged.

2. By the said orders dated 15/06/2019 and 20/06/2019, the respondent Collector has rejected the applications filed by the petitioners under Section 28A of the aforesaid Act for re-determination of compensation on the basis of Award of the Court.

3. The petitioners are agriculturists and residents of villages in District Wardha. Their land

along with structures existing thereon were acquired by the respondents for an irrigation project.

4. The Land Acquisition Officer passed an Award dated 22/03/2002 and determined the amount of compensation payable to the claimants, including the petitioners herein. Some of the claimants, similarly situated like the petitioners, preferred applications under Section 18 of the aforesaid Act for enhancement of compensation. In pursuance thereof, the reference Court enhanced the compensation payable to the said claimants who had invoked Section 18 of the said Act. By relying upon one such judgment and Award of the reference Court dated 22/03/2019, the petitioners filed the aforesaid applications under Section 28A of the said Act for re-determination of compensation in their favour.

5. By the impugned orders dated 15/06/2019 and 20/06/2019, the respondent – Collector rejected the applications by simply noting that since the District Government Pleader had opined that the situation of the houses, quality of construction and other such aspects concerning the petitioners were materially different from the case of the claimants wherein the reference Court had passed its Award, the applications under Section 28A of the

aforesaid Act could not be considered. By relying upon the said opinion, the respondent Collector proceeded to reject the applications by a cryptic order.

6. Mr.Kshirsagar, learned counsel appearing for the petitioners in these writ petitions submitted that in Section 28A of the aforesaid Act, particularly Sub-Section (2) thereof, the Collector is mandated to conduct an enquiry and then to re-determine the compensation by considering the claims made by the applicants based on the Award of the reference Court enhancing the compensation.

7. A perusal of the Award of the reference Court, on which the petitioners placed reliance, shows that the amount of compensation for open plot was enhanced from Rs.90/- per square meter to Rs.738/- per square meter and for the constructed area it was enhanced to Rs.2530/-per square meter. It was submitted that on the face of it, the reference Court erred in not enhancing compensation payable to similarly situated claimants for open land, as well as the constructed area.

8. Ms. Ujjwala Patil, learned counsel appearing on behalf of respondent No.4 submitted

that the constructed portion of the each of the claimants was different and that therefore, the petitioners could not claim identical amount of compensation as granted to the claimants in whose case the reference Award was passed.

9. This Court is of the opinion that a perusal of the Award of the reference Court would show that enhancement of compensation was granted not only for the constructed area, but also for the open land. While the constructed area of each claimant may differ, enhanced compensation for open plot would clearly enure to the benefit of the petitioners. Even in respect of the enhanced compensation for constructed area, an enquiry was certainly contemplated for the Collector to decide the claims of the petitioners on merits.

10. A perusal of the impugned orders shows that no such exercise was undertaken, although statutorily mandated under Section 28A(2) of the aforesaid Act, thereby showing that the Collector has erred in passing the impugned orders. There is no discussion beyond reference to the opinion of the District Government Pleader. The impugned orders passed by the Collector are cryptic and not in terms of

the requirement under Section 28A of the aforesaid Act.

11. In view of the above, the writ petitions are partly allowed.

12. The orders passed by the Collector are quashed and set aside.

13. The matters are remanded back to the Collector for considering the applications filed by the petitioners under Section 28A of the said Act afresh, after giving proper opportunity to the petitioners, as well as the respondents to place on record material that would assist the Collector in the enquiry under Section 28A(2) of the said Act to re-determine the enhanced compensation, if any, payable to the petitioners with reference to the Award passed by the reference Court in the case of similarly situated claimants.

14. The Collector is directed to complete the enquiry and pass orders expeditiously and in any case within six months from today.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*31.03.2022
19:09

KOLHE