

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8626 OF 2023

**AJAY BHAUSAHEB AGHARDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY
AND OTHERS**

....

Mr. Sandeep N. Lute, Advocate for Petitioner
Mr. S. K. Tambe, AGP for Respondent – State

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 28.11.2023

PER COURT :-

1. The Petitioner has put forth prayer clauses (B), (C) and (D), as under:-

“(B) By an order of this Hon’ble Court, direct the respondent’s authorities to declared an award of acquired land bearing Gat No.234, situated at Ghatshendra, Tq. Kannad, Dist – Aurangabad, totally admeasuring acquired 0.28 Hectors (28R) for the Purna – Nevpur Mediam Project Left Canal at Ghatshendra, Taluka Kannad, District – Aurangabad, of the petitioner as per the Land Acquisition, Rehabilitation and Resettlement Act, 2013, as earlier as possible.

(C) By an order of this Hon'ble Court, direct the respondent's authorities to deposit the compensation amount of acquired land before the Hon'ble court.

(D) By an order of this Hon'ble Court issue appropriate directions to the respondents authorities so as to return the possession of the agriculture land bearing Gat No.234 situated at Ghatshendra, Tq. Kannad, Dist. Aurangabad, totally admeasuring acquired 0.28 Hectors (28R), to the present petitioner."

2. Our attention is drawn to page No.48 and 49, which indicates the measurement report by the Deputy Superintendent of Land Records, Kannad, dated 08.03.2022 and the sketch map with remarks thereon.

3. The learned AGP points out that the Petitioner's grandfather had himself approached the competent Court by preferring a Special Civil Suit No.175 of 2005 on 15.04.2005. By judgment dated 29.03.2006, the suit for recovery of compensation on the ground that the land has been acquired for a public project, was dismissed with specific observations in paragraph Nos. 8, 9, 10 and 11, which are reproduced hereunder:-

"8. Now, next question remained for consideration is as to whether plaintiff has led the evidence to show that 28 R land is acquired or affected by the said left canal. Here it will seen

from the documents on record there is only oral statement of plaintiff i.e. PW-1 that his 28 R land is acquired by left canal. Even that statement is also not certain because at one place he says that 30 R land was affected by the left canal and another place he says that only 28 R land is affected by the said canal. Even the plaintiff has not led any documentary evidence to show as to how the canal proceeds from gut No.234 and how much area is affected by the said left canal. Because how much land is affected by the said canal is a fact which can be proved only by way of measurement of the said land either by the Government or at the hands of private persons. The plaintiff has not taken any pain to bring on record the exact location of the land affected by the left canal from land gut No.234, but it reveals from the record that plaintiff want to take the advantage of the apparent mistake committed by the Government i.e. Land Acquisition Officer because from the Joint Statement Ex.17 it is crystal clear that the land gut No.233 is not of 18 R. land so, even if there had been any acquisition more than 3 R land then it must be from other gut numbers and not from Gut No.233. But in the Award passed by the competent authority it reveals that land acquired from land gut No.233 is shown as only 3 R land. There is no reference of the land gut No.234 in the Award. So far as the notice issued u/sec. 9 of the Land Acquisition Act is concerned though it appears from the contents of notice that it was addressed to plaintiff and intimated to him that only 8 R land is under acquisition from gut No. 233, yet that notice is not accompanied with map as endorsed below. It does not bear the seal of the office and even if for the sake of argument it is assumed that reference of gut No. 233 is not correctly written and it ought to have been 234, then even then the area is shown as 8 R and not 28 R. And hence, how much land is affected by the left canal is the fact which can be proved only by examination of expert i.e. measurer. Nobody can take the benefit of the apparent mistake committed on record by the

Government. It is crystal clear from the record that Land Acquisition Officer who issued the notice or prepared the joint measurement has not taken the precaution about the area acquired and the gut numbers thereof and i. e. why this discrepancy in respect of area and gut number appears to be on record. Even the plaintiff not sure because in his application Ex. 18 he says that 30 R land is acquired but Government is showing 8 R land out of gut No. 234. Then says that only 28 R land is affected. So, it is not certain as to how much land is affected by the left canal though he is speaking about the 18 R land in the joint measurement but Ex. 17 statement of joint measurement only speaking about 18 R land from gut No. 233 and not gut No. 234. Then Ex. 28 notice u/sec. 9, speaks only in respect of 8 R out of gut No. 233 and not gut No. 234. Section 9 requires a notice to person interested and it is mandatory that the notice shall state particulars of the land so needed. But the particulars of the lands are not alongwith this notice. Plaintiff is not speaking about any map whether it was supplied to him alongwith notice or not, and hence in this circumstances though plaintiff orally stating before the Court that 28 R land is affected by the left canal out of gut No. 234 yet for want of corroboration from the documentary evidence that statement is not acceptable at all. It is again pertinent to note here that 7/12 extracts filed on record Ex.15 in respect of gut No. 233 for the year 2004-05. In this 7/12 extract no entry is taken as to whether the land is acquired from this gut No.233, same fact happen in respect of gut No. 234. No entry in the 7/12 extract to show that Talathi found the land affected by the left canal. On the contrary if the area under cultivation shown in the 7/12 extract Ex. 16 for the year 2005-06 is seen then it will seen that 1 hector 76 R Maka(Maize), 1 Hector Bajara + 1 hector 50 R cotton, total will come to 3 Hector 26 R. under cultivation. Had there been 30 R land or 28 R land as claimed being affected by the canal there was no reason for the Talathi to show that plaintiff cultivating 3 Hector and 26 R.

land. So, this entry in the 7/12 extract for the year 2005-06 does not support the contents of the plaintiff. Even the 7/12 extract for the year 2003-04 of gut no. 234 does not bear any endorsement of Talathi that some land is affected by the canal and not under irrigation. Here also if the total of cultivated land is seen then Maka(maize) 1.60, Jawar 1.40 and then Tur 26 total will be come to 3 hector 26 R land. So, this 7/12 extract Ex. 38 also does not support to the plaintiff. Had his land .30 R being affected as claimed naturally the said area would have been reduced from cultivation column and would have been shown as affected area.

9. *No doubt, from the documents on record it is crystal clear that some apparent mistake happen in respect of gut No. 233 while showing the area as 3 R but has been shown as 8 R, then again mistake is committed that 18 R but so far as Award is concerned, Award is in respect of only 3 R out of gut No. 233 and that is not in dispute. But, so far as the acquisition of land or the land affected by the left canal out of gut No. 234 is concerned, no doubt it reveals from the record that it might have been affected to some extent but so far as area affected is concerned in the absence of map showing the location of gut No. 233, 234 and the exact location of the canal proceeding from gut No. 233 and 234, so also in the absence of an authenticated map or an evidence of a skilled person to show that in fact the left canal affected area of gut No. 234 and the area thereof, a mere oral statement though unchallenged and unrebutted yet not conclusive proof of the fact that 28 R land is affected by the left canal. And hence, I have come to the conclusion that the evidence adduced by the plaintiff is not found reliable, trustworthy and sufficient to come to the conclusion that 28 R land is affected out of gut No. 234 by the left canal.*

10. **POINT NO. 2, 3 and 4:-** No far as the value of the land is concerned in fact this issue does not survive but in alternative finding is given plaintiff has made the claim of Rs. 5000/- per R and that is why made the claim of Rs. 1,40,000/- i. e. of total price of 28 R land. In support of his claim he has placed on record one copy of index to show that sale-deed executed by one Shenphadu Shahadu in favour of Ramdas Mahadu and others dt. 28.1.91 and on perusal of the said it reveals that 10 R land is sold in consideration of Rs. 25,000/-, then also filed xerox copy of sale deed executed by the alleged Shenphadu in favour of Ramdas Randhire and others. So it reveals that Rs. 2500/- per R the land was sold but at the same time plaintiff has not brought on record any evidence to show that this land is situated near the land of plaintiff. Even it is not made clear as to whether land acquired was irrigated or non-irrigated but the Award is on record and gut No. 233, area 3 R land is acquired and in the award the value of the land is calculated by the Land Acquisition Officer @ Rs. 390/- per R as both the lands are situated adjoining to each other. The value shown by the plaintiff appears to be not correct and is exaggerated. No doubt, the sale deed brought on record is of Ghatshendra but it must be shown that alleged land is situated adjacent to the land acquired and having the same quality and market value and hence the value of the land as calculated by the Land Acquisition Officer may not be more than in Rs. 400/- per R, and hence the total price of the land of 28 R land may come to Rs. 11,200/- and interest thereon @ Rs. 12% p.a. from 1996 comes to Rs. 9,408/- and hence the total amount due comes to Rs. 20608/-. Hence this point is answered does not survive in the alternative entitled for Rs. 20,608/- hence I hold that plaintiff is entitled to Rs. 20608/- for 28 R Land as claimed.

11. In view of my findings to the above points as I have come the conclusion that plaintiff totally failed to prove that 28 R land is acquired from land gut No. 234 and hence plaintiff is

not entitled to have the claim as prayed. Hence I answered point No. 3 and 4 accordingly.”

4. This Court (Coram: Nitin Jamdar, Acting C.J. and S. G. Chapalgaonkar, J.) has passed an order on 21.07.2023, seeking an explanation for the delay caused in preferring this Petition with reference to a public project of the year 1996. In our view, the said issued would not survive in the light of the fact that the competent Civil Court has delivered a verdict by judgment dated 29.03.2006 in Special Civil Suit No. 175 of 2005. When the grandfather of the Petitioner has failed in the litigation, we do not find any pleadings to indicate as to how the present Petitioner would acquire any right, title or interest.

5. In view of the above, **this Petition is disposed off.**

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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