

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10602 OF 2021

Pitamber Devram Sonawane (Koli)
Age- 85 years, Occ- Agriculture,
R/o. Village- Sujde,
Taluka & District- Jalgaon.

Petitioner

Versus

1. The Ld. District Collector
Jalgaon.
Taluka & District- Jalgaon.
Pin Code- 425001.
2. The Special Land Acquisition Officer
Jalgaon.
Taluka & District- Jalgaon.
Pin Code- 425001.
3. The Executive Director,
Tapi Irrigation Development Corporation,
Jalgaon.
Taluka & District- Jalgaon.
Pin Code- 425001.
4. The Executive Engineer
Waghur Dam Project Division,
Jalgaon.
Taluka & District- Jalgaon.
Pin Code- 425001.

Respondents

Mr. J.V. Patil, Advocate for petitioner.
Mr. S.N. Kendre, AGP for respondent-State.
Mr. S.B. Kadu, Advocate for respondent No. 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th SEPTEMBER, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. By this petition under Article 226 of the Constitution of India, petitioner challenges the settlement arrived before Lokadalat in Land Acquisition Reference No. 434/2014, dated 09.12.2017.

3. Facts which are not in dispute can be stated thus;
Land of petitioner/claimant admeasuring 98 Are is acquired by respondent Nos. 3 and 4 for construction of Waghur Project, Bhadali Distributaries No. 8510. On 30.08.2011, notification under section 4 of Land Acquisition Act, 1894, was published. Award was passed on 13.05.2013. Petitioner by filing Land Acquisition Reference No. 434/2014 sought enhancement of compensation.

4. Some of the similarly situated land holders whose lands were acquired by same notification, filed Writ Petition Nos. 2390/2015 and 610/2014 in this Court. This Court by order dated 21.09.2015 partly allowed the petition as follows:

"33 In view of the reasons set out above, both the writ petitions are partly allowed. Respondent-

State authorities are directed to determine amount of compensation payable to the claimants covered by Section 4 notification in respect of the award/s in both the petitions, in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The exercise of determination of amount of compensation, as directed above and payment thereof, shall be completed within a period of six months from today."

5. Pursuant to the orders of this Court, petitioner/claimants who had filed writ petitions were paid ex-gratia payment by making necessary calculations. Chart of which is produced at Page 93 of the present petition.

6. Petitioner since had filed reference was prosecuting the same and said reference of petitioner was settled before Lokadalat on 09.12.2017, as per compromise terms placed on record at Exhibit-F. As per Clause (1) of said settlement, petitioner agreed to accept three times enhanced amount of compensation given by Special Land Acquisition Officer. As per said settlement, petitioner was held entitled to an amount of Rs. 14,07,409/-.

7. It is the grievance of petitioner that though, he is covered by the order passed in Writ Petition No. 2390/2015 and

companion matter, respondent-State failed to point out this order to Lokadalat and thereby deprived petitioner from ex-gratia payment which is paid to similarly situated agriculturists from the same award. According to petitioner, said suppression has vitiated the settlement arrived at before Lokadalat and therefore award passed by Lokadalat be quashed and set aside and petitioner prays for holding him entitled for ex-gratia payment as is paid to other similarly situated agriculturists.

8. Heard the learned advocate for petitioner, learned Assistant Government Pleader for respondent-State and learned advocate for respondent No. 4. Perused the writ petition memo, annexures thereto and affidavit in reply filed by State.

9. It is a matter of record that Division Bench of this Court by order dated 21.09.2015 passed in Writ Petition No. 2390/2015 and in companion matter directed Respondent-State authorities to determine amount of compensation payable to the claimants covered by Section 4 notification in respect of the award/s in both the petitions, in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The process was directed to be completed within six months from the

date of the order.

10. Similar directions are given in Writ Petition No. 2898/2016 by order dated 14.07.2016. It is not in dispute that pursuant to said orders State authorities have prepared a chart (Exhibit-F, Page 93) with calculations as to how much ex-gratia amount is payable to petitioners/claimants in those petitions. Said judgments can be termed as judgment in rem and ought to have been made applicable to all the similarly situated claimants. State Authorities were duty bound to bring these decisions to the notice of Lokadalat, at the time of settlement of matter with petitioner on 09.12.2017. Admittedly, same was not pointed out to Lokadalat and due to said suppression petitioner has settled the matter, oblivious of the fact that similarly situated claimants have received ex-gratia payment at enhanced rate.

11. As per the calculation given by petitioner, petitioner is entitled for an amount of Rs. 54,11,571/- by way of ex-gratia payment. Had the petitioner known that similarly situated agriculturists/claimants were paid ex-gratia payment pursuant to the orders passed by Division Bench of this Court, petitioner could not have settled the matter before Lokadalat by accepting lesser amount of Rs. 14,07,409/-. Settlement arrived at

Lokadalat, therefore is vitiated by suppression of orders passed by Division Bench of this Court which were not brought to the notice of petitioner or Lokadalat by State-Authorities and on that ground alone the award is liable to be quashed and set aside.

12. State-Authorities in their affidavit in reply have claimed that petitioner has willingly settled the matter and he is paid three times enhanced amount than the amount awarded by Special Land Acquisition Officer. This statement is liable to be rejected as the State-Authorities have failed in their duty to point out orders passed by Division Bench to Lokadalat.

13. By non disclosing the orders passed by Division Bench in favour of similarly situated claimants, State-Authorities have obtained undue advantage in their favour and deprived petitioner from rightful amount of compensation which was given to the similarly situated claimants. Thus, award passed on the basis of settlement arrived before Lokadalat is therefore vitiated on account of suppression of material facts by State-Authorities. Since, petitioner is deprived of rightful compensation/ex-gratia payment awarded in favour of similarly situated claimants, compromise is liable to be quashed and set aside.

14. For the aforestated reasons, writ petition is allowed.

15. Settlement arrived at before Lokadalat on 19.12.2017 in Land Acquisition Reference No. 434/2014 is hereby quashed and set aside.

16. Respondents/Authorities are directed to calculate amount of ex-gratia payment as per calculation made in the cases of similarly situated claimants, which is placed on record at Exhibit-F and pay the same to petitioner within a period of six months from the date of receipt of writ of this order.

Rule is made absolute in the above terms. No order as to costs.

[NITIN B. SURYAWANSHI, J.]