

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

WRIT PETITION NO. 14281 OF 2021

1) Mahesh s/o Jalindar Kharade,
Age 33 years, Occ. Agriculture

2) Vijay s/o Tukaram Raut,
Age 47 years, Occ. Agriculture

Petitioner Nos. 1 & 2 r/o Karjat
Tq.Karjat, Dist. Ahmednagar

3) Chandrakant s/o Ramsingh Pardeshi,
Age 27 years, Occ. Agriculture,
R/o. Rajput Wadi, Koregaon,
Tq. Karjat, Dist Ahmednagar

... **Petitioners**

VERSUS

1) The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.

2) The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Maharashtra Mantralaya,
Mumbai-32.

3) The Divisional Commissioner,
Division Nashik, Nashik.

4) The District Collector, Ahmednagar.

5) The Special Land Acquisition
Officer/Sub Divisional Officer,
Karjat Division Karjat, Tq.
Karjat, Dist. Ahmednagar.

6) Krishna Valley Development
Corporation, Sinchan Bhavan,
Barne Road, Mangala Peth,
Pune-11.

7) The Executive Engineer,
Kukadi Distribution Construction
Division, Kolwadi, Tq. Karjat,
Dist. Ahmednagar.

... Respondents

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Advocate for petitioners : Mr. S.B. Tarde
A.G.P. for Respondent Nos.1 to 5 : Mr. A.S. Shinde
Advocate for Respondent No. 7 : Mr. G.B. Rajale

CORAM : **MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : **03.01.2023**

PRONOUNCED ON : **20.01.2023**

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned A.G.P. waives service for respondent Nos. 1 to 5. Learned advocate Mr.Rajale waives service for respondent No. 7.

2. The petitioners' agricultural lands bearing Gat Nos. 148/3, 153/2/B 158 and 159/2 situated at Karjat Tq. Karjat Dist. Ahmednagar have been acquired by way of private negotiations for construction of Kukadi Canal from 6 to 8 kms stretch.

3. According to the petitioners, the compensation that has been determined by resorting to the Government resolutions dated 26.05.2015, 07.10.2015, 24.04.2017 and 31.08.2017 is not proper. The two primary objections to the assessment of compensation are :

(a) Though the petitioners' lands are irrigated those have been erroneously classified as unirrigated or dry lands.

(b) The multiplier applied for assessment of compensation should have been 02 instead of 01.

4. The learned advocate for the petitioners vehemently submitted that though the petitioners' lands are irrigated, the committee which assessed the compensation headed by the Collector has incorrectly treated those lands as unirrigated which has drastically reduced the compensation. He would then submit that the petitioners' lands fall in Karjat town but in spite of those being agricultural lands the multiplier applied in accordance with the Government resolutions of 2015 and 2017 is incorrect. He would submit that in the Government resolution dated 08.08.2018 the discrepancy in application of multiplier was addressed. Assessment of compensation in respect of such discrepancy in application of multiplier 02 to the rural areas and 01 for the lands situated in the Nagar Panchayat areas was resolved. The difference was to be paid by solatium with the prior permission of the Divisional Commissioner. But even that has not been followed and the assessment of compensation is illegal.

5. Learned A.G.P. Mr. Shinde and learned advocate Mr. Rajale who appears for the respondent No. 7 submit that the committee has assessed the compensation strictly in accordance with law. There is no error. The lands of the petitioners are unirrigated and could not have been treated as irrigated. The Government resolution dated 08.08.2018 is not applicable to the acquisitions undertaken for irrigation purposes. It is applicable only to the acquisitions undertaken under the National Highways Act.

6. At the outset it is necessary to bear in mind that the petitioners have not been seriously disputing the modalities for assessment of compensation, when it is to be acquired by private negotiation in accordance with the provisions of Section 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter 'the Act'). As per the Government resolutions while resorting to acquisition by private negotiation compensation has to be determined by a committee headed by the Collector.

7. The petitioners' grievance is that their lands have been treated as unirrigated when those are irrigated ones, which has resulted in determination of less compensation. True it is that the compensation has been determined by the Committee by taking into consideration the nature of land whether it is irrigated, unirrigated or seasonally irrigated. However, the revenue record in the form of 7/12 extracts produced on the record by the petitioners themselves (Exhibit 'A') clearly shows that none of the four lands are irrigated. If the revenue record which is a legitimate document to be referred to and relied upon by the committee for assessment of compensation, we cannot comprehend as to how the petitioners can claim assessment of compensation by treating their lands as irrigated ones.

8. It is necessary to note that only one of the petitioners namely petitioner No. 2 who is the owner of land Gat No. 153/2/B has raised such dispute regarding his land being irrigated and had applied to the respondent-Special Land Acquisition Officer on 13.12.2019 specifically admitting that the revenue record of his land Gat No. 153/2/B wrongly mentioned his land to be unirrigated when it is irrigated one. Conspicuously, the other two petitioners does not even seem to have raised any such objection. The crops grown on the land of the petitioner No. 2 (Gat No. 153/2/B) also demonstrate that he has not grown any crop, which clearly indicates that there is no substance in his stand regarding his land being irrigated one. It is also nowhere mentioned in the revenue record of his land that there is any source of irrigation. Therefore, this first ground of objection being raised by the petitioners is not sustainable.

9. As regards the dispute being raised in respect of the application of proper multiplier, the State Government in exercise of the powers conferred by entry 2 of the First Schedule of the Act has notified the factors by which the market value is to be multiplied classifying the areas in three categories. The first category in Clause 'B' *inter alia* mentions areas falling in class 'C' Municipal Councils and column No. 3 provides for multiplier 01. Category 3

is applicable to the rural areas and multiplier of 02 is applicable. Though there are subsequent modifications only to the extent of further clarification in respect of these areas, those are not relevant for the present. The petitioners lands situate within 'C' class Municipal Council and a multiplier 01 has been applied while assessing the compensation. The petitioners seem to be aggrieved by the fact that in respect of the lands acquired from the adjoining villages, the compensation has been assessed by applying multiplier 02 but the petitioners lands have not been applied with a similar multiplier.

10. The learned advocate for the petitioners vehemently submitted that after noticing such a discrepancy, the State Government has taken a decision which has been communicated to the Divisional Commissioners of all the regions and the District Collectors by communication dated 08.08.2018 wherein it was specifically resolved to compensate the land holders from 'C' class Municipal Councils. He submits that according to this communication the difference is to be calculated and paid as a solatium with the previous approval of the Divisional Commissioner.

11. It does appear that the State Government has informed the Divisional Commissioners and Collectors *inter alia* regarding payment of additional solatium in respect of the difference between the compensation calculated by applying multiplier of 02 in respect of the lands from class 'C' Municipal Councils and to be paid with the approval of the Divisional Commissioners. But then, the affidavit in reply filed by the respondent Nos. 3 to 5 by a Sub Divisional Officer specifically mentions that this communication dated 08.08.2018 is applicable only in respect of the land acquisitions for national highway projects. This contention has not been controverted by the petitioners by filing any rejoinder.

12. Besides, as can be seen from this communication, so far as the relevant clause 1 is concerned, it does appear that the decision on this point

No. 1 was taken apparently in respect of application of multiplier 02 in respect of class 'C' Municipal Councils in respect of national highway projects. Therefore, even the stand of the petitioners that this government decision dated 08.08.2018 intends to remove the discrepancy in respect of the assessment of compensation to be paid for the agricultural lands situated in rural areas and the one situated in Municipal Council areas, is not sustainable.

13. There is no substance in the petition. It is dismissed.

14. The Rule is discharged.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

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