

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

WRIT PETITION NO. 4040 OF 2022

Vijay Dhaku Jadhav and Anr. .. Petitioners

Versus

State of Maharashtra thr. Revenue
Minister and Ors. .. Respondents

WITH

WRIT PETITION NO. 4041 OF 2022

Smt. Sunanda Shantaram Jadhav and Anr. .. Petitioners

Versus

State of Maharashtra thr. Revenue
Minister and Ors. .. Respondents

WITH

WRIT PETITION NO. 4042 OF 2022

Lavu Gopal Jadhav and Anr. .. Petitioners

Versus

State of Maharashtra thr. Revenue
Minister and Ors. .. Respondents

Mr. Akshay R. Kapadia, Advocate for the Petitioners.

Mr. V.S. Gokhale, B Panel Advocate for Respondent/State.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

**RESERVED ON : JUNE 23, 2023
PRONOUNCED ON : JUNE 28, 2023**

JUDGMENT: [PER M.M.SATHAYE, J.]

1. Rule. The learned AGP waives service for Respondent Nos. 1 to 5. With the consent of parties, rule made returnable forthwith and heard finally.

2. By these Petitions filed under Article 226 of the Constitution of India, the Petitioners are seeking a writ in the nature of certiorari to quash and set aside the impugned orders/communications dated 22nd June 2021 passed by Respondent No. 5 - Deputy Collector (land Acquisition) District head-quarter, Sindhudurga. The Petitioners further seek a direction to Respondent No. 2 (Collector, Sindhudurga) to follow due process with respect to acquisition of the houses of Petitioners and give notice under Section 12(2) of the Land Acquisition Act, 1894 (for short the “**said Act**”).

3. By the impugned orders/Communications, Respondent No. 5 has disallowed the Applications of the Petitioners under Section 18 of the said Act for a land reference.

4. It is the case of the Petitioners, as submitted by their learned Counsel, that in the final Awards dated 30th May 2016 [which was passed while acquiring the Petitioners' lands], the valuation regarding their constructions [House No. 460A in Writ Petition No.4040/2022; House No. 460-C in Writ Petition No.4041/2022 and House No. 460B in Writ Petition No.4042/2022, all situated at post Bhairav Goan, Taluka Kankavali], were not made. Instead of making a reference under Section 18 of the said Act at that time, the Petitioners approached the concerned authorities and pointed out this mistake of exclusion of valuation in relation to the said Houses.

5. It is submitted that additional compensation was accordingly allowed by the concerned authority. Since this additional compensation was inadequate, the Petitioners, on 08/03/21 applied for a reference under Section 18 of the said Act. It is contended that by the impugned orders/communications, the said Applications filed by the Petitioners are rejected. It is further submitted that no notices under section 12(2) of the said Act have been issued about this additional compensation and therefore their applications u/s. 18 could not have been rejected and ought to have been allowed. Consequently, the Petitioners have prayed that the impugned order/communications be quashed and set aside.

6. Mr. Gokhale, the learned B-Panel Counsel appearing on behalf of Respondent/State, invited the Court's attention to the common affidavit-in-reply filed on behalf of the State, affirmed on 15th February 2023. He fairly submitted that although the final award dated 30th May 2016 excluded valuation of Houses, the requests of the Petitioners were in fact considered and ex-gratia compensation has been granted to the Petitioners. For accepting/collecting the said ex-gratia compensation, notices dated 5th November 2020 [in WP Nos. 4040/22 and 4041/22] and notice dated 27th November 2020 [in WP No.4042/22] were issued to the Petitioners, calling upon them to remain present on 1st December 2020. He submitted that this additional compensation paid to the Petitioners [Rs.18,56,359/- in WP No. 4040/22; Rs.4,91,407/- in WP 4041/22; and Rs.9,66,632/- in WP No. 4042/22] are not Awards and as such therefore there is no question of issuing notices under Section 12(2) of the said Act. He further pointed out that pursuant to said notices, the Petitioners have admittedly collected / received the amounts under protest. He submitted that therefore the impugned orders/communications are justified. He further submitted that the said notices, the basis on which Petitioners have collected the ex-gratia compensation, are not issued by the Collector but they are issued by the Executive Engineer of the concerned Irrigation

Department. This supports the position that the amounts are not awards but an ex-gratia compensation, was the submission. He therefore submitted that there was no merit in the above Writ Petitions and they be dismissed with costs.

7. We have considered the submissions of both sides and perused the record. Perusal of Section 12(2) of the said Act shows that it contemplates a notice by the Collector as soon as the Award is passed. In this matter, admittedly, no new / fresh award is passed for granting of the additional amount in question of which the Petitioners are seeking enhancement. Copies of the notices produced by the Respondent/State alongwith its affidavit-in-reply, clearly show that these notices were not issued by the Collector. These were issued by the Executive Engineer of the concerned Irrigation Department for disbursal of ex-gratia compensation (*sanugraha anudan*). Since there is no fresh award passed for disbursal of said amount, there is no question of issuing fresh notices u/s. 12 of the said Act.

8. Even otherwise, since the concerned Awards passed in the year 2016 have not been challenged by the Petitioners by filing necessary Applications for reference under Section 18 of the said Act at the relevant time, it is not possible to accept the argument of the

Petitioners that they are entitled for any enhancement in this amount. It was open to the Petitioners to file reference application u/s. 18 of the said Act immediately after awards were passed and seek enhancement on the ground that compensation for their constructions/houses were not calculated and paid, but they have not done so. Instead they chose to approach authorities by way of representations / applications. Since we find that the additional amounts in question are granted as “ex-gratia compensation” and not a fresh award, it is not possible to accept the argument of the Petitioners that fresh notices under Section 12(2) of the said Act are necessary.

9. Prayers in the above Petitions show that a writ of certiorari is sought, under which jurisdiction of this Court is limited. It is now well settled that in writ jurisdiction, it is not sufficient that the party should come to this Court and make out a case that a particular order/action is not valid. In order to get relief from the Court in writ jurisdiction one must not only come with clean hands, not suppress any material fact, show utmost good faith but he must also satisfy the Court that making of the order will do justice and that justice lies on his side. In the facts and circumstances narrated above we are clearly of the view that the Petitioners slept over their rights when they did

not prefer any application under Section 18 of the said Act after the award was passed on 30th May 2016 and their Houses were excluded from calculating the compensation. This being the case we are of the view that justice does not lie on the side of the Petitioners entitling them to any extraordinary equitable relief under Article 226 of the Constitution of India. This is apart from the fact that there is neither any error apparent on the face of the record nor is there any perversity in the impugned Orders. The view taken by the Authority is a probable one, and which is based on the material on record. For this reason also no interference is called for in the impugned orders/communications.

10. In the result, the above Writ Petitions are dismissed. Rule is discharged. No order as to costs. All concerned to act on authenticated copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]