

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14942 OF 2022**

Shri. Sakharam Dhondi Toraskar (decd)
through LR's & Ors.

..Petitioners

Vs.

State of Maharashtra & Ors.

..Respondents

Mr. Tanaji Mhatugade for the Petitioners.
Ms. S. S. Bhende, AGP for State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : JULY 05, 2023

P.C.:

1. We have heard Mr. Mhatugade, learned counsel for the petitioners and Ms. Bhende, learned AGP for the State.
2. The petitioners are project affected persons of Ambehoel Irrigation Project. Their land totally admeasuring 3 Hectar 33.04 areas situated at Village-Aardal, Taluka-Ajara, District-Kolhapur was acquired for the said project. A land acquisition award was declared on 14 July, 2006. The petitioners, for allotment of an alternate land as per the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short, the "said Act"), also deposited 65% of the amounts with the respondents. As per the Sankalan Register maintained by the respondents, the

petitioners' names are mentioned at serial No.53 and it is shown that they are entitled for 2 Hectar and 80 Gunthas of land. As averred by the petitioners, the respondents allotted the land admeasuring 40 gunthas out of totally 2 Hectar and 80 gunthas at Village-Atyal 20 gunthas and at Village-Kadgaon, 20 gunthas Taluka-Gadhinglaj, District - Kolhapur respectively. Apart from this, the petitioners are also entitled to balance 2 Hectors of land, which is not allotted to the petitioners.

3. As contended by the petitioners, between 06 June, 2018 to 17 December, 2018, the respondents instead of allotment of alternate land to the project affected persons declared a special finance assistance policy for issuance of payment of Rs. 36 Lakhs per Hectar to the project affected persons, in view of the 97th Meeting held by the Maharashtra Krushna Valley Development Corporation, Pune on 06 June, 2018, in which resolution was passed being Resolution No.97/19. Thereafter on 17 June, 2018 the Revenue and Forest Department of the Government of Maharashtra issued a communication in that regard confirming the said policy.

4. In pursuance of the said policy of the respondents, between the period 27 November, 2019 and 27 December, 2019, the petitioners had submitted their consent for financial assistance as available under the said

policy. Accordingly, two registered agreements were executed between the petitioners and the respondents and in view of the said agreements, the petitioners became entitled to an amount of Rs.72 Lakhs.

5. Mr. Mhatugade, learned counsel for the petitioners submits that such beneficial schemes take their character from the statutory scheme of allotment of alternate land under the said Act and thus, in the circumstances, the respondents were required to take appropriate, non-arbitrary and fair view of the matter and ought to have proceeded to comply with the conditions of such agreements which are not commercial agreements, but agreements in the nature of a benefit which is available to the petitioners under the said Act. It is, therefore, his submission that the respondents ought to have proceeded instead of turning their back to the said binding agreements as entered by the respondents.

6. Mr. Mhatugade has submitted that the respondents have already acted upon under the said agreements and that an amount of Rs.28,80,000/- was already paid to the petitioners on which there is no dispute whatsoever. The question according to Mr. Mhatugade, is in relation to the balance amount of Rs.43,20,000/-, which needs to be now paid by the respondents. Mr. Mhatugade submits that this is a case where the rights of the petitioners under Article 300A of the Constitution are

clearly involved and therefore, the agreement/ kararnama is required to be taken to the logical conclusion by the respondents. He submits that the inaction of the respondents in that regard and in fact, the position taken by the respondents even filing Regular Civil Suit No. 32 of 2021 before the Civil Judge, Senior Division, Gadhinglaj itself was not correct and the petitioners have unwarrantedly suffered at the hands of the respondents. It is submitted by Mr. Mhatugade that the petitioners have suffered on both counts, they have neither given benefit of the kararnama/agreement, nor they have given the alternate land in respect of which the amount was deposited by the petitioners. Mr. Mhatugade has further submitted that the suit itself is dismissed by the Civil Judge, Senior Division as far as back on 16 September, 2022 and that as per his instructions, the same was not restored.

7. We find that there is much substance in the contentions as urged by Mr. Mhatugade that the State Government ought to have taken appropriate action to make the benefit available to the petitioners, under the agreement, which takes its colour from the policy which grants financial benefit in lieu of the statutory entitlement of an alternate land under the 1999 Act. The provisions of the said Act are quite clear that the petitioners being project affected persons, were entitled to certain benefits

under the said Act, they ought to have been granted such benefits. However, it appears that in the intervening a period special finance assistance policy was issued and it was acted upon under which some payments were issued to the petitioners.

8. In these circumstances, we are of the opinion that the respondents need to take the matter to the logical conclusion and decide the rights of the petitioners as conferred by law and more particularly under the said Act and/or the scheme which was promulgated by the respondents and acted upon. Mr. Mhatugade has fairly pointed out that already a representation to that effect has been made by the petitioners on 01 July, 2020 which has not been decided. We also permit the petitioners to make a fresh representation, if they so desire within a period of four weeks from today. Let the Additional District Collector, Kolhapur, decide the petitioners' representation along with fresh representation as may be filed by the petitioners. The same be decided in accordance with law after hearing the petitioners. All contentions of the petitioners in that regard are expressly kept open. Ordered accordingly.

9. The petition does not warrant further adjudication. It is accordingly disposed of. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]