

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5569 OF 2013

VAISHALI
ANIL
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Date: 2023.04.06
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1. Mr. Suryakant Tarachand Bhatewara)
 - Age 75 years, Occupation Business,)
 - Residing at 68, Bhosale Nagar,)
 - Pune - 411007)
2. Shri Bansilal Hirachand Chordia)
 - Age 70 Years, Occupation Business)
 - Residing At C-24, Sayyam Bungalow,)
 - Abhimanshri Society, Aundh,)
 - Pune - 411 008)
3. Mrs. Vimal Suryakant Bhatewara)
 - Age 67 Years, Occupation Business)
 - Residing at 68, Bhosale Nagar,)
 - Pune - 411 007)
4. Mrs. Kamal Nemichand Karnawat)
 - Age 66 Years, Occupation Housewife)
 - Residing at C-12B, Anand,)
 - Abhimanshri Society, Aundh,)
 - Pune - 411008)...Petitioners

Versus

1. State of Maharashtra)
2. Collector - District Satara)
 - Collector Office Building, Satara)
3. Deputy Collector/Land Acquisition)
 - Officer No.19)

- Opposite to S.T. Stand, Satara)
4. Deputy Collector,)
Phaltan Sub Division, Phaltan,)
Dist. Satara)
5. Assistant Engineer, (Grade I),)
Neera Deodhar Project)
Sub Division No. 5, Shirwal,)
Tahsil- Khandal, Dist. Satara)
6. Smt. Vimal Sampatlal Chordia)
Age: 68 Years, Occupation Housewife)
Residing At Plot No. 36, S.No. 13,)
Kohinoor Planate, Aundh,)
Pune- 411007)...Respondents

Mr. Anil Y. Sakhare, Senior Advocate a/w. Mr. Joel Carlos i/by Mr. Vikram Chavan, Advocate for the Petitioners.

Mrs. M.S. Bane, AGP for State, Respondent Nos.1 to 4

**CORAM:- R.D. DHANUKA &
M.M. SATHAYE, JJ.**

RESERVED ON 15TH FEBRUARY, 2023
PRONOUNCED ON: 6TH APRIL, 2023

JUDGEMENT [PER R.D. DHANUKA, JJ]:

1. Rule. Mrs. Bane, learned AGP for Respondent Nos.1 and 4 waives service of notice. By consent of parties, Rule is made returnable forthwith.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioners have prayed for a declaration that lands belonging to the Petitioners to the extent of 14H 40R are free from any encumbrance, of acquisition and/or reservation under the Scheme of Neera Deodhar Project or otherwise as they are illegally acquired/retained by the Respondents without following the due process of law and without paying any compensation to the Petitioners ,.

3. The Petitioners have also prayed for a Writ of Mandamus against the Respondents to return the possession of the landed property admeasuring 14H 40 R. The Petitioners have prayed for declaration that the award dated 28th May, 2013 is anti-dated, bad in law and for quashing and setting aside the said award dated 28th May, 2013. The Petitioners have also prayed a Writ of Mandamus against the Respondents to acquire land admeasuring 39R afresh under The Right to Fair Compensation and Transferancy in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short "Fair Compensation Act") within a period of six months from the date of the order.

4. The Petitioners have also prayed for an order and direction against the State Government to pay interest/damages at rate of 15% per annum on the amount awarded or such other amount as this Court deems fit for the period between 21st March, 1996 to 7th April, 2010. Some of the relevant facts for the purpose of deciding the Petition are as under.

5. Sometime prior to 1990, the State Government decided to implement the Neera Deodhar Project for dam on Neera River and to further acquire lands from the benefited area for rehabilitation of the Project Affected Persons (hereinafter referred to as "PAP").

6. On 8 May, 1990, the State of Maharashtra issued an Order for acquisition bearing No. RPA 1090/CR/1690/RI. On 3rd August, 1991, the District Collector, Satara assigned / delegated his powers to acquire the lands for rehabilitation of the PAP to the Deputy Collector/Land Acquisition Officer No.19, Satara. On 22 November, 1992, the District Collector, Satara issued a declaration under Section 11(1) of the Maharashtra Project Affected Persons Rehabilitation Act,

1986 (for short "the said Rehabilitation Act), which declaration was published in the daily news paper 'Sakal' dated 22 November, 1992, declaring that the land admeasuring about 948 H 14.8 R situated at Village Shirwal, Tahasil- Khandala , Dist. Satara is covered under the benefited zone of the said project.

7. It is the case of the Petitioners that while implementing the said project, State Government prepared a plan of the proposed irrigation canal and accordingly the area of the lands situated at Shirwal were declared as the benefited zone area. However, later on, the State of Maharashtra amended their plan in respect of the said proposed canal and accordingly planning authorities deleted substantial part of the lands situated at Shirwal, which were initially coming under the benefited zone, due to the shifting the mode of canal.

8. It is the case of the Petitioners that out of the total landed property jointly purchased by Petitioner No.1 and Mr. Hirachand Jethmal Chordia at Shirwal, some of the portion of

the land was falling within the ambit of the benefited zone of the said project and thus, lands held in either of the names of Petitioner No.1, Mr.Hirachand Jethmal Chordia, Mr. Sampatlal Chordia or Smt. Parvatibai Chordia were prone to acquisition for the rehabilitation of the Project Affected Persons (PAP) under the provisions of Section 13(i) (c) of the said Rehabilitation Act. Accordingly the area of the lands situated at Shirwal were declared as the benefited zone area. However, later on the State of Maharashtra amended their plan in respect of the said proposed canal and accordingly the planning authorities deleted substantial part of the lands situated at Shirwal, which were initially coming under the benefited zone, due to shifting the path of the said canal.

9. The State of Maharashtra, thereafter, issued a circular/notification under Section 12(1) of the said Resettlement Act intimating the public at large that after the publication of the notification in the official gazette and until the Collector makes a declaration to that effect, no agricultural land in the village and/or areas specified in the Notification under Section 11 and/or the lands falling under

the benefited zone of any particular village and/or areas therefrom, which are required for the purpose of the Rehabilitation Act, can be transferred by way of sale/gift/exchange/ lease or otherwise and/or subjected to partition and/or converted into non agricultural purpose, except with the permission in writing of the state government.

10. In or about the month of January 1996, the Petitioners approached the Revenue Authorities for seeking requisite permission to deal with their lands as the Petitioners were interested in transferring of some of their lands by way of sale and converting some of their lands for non-agricultural use i.e. for industrial activities. The Revenue Authorities, however, insisted the holders of the said lands that until they surrender the land to the extent of 8H 37R out of their total collective holding situated within the ambit of the benefited zone of the said project, the revenue authorities will not be able to grant the permission as sought by the Petitioners for dealing with their respective lands.

11. It is the case of the Petitioners that Respondent

No.3 insisted Mr. Suryakant Tarachand Bhatewara and other three to deliver the possession of their lands to the Government in order to consider their request for transfer of their lands. The Petitioners accordingly agreed to surrender and deliver the possession of the said land to the extent of 8 H 37 R to the State Government out of their total holdings falling/ covered under the benefited zone of the said project.

12. It is the case of the Petitioners that an assurance was made by the Respondents that the Government shall acquire only those lands belonging to the Petitioners under the scheme of project as directed to be surrendered by them and shall grant the requisite compensation by completing the acquisition proceeding at the earliest. The Petitioners relied upon and believed the assurances given by Repondent No.3 on behalf of Respondent No.2, in order to secure/ get the permission of transferring and/or dealing with their lands, for which the surrender of the land to the extent of 8H 37R was made a condition precedent by the Respondents, they handed over / delivered the possession of their lands to the extent of 8H 37 R.

13. On or about 21 March, 1996, the Petitioners gave a statement before the revenue authorities while delivering the possession of the land. The Circle Officer, Shirwal executed the Kabje Patti while taking away the possession of the said lands without passing any award and/or without paying any compensation to the land holders against those lands and got the mutation entry recorded in the name of the State Government against those lands vide Mutation Entry No. 1700 certified on 27th July, 1997.

14. It is the case of the Petitioners that on 30 November, 2001, the Land Acquisition Officer No.19 completed the acquisition proceeding in respect of the said lands surrendered by them to the extent of 5 H 14 R and awarded compensation to them against the same on or about 30 November, 2011, however, paid to them after a lapse of 6 years i.e. on 1 July, 2006. Though no acquisition proceedings were initiated in respect of the remaining land admeasuring 3 H 24 R by the Respondent, and no compensation was paid to the Petitioners, the possession of the same was retained by the Government without any legal right and/or entitlement.

15. On 4th June, 1997, the Petitioners jointly made an application before the Authority. On 28 July, 1997, the Authority passed an order, however, the Collector (Rehabilitation) granted permission to the Petitioners for transferring their remaining lands or part thereof, which were left over after the surrender and delivered the possession thereof to the Government under the said Neera Project as per the scheme formulated under the Rehabilitation Act. The holders of the lands accordingly transferred part of their properties to High Power Engineering Company Pvt. Ltd., Vings Automobiles Product Pvt. Ltd., Super Paints Ltd., etc. for being used for industrial purpose.

16. On 30 September, 1999, Hirachand Jethmal Chordia expired. Smt. Parvatibai Hirachand Chordia expired on 18 July, 2002. All their legal heirs decided to get their respective shares separated out of the total lands, which were jointly owned and possessed by the Family Members of Late Hirachand Jethmal Chordia and Smt. Parvatibai Hirachand Chordia. Accordingly, all the legal heirs of Late Hirachand Jethmal Chordia and Smt. Parvatibai Hirachand Chordia negotiated with Mr. Suryakant Tarachand Bhatewara

i.e. Petitioner No.1 and settled the quantum/proportion of their shares in the total lands and mutually got it divided by entering into Memorandum of Partition dated 28 April, 2004 amongst themselves.

17. On 17 June, 2005, the legal heirs of Hirachand Jethmal Chordia and Smt. Parvatibai Hirachand Chordia submitted an application for seeking permission for partition amongst themselves. By an order dated 17 June, 2005, the District Rehabilitation Officer, Satara granted the requisite permission for partition and upon receiving the permission from the concerned authorities for partition, they submitted an application to the Tahsildar, Tahsil Khandala to divide and/or partition their respective shares in the property under Section 85 of Land Revenue Code. The Tahsildar, passed an order dated 26 December, 2005, thereby granting permission to partition their entire remaining lands and divide the same amongst the co-sharers, legal heirs and successors of Late Hirachand Jethmal Chordia.

18. It is the case of the Petitioners that on 30 November, 2001, the Special Land Acquisition Officer

declared Award for 5H 14 R and awarded compensation in a sum of Rs. 13,90,918/- . Though the Special Land Acquisition Officer tendered compensation on 13 September, 2002, 3 May, 2007 and 25 June, 2007 to the extent of Rs.13,40,360/-, the same was not as per the Award dated 30 November, 2011. The Petitioners accordingly filed the present Petition on 15 April, 2013.

19. The State Government filed an affidavit in reply in this Petition stating that on 28 May, 2013, the Deputy Collector and Special Land Acquisition Officer No.19 passed an Award for the land admeasuring 3 Hectar 24 Ares of which possession was obtained on 21 March, 1996 and retained the compensation of Rs.27,28,526/- and that amount would be paid expeditiously. In the said Affidavit, it was stated that the said two Awards would cover 8H and 38R (3H 24R + 5H 14R). On 18 March, 2014 this Court passed an order, directing the Respondents to pay to the Petitioners the entire amount payable as per the award datd 28 May, 2013 as well as 30 November, 2001, if not paid earlier. This Court directed that the issue regarding payment of interest as well as the rental compensation will have to be considered as admittedly

the possession of the acquired land was taken over on 21 March, 1996 under the private negotiations.

20. On 4 April, 2014, the Petitioners received some amount under protest with reference to land admeasuring 3 H 24 R for Rs.27,28,526/-. However, no compensation is paid for land admeasuring 0 H. 39R taken for construction of road. The award was declared only for 15R and no compensation was paid. On 24 February, 2015, this Court directed the Collector to file an Additional Affidavit. On 14 October, 2016, the Deputy Collector filed an Additional Affidavit and stated that the Special Land Acquisition Officer No. 19 had paid compensation amount to the Petitioners on 4 April, 2014 and 18th December, 2014 for the land admeasuring 3 H 24R and contended that the entire dues payable to the Petitioners have been cleared and further dues were remained to be paid.

21. On 7 February, 2017, this Court recorded the observation that main grievance of the Petitioners is that so far as 39 ares of land is concerned, no details of whatsoever are furnished even in the additional affidavit filed on behalf of

the Land Acquisition Officer in terms of the direction dated 28 September, 2026. The said additional affidavit does not indicate the specific date when an award came to be made in respect of 39 ares of land. This Court directed the Government Pleader to file those details.

22. On 6 March, 2017, a Division Bench of this Court passed an order and observed that in respect of the award passed in 2013, no compensation came to be paid and so far as other awards are concerned, the compensation was paid after 1 January, 2014 but the same was received by the Petitioners under protest as directed by this Court, virtually it was a payment not made in terms of Section 24(2) of the Fair Compensation Act. The land in question is already submerged for the purpose of water and some is used for road. Therefore, the question of retrieving the land and handing over the possession of the same to the Petitioners would not arise. This Court also observed that though the possession of land was divested from the owners or the Petitioners way back in 1996, till 2013 no acquisition proceedings came to be initiated.

23. This Court, accordingly, observed that since the land was already used for the larger interest of the public, if possible, the authorities must sit with the Petitioners and see that the entire thing could be considered as consent award by merits. This Court also directed that the compensation has to be determined as per the Fair Compensation Act.

24. On 12 July, 2017, the Deputy Collector (Land Acquisition) No.16, Satara filed an affidavit, stating that as per Section 24(2) of the Fair Compensation Act, the Petitioners are entitled for total compensation of Rs.77,52,816/-. As the Petitioners have been already paid a sum of Rs.27,28,526/- towards the compensation amount, the balance compensation of Rs.50,24,290/- will be paid to the Petitioners at the earliest after the beneficiary i.e. Executive Engineer, Neera-Deodhar Project, deposits the said amount in his office. The office of the Deputy Collector has already informed the Executive Engineer of Neera-Deodhar Project by letter dated 7 July, 2017 to deposit the balance compensation amount of Rs.50,24,290/-.

REASONS AND CONCLUSIONS

25. The prayers of the Petitioners in this petition are viz.

- a) for declaration that the land belonging to the Petitioners to the extent of 14 Hectors 40R are illegally acquired without following due process for acquisition and without paying any compensation to the Petitioner and are thus free from any encumbrance of acquisition or reservation under the scheme of Neera Deodhar Project or otherwise.
- b) for a writ of mandamus against Respondents to return the possession of the landed property to the extent of 14 Hectors 40R.
- c) for an injunction against Respondents from acquiring/taking possession of landed property to the extent of 14 Hectors 40R, without awarding any compensation to the Petitioners.
- d) for a declaration that the award dated 28 May, 2015 is antedated, bad in law and for quashing and setting aside the same.
- e) to direct the Respondents to acquire the land admeasuring 39R afresh under the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of six months from the date of the order and to pay

interest/damages to the Petitioners from the period between 21 March, 1996 to 7 April, 2010.

26. Insofar as the land admeasuring 14 Hector 40R is concenred, it is the case of the Respondents in the Affidavit in Reply filed on 13 March, 2014 that on 21 March 1995 Shri Suryakant T. Batewara, Smt. Parvati Choradia, Shri Sampatlal Chordia and Hirachand Chordia voluntarily delivered possession of land admeasuring about 8 Hectors, 37 Ares situate at Village Shirwal, Tal. Khandala, to Resettlement Officer, Satara, Dist. Satara for the purpose of resettlement of project affected persons. On 30 November, 2001 the Deputy Collector and Special Land Acquisition Officer passed an Awad in respect of the land admeasuring about 5 Hectors 14 Ares for an amount of Rs.13,90,918/-. It is stated that an amount of Rs.5,78,440/- was paid to Suryakant Bhatvera on 13 September, 2002 and the balance amount was paid to the other claimants.

27. In the said affidavit it is stated that on 28 May, 2013 the Deputy Collector and Special Land Acquisition

Officer No. 19 passed an award in S.R. No. 640 for Rs.27,28,526/- for the lands admeasuring 3 Hector 24 Ares of which possession was obtained on 21 March, 1996. The copy of the said Award is annexed to the said Affidavit in Reply. It is further stated in the affidavit that the Awards dated 30 November, 2001 and 25 May, 2013 are in respect of land of which possession is obtained by District Resettlement Officer, Satara. It is the case of Respondents that the lands were thus acquired and Awards in respect of 8 Hectors and 37 Ares were already passed and possession thereof was already obtained as far back on 21 March, 1996. The compensation as per the Award dated 30 November, 2011 is paid to the Petitioners.

28. In the said affidavit, it is further stated that so far as compensation as per Award dated 28 May, 2013 is concerned, the same would be paid to the Petitioners expeditiously.

29. We have also perused further affidavit filed by Deputy Collector in compliance with the interim order passed

by this Court and Other affidavit filed in compliance with the order passed by this Court. It is stated in the said affidavit that as per order dated 28 May, 2013 passed by learned Deputy Collector and Special Land Acquisition Officer No.19 in S.R.640 a sum of Rs.27,28,526/- was paid to the Petitioners under the provisions of Land Acquisition Act 1894. Petitioners are however, entitled for compensation in terms of Section 24(2) of the Fair Compensation Act Petitioners are thus entitled for total compensation amount of Rs.77,52,816/- out of which Petitioners have been already paid a sum of Rs.27,28,526/-. Balance amount of Rs.50,24,290/- will be paid to the Petitioners at the earliest after the Executive Engineer deposits the balance compensation amount in the office of Deputy Collector. The office of the Deputy Collector has already informed the Executive Engineer Neera Deodhar Project to deposit the said amount with the office of Deputy Collector vide letter dated 7 July, 2017.

30. The Sub-Divisional Officer has filed an affidavit on 31 July, 2017 stating that as regards the balance area admeasuring 24 Ares, no proposal has been received by Sub-

Divisional Office from the Acquiring Body i.e. Executive Engineer, Neera Deodhar Project. Hence, no steps under Land Acquisition Act, 1894 and/or Fair Compensation Act have been taken. It is further stated that meeting was conveyed on 17 July, 2017 in pursuance of order dated 6 March, 2017 passed by this Court when Sub-Divisional Officer directed official acquiring body to prepare consent Award by Agreement.

31. A perusal of the record indicates that the Special Land Acquisition Officer had already passed an Award in respect of the land admeasuring 5 H 14 R for amount of Rs.13,90, 918/- on 30 November, 2001. The said amount of compensation has been already paid to Mr. Suryakant Bhatewara and other claimants. On 13 September, 2002, 3 May, 2007 and 25 June, 2007, though the Special Land Acquisition Officer tendered compensation, the same was not as per the award dated 30 November, 2011. The only grievance made in the Petition is that the tendered amount was not tendered or made, as required under the provisions of the Land Acquisition Act.

32. On 18 March, 2014, this Court passed an order and directed the Petitioners in this Writ Petition and their authorized representatives/ Constituted Attorney to remain present in the office of the Deputy Collector and Special Land Acquisition Officer No.19, Satara, on 4th April, 2014 at 11.00 a.m. This Court directed the Respondent to pay to the Petitioners the entire amount payable as per award dated 28 May, 2013 as well as 30 November, 2001, if not paid earlier. The said two awards dated 30 November, 2001 and 28 May, 2013 were in respect of lands admesuring 8 H 38 R. The possession of those lands were handed over to the Special Land Acquisition Officer on 21 March, 1996.

33. The Petitioners have already filed a Reference on 8 May, 2014 under Section 18 of the Land Acquisition Act. The Respondents have failed to show that the compensation as per the award dated 30 November, 2001 has been paid to the Petitioners or the persons entitled to such compenstion. If the compensation amount as per Award dated 28 May, 2013 is not paid, the Respondents are liable to pay such amount of compensation to the Petitioners with interest provided under

the Act.

34. Be that as it may, so far as submissions made by the Learned Senior Counsel for the Petitioners that the Award purportedly made on 28 May, 2013 is after filing of the writ petition by the Petitioners is antedated is concerned, in our view there is no substance in the submissions made by the Learned Senior Counsel for the Petitioners. The Petitioners have already made a reference under Section 18 in respect of the said Award.

35. According to the Respondents, the Respondents redetermined the amount of compensation in pursuance of the interim order passed by this Court on 6 March, 2017 and held that the Petitioners would be entitled to compensate in the sum of Rs.77,52,816/- out of which, the Petitioners were already paid Rs.27,28,526/-. In the affidavit in reply filed by the Respondents, it was agreed that the balance compensation amount of Rs.50,24,290/- would be paid to the Petitioners at the earliest after the beneficiary i.e. the Executive Engineer, Neera-Deodhar Project, deposits the

balance amount in the office of the Deputy Collector.

36. The Petitioners are entitled to apply for enhancement of compensation by filing an application under Section 64 of the Fair Compensation Act and in accordance with law, if aggrieved by the payment of compensation of Rs.77,52,816/- upon determining of the revised amount of Rs.77,52,816/-. It is made clear that we have not expressed any view on the maintainability of any such application and the same would be considered by the Authority on its own merits.

37. Insofar as the land admeasuring 0 Hectare 24 Ares is concerned, the Special Land Acquisition Officer has filed an Affidavit on 31 July, 2017 admitting that no proposal has been received by the Sub-Divisional Officer from the acquiring body i.e Executive Engineer, Neera Deodhar Project under the provisions of the Land Acquisition Act, 1894 and/or Fair Compensation Act. It is stated in the said Affidavit that a meeting was conveyed on 17 July, 2017 in pursuance of the order passed by this Court when the Sub-Divisional Officer

directed the Acquiring Body to prepare Consent Award by Agreement. We make it clear that if there were private negotiations for acquiring the said portion of 24R of land and if no agreement is entered into to make an award, the Respondents shall commence the acquisition proceedings by following the provisions of the Fair Compensation Act within four weeks from today and to pay the compensation as determined under the provisions of the Fair Compensation Act to the Petitioners.

38. If the balance amount of Rs.50,24,290/- has not been paid to the Petitioners by the Respondent as averred in the Affidavit in reply filed by the Respondents, we direct the Executive Engineer to deposit the balance compensation amount with the Special Land Acquisition Officer from Competent Authority as the case may be within four weeks from today, and to release the said amount of Rs.50,24,290/- to the Petitioners within two weeks thereafter, without fail.

39. A reference application filed by the Petitioners arising out of the Award declared on 28 May, 2013 for the

land admeasuring 3 Hectare 24 R to be disposed of expeditiously, if not disposed of so far.

40. No case is made out by the Petitioners for declaration that the land admeasuring 3 H 14 R is illegally acquired / retained by the Respondents without following the due procedure under the provisions of law. No relief for retaining of possession can be granted to the Petitioners. Prayer clause (d) also cannot be granted.

41. So far as the question of damages and interest @ 15% p.a. of the amount awarded during the period between 21 March, 1996 to 7th April, 2010 is concerned, the Petitioners have made out a case for payment of interest on the amount of compensatin @ 9% p.a. on a delayed payment of Compensation from the due date till payment. Such interest shall be computed by the Special Land Acquisition Officer within four weeks from today and shall pay the amount of compensation within four weeks thereafter. If any further amount is required to be deposited by the acquiring body, the same shall be deposited within two weeks from the date of

such requisition by the Executive Engineer.

42. We accordingly pass the following order:

- (a) Writ Petition is disposed of and rule is made absolute in the aforesaid terms.
- (b) No order as to costs.
- (c) Parties to act on an authenticated copy of this judgment.

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)