

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8192 OF 2022

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Dnyanu Bhiku Tanpure

Since deceased through LR's

Suresh Dnyane Tanpure

..Petitioner

Vs.

The Deputy Collector, Rehabilitation,

Pune & Ors.

..Respondents

WITH

WRIT PETITION NO. 8202 OF 2022

Shankar Abaji Kshirsagar

(Since deceased through LR)

1-A. Arun Shankar Kshirsagar

..Petitioner

Vs.

The Deputy Collector, Rehabilitation,

Pune

..Respondents

Mr. Nitin P. Deshpande, for the Petitioner.

Ms. M. S. Bane. AGP for State in WP No.8192 of 2022.

Mr. Rajan S. Pawar, AGP for State in WP No. 8202 of 2022.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : JULY 19, 2023

Oral Judgment: (Per G. S. Kulkarni, J.)

1. Both these petitions under Article 226 of the Constitution of India are praying for similar reliefs. For convenience, we note the prayers as

made in Writ Petition No.8192 of 2022 which reads thus:

“A. this Hon’ble Court may, by way of appropriate Writ Order or direction, direct the respondents to issue notice u/s 16(2)(a) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 to the Petitioner and after the Petitioner communicate willingness and deposit an amount of 65% of the amount of compensation received by them further direct the respondents to allot to the Petitioner land in the beneficial zone of the said Irrigation Project.

B. All other just and necessary Orders may kindly be passed in favour of the Petitioner.”

2. The petitioners claim to be the project affected persons. Insofar as the first petition is concerned, the petitioner therein is claiming rights qua the land in question through his predecessor Dnyanu Bhiku Tanpure. Insofar as the petitioner in the second petition is concerned, it is contended that he is claiming rights in respect of the land in question through his predecessor Shankar Abaji Kshisagar. It is contended that they hold lands at Village Wada, Tq. Khed, District Pune. The details of which are set out in both the petitions in paragraph No.2.

3. The contention of the petitioners is that the lands of the predecessors were acquired for Chaskaman Irrigation Project, in respect of which the land acquisition award was rendered on 21 March 1989 and 31 March 1989 respectively. The case of the petitioners is to the effect that they would be entitled to alternate land. The petitioners have made specific averments in the petitions that petitioners have never received a

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notice under Section 16(2)(a) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short the “**1999 Act**”). It is their contentions that after passing of the award the respondents particularly the Collector, ought to have prepared proposals in one or more stages from time to time as the circumstance may require for rehabilitation of the affected persons from the affected Zone under the project, and publish a notice containing such proposals. However, no such proposal was prepared.

4. The primary contentions as urged by Mr. Deshpande in both these petitions is that the respondents never issued a notice under Section 16(2) (a) of the 1999 Act to the petitioners, who are project affected persons, calling upon to them to communicate their willingness to accept the grant of land within the stipulated period and it is in these circumstances, the petitioner would be hit by the provisions of sub-section (2) of Section 16 of the 1999 Act, and it would be presumed that the petitioners have fortified their right to get allotment of the alternate land. It is thus submitted that there was no alternative for the petitioners but to approach this Court praying for a direction that the respondent issues a notice under Section 16(2)(a) of the 1999 Act to the petitioner, and after such a notice is issued, the petitioners would communicate their willingness and thereafter the petitioner be permitted to deposit 65% of the amount of

compensation received by the petitioners and thereafter respondents shall allot the petitioners land in the beneficial zone of the Irrigation project. Mr. Deshpande, in support of such contention, has drawn our attention to the land acquisition awards which are annexed to the petition which itself are of the year March, 1989 as noted above.

5. We have heard Mr. Deshpande and Ms. Bane, learned AGP. We have also perused the record.

6. At the outset to appreciate the contentions as urged by the petitioners we note the provisions of Section 16 of the 1999 Act, which reads thus:

“16. Grant and assignment of land and payment of special grant

(1) An eligible affected person who is desirous of getting land or plot or both in the area shown for the purpose in the scheme published under section 15 may make an application to the Collector in the prescribed form for grant of land or plot, and subject to such rules as may be prescribed, it shall be lawful for the Collector -

(a) to grant land acquired under section 14 to such affected person with the occupancy status on the land held by him earlier;

(b) to grant a plot of land to such affected person in a new gaothan or extended part of the existing gaothan with the occupancy status on the land held by him earlier and rupees ten thousand as a special grant for construction of house on such plot,

in such manner, as far as possible, according to the provisions of parts III and IV of the Schedule and on such terms and conditions as may be prescribed:

Provided that -

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(i) if the allottee of the land under sub-clauses (a) and (b) of sub-section (1) is an occupant Class II, he shall be entitled to conversion of the land to occupant Class I after a period of ten years on payment of premium as may be prescribed;

(ii) the affected person referred to in sub-clause (d) of clause (2) of section 2 shall be eligible to a constructed house on the basis of the Indira Awas Scheme of the State Government;

(iii) the affected person referred to in sub-clause (e) of clause (2) of section 2 shall be eligible only for grant of a plot under clause (b);

(iv) subject to the provisions of sub-sections (2) and (3), the occupancy price of the land or plot, as the case may be, granted under clause (a) or (b), except under sub-clause (ii) above, shall be determined and paid in the manner as may be prescribed.

(2) An affected person eligible for the grant to land or plot under sub-section (1) shall forfeit his right to get the same if -

(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of forty-five days from the date of receipt by him of a notice in that behalf from the Collector; or

(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five per cent of the amount of compensation which he has received for his land which is acquired from him in the affected zone or, of the likely cost of the land to be granted to him under sub-section (1), whichever is less, at the time of payment of such compensation to such affected person.

(3) After payment of the amount under clause (b) of sub-section (2), the remaining amount towards the occupancy price payable by the affected person for the land allotted to him shall be recovered from him free of interest in such manner and instalments as may be prescribed :

Provided that, the first instalment of such recovery shall commence one year after the irrigation facility is made available to him.

(4) The State Government shall pay a special grant to all such affected persons who have deposited an amount as per clause (b) of sub-section (2) of this section but have not been allotted land in the benefited zone and the rate of the special grant shall be rupees four hundred per mensem for the period from the date of actual displacement of the person from the land to the date of allotment of

land in the benefited zone.

(5) Nothing in this Act shall prevent the project authority to lease out to the affected person the land acquired from him till the gorge filling of an irrigation project is taken up and not used for quarrying dam seat, etc.

(6) Nothing in this Act shall prevent the Collector to lease out to the affected person the land acquired from him in the benefited zone, which is still in his possession, for whatever reason, till the possession of such land is granted to any eligible affected person and such land shall be given only on lease.”

7. On a plain reading on sub section (1) of Section 16, the consequence which would be brought about is to the effect that a project affected person who is desirous for allotment of plot or land or both in the area shown for the purpose in the scheme published under Section 15, is eligible to make an application to the Collector in the prescribed form for grant of land or plot, and subject to such rules as may be prescribed. It is lawful for the Collector to grant land acquired under Section 14 to such affected person with the occupancy status on the land held by him earlier, to grant a plot of land to such affected persons, in a new gaathan or extended part of the existing gaathan etc., which shall be according to the provisions of Part-III and Part-IV of the schedule and on such terms and conditions as may be prescribed and subject to the proviso to the sub-section (1). Insofar as the petitioners case in the present proceeding is

concerned, we are concerned with sub-section (2) of Section 16 which provides that a project affected person eligible for grant of land or plot under sub-section (1) shall forfeit his right to get the same, if firstly, he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of 45 days from the date of receipt by him, of a notice in that behalf from the Collector, and secondly, if he fails to deposit with the Collector, towards occupancy price of the land, 65% of the amount of compensation which he has received for his land which is acquired from him in the affected zone or, of the likely cost of the land to be granted to him under sub-section (1), whichever is less, at the time of payment of such compensation to such affected persons. Sub-section (1) of Section 16 is required to be read in conjunction with sub-section (2). The petitioner has not annexed to the present petition the scheme which was published under Section 15. The date of the scheme is also not set out in the petition, even assuming that immediately after the land acquisition award was made, such a scheme was notified and that too under the law in regard to the project affected persons as prevailing at that time. This for the reason that the 1999 Act was not prevalent and was brought into force only from 1 April, 2002.

8. Notwithstanding the above basic infirmities, the petitioner almost

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after 33 years of the land acquisition award in question, addressed a letter dated 4 May, 2022 in the second case i.e. Writ Petition No.8202 of 2022 that the petitioner is required to be allotted alternate land and that he should be permitted to deposit 65% of the amount of the land acquisition compensation received under the land acquisition award for claiming allotment of alternate land. In the said letter dated 4 May, 2022, the petitioner has surprisingly stated that the Section 16(2)(a) notice be issued to the petitioner. Insofar as the first petition is concerned, no such representation was made and therefore, for the first time in regard to the land acquisition award of the year 1989, the said petitioner directly by approaching this Court, is making a prayer that the respondents be directed to issue notice under Section 16(2)(a) of the 1999 Act.

9. On a perusal of the averments as made in the petition, there is not a whisper in regard to such gross and inordinate delay of more than 33 years in filing present proceedings of both these petitions. In any event, such a prayer which is on the basis that no notice under Section 16(2)(a) was received at the relevant time in the year 1989, is itself a disputed question of fact as the original land owners/ predecessors of the petitioners appear to have not raised such issue, if that be so the petitioners are precluded from raising the same for the first time that too after such long long lapse

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of time. Thus, such issue cannot be gone into the present proceedings. It could not have also been agitated in a civil suit after such a long lapse of 33 years of which the petitioners are aware and for such reason, this is a chance litigation, a total abuse of the process of law. Even otherwise, it is beyond one's imagination as to how such plea as taken in the petition can at all be entertained as the plea is that the predecessor of the petitioner had not received a notice. The successor cannot maintain such assertion and a claim.

10. This apart, the prayer for issuance of a notice under Section 16(2) (a) is made under the 1999 Act, when the land acquisition in question took place in the year 1989 is totally untenable. The land acquisition awards in question are of the year 1989 when the 1999 Act, itself was not brought into force and what was prevailing at that point of time was the Maharashtra Resettlement of Project Displaced Persons Act 1976 (for short **the 1976 Act**) which did not have the provision of Section 16 as has been prayed for in the prayers so as to be made applicable. We are not shown by Mr. Deshpande, any provision under the 1999 Act, which has been made applicable retrospectively, and more particularly, Section 16 of the 1999 Act, to have a retrospective application, in respect of any acquisition of land prior to the 1999 Act being brought into force. We

note that the relevant provisions of the 1976 Act, in regard to issuance of public notice calling upon displaced persons to state if they intend to have alternate land for Resettlement, was Section 19, and the corresponding provision for forfeiture of any claim was Section 23. For the sake of completeness, we refer to Section 19 and Section 23 of the 1976 Act, which reads thus:

“19. Public notice calling upon displaced persons to state if they want land for resettlement. (1) The Resettlement Officer shall as soon as may be after the assessment is made under Section 13 public a public notice in the Official Gazette and also as provided by subsection (2) of Section 11 calling upon the displaced persons in the affected zone to intimate to him in writing before the date specified in the notice (not being earlier than 60 days’ from the date of publication of the notice in the Official Gazette whether they required land for resettlement on occupancy price provided under Section 18; and if so , to submit to him, in duplicate, before the said date, a statement containing the following particulars, namely,-

- (a) the area of land held by each displaced person as occupant or tenant in the affected zone, separately;
- (b) the area of land held by each displaced person, if any, in the benefited zone or outside that zone in any village or area specified under Section 10 as occupant or tenant;
- (c) the description of land on which he was working as agricultural labourer;
- (d) the place of residence in the old *gaothan*, and whether the displaced person holds that place as owner or tenant; and
- (e) choose of land for purpose of grant or for working thereon as agricultural labourer in the benefited zone, or in the village or area specified under Section 10, and choice of land in the new *gaothan*.

(2) The Resettlement Officer shall take particular care to ensure that the notice published under sub-section (1) is given as wide publicity as possible, and for that purpose he may render such

assistance to the displaced persons to understand the contents of the notice as he think fit in the circumstances of each case.

(3) A copy of the statement received under sub-section (1) shall be sent to the Deputy Director.

23. Grant of land on payment of occupancy price.-(1) After the publication of the sanctioned scheme in the Official Gazette under Section 21, the Deputy Director shall, subject to the provisions of Section 25, grant land, on payment of occupancy price, to the displaced persons in accordance with the provisions of the sanctioned scheme; and thereupon, except as expressly provided by this Act, the provisions of the Code and rules made thereunder which provide for disposal of Government lands shall apply to such grants as they apply in relation to Government land granted under the Code.

(2) Where the occupancy price payable by any displaced person in respect of the agricultural land granted to him is not paid as provided in sub-section (1), the Deputy Director may, if he is satisfied that the delay in granting the land under sub-section (1) is likely to result in land remaining fallow, put such displaced person in possession of the land from the commencement of the agricultural year next following the date of the publication of the sanctioned scheme in the Official Gazette, subject to the following conditions, namely,-

(i) if the displaced person fails to pay the occupancy price, he shall be deemed to have forfeited his right to the grant of the lands as provided in the sanctioned scheme;

(ii) in case of such failure, he shall be continued in possession of the land as a lessee only upto the expiry of the said agricultural year on payment to the State Government of such rent as the Deputy Director may determine;

(iii) on the expiry of the said agricultural year, the displaced person shall vacate the land, and if he fails to do so, he shall be liable to be summarily evicted in accordance with the provisions of the Code;

(iv) after the displaced person vacates, or is evicted from the land as provided in condition (iii), the land may be disposed of in accordance with the provisions of the Code and the rules made thereunder in respect of grant of Government lands on payment of occupancy price;

(v) if the displaced person fails to pay the rent, it shall be

recoverable from him as an arrear of land revenue.”

11. We accordingly find that all the contentions as raised by the petitioner are without any basis and are totally unmindful to the applicable provisions of law. Section 16 was certainly not applicable in the given facts. It was the 1976 Act which was applicable under which no contention can be asserted. The petitioner has completely overlooked such legal position.

12. A relief of such nature, even otherwise cannot be granted after about 33 years from the date of land acquisition. The petition is also hopelessly barred by delay and laches. For such reasons, there is no warrant whatsoever to consider the prayers as made in the petition.

13. The petitions are accordingly dismissed. We refrain from imposing costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]