

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1082 OF 2019

1. Maruti Genba Veer )  
(Since deceased through legal heirs)
- 1a. Laxmibai Maruti Veer )  
Aged adult, Occu: Household )
- 1b. Dilip Maruti Veer )  
Aged adult, Occu: Agriculture )
- 1c. Kisan Maruti Veer )  
Aged adult, Occu: Agriculture )  
All residing at Pisal Wadi, )  
Tal. Khandala, Dist. Satara )
2. Aanna Genba Veer )  
Aged: 75 yrs, Occu: Agriculture )
3. Shivaji Genba Veer )  
Aged: 70 yrs, Occu: Agriculture )
4. Ramdas Genba Veer )  
Aged: 65 yrs, Occu: Agriculture )
5. Ankush Genaba Veer )  
Aged: 55 yrs, Occu: Agriculture )
6. Lahudas Genba Veer )  
(Since deceased through Legal heirs)
- 6a. Sandeep Lahudas Veer )  
Aged: 25 yrs, Occu: Agriculture )  
All R/A. Pisalwadi, Shrival, )  
Taluka Khandala, Dist. Satara ) ....Petitioners

***Versus***

1. State of Maharashtra, through )  
Revenue and Forest Department )  
Mantralay, Bombay-400032 )
2. District Rehabilitation Officer, )  
And Deputy District, Collector )  
Satara Dist. Satara )
3. Sub Divisional Officer, )  
Wai Division, Satara )
4. Additional Commissioner )  
Pune Division, Pune ) ....Respondents

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Mr.Vishwajeet S. Kapse a/w. Ms.Freddy Bhedha, for Petitioner.  
Ms.M.S. Bane, AGP, for Respondents / State.  
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**CORAM : R.D.DHANUKA AND  
M.M.SATHAYE, JJ.**

**RESERVED ON : 25<sup>th</sup> JANUARY, 2023**

**PRONOUNCED ON : 24<sup>th</sup> FEBRUARY, 2023**

**: JUDGMENT (PER: M.M.SATHAYE, J.):**

1. Rule. Rule made returnable. Learned AGP waives service for Respondents / State. Taken up for final disposal by consent.
2. This petition is filed under Article 226 of the Constitution of India, praying for quashing and setting aside the impugned Award dated 19.03.1996 bearing No.LAQ/19/SR/362 passed by Special Land Acquisition Officer No.19, Satara in respect of the

writ land, which is land Gat No.533 admeasuring 84 R, situated at Village Dhangarwadi, Taluka Khandala, District Satara. Initially the petition was filed praying to set aside impugned Order dated 10.08.2018 passed by learned Minister for Forest and Revenue, in Application No. LST/3517/INO.23/A-3, rejecting the same. The said order is passed confirming rejection of Petitioner's Application u/s. 48 The Land Acquisition Act, 1894, to remove the writ land from acquisition. However, subsequently by amending the petition, a prayer to set aside award has been added.

3. Brief facts necessary for disposal of this petition are as below:

(i) Petitioners' family was holding lands at village Shirwal and village Dhangarwadi. Lands at village Shirwal bearing No. 301, 306, 310 and 314, where admeasuring 2H - 38R with pot-kharaba 43R. Land at village Dhangarwadi bearing No. 533 was totally admeasuring 2H, 10R. Thus, the total holding of the Petitioners was originally 4H – 48R.

(ii) On 05.02.1986, a notification u/s. 11(1) of the Maharashtra Resettlement of Project Displaced Persons Act,

1976 came to be issued thereby applying provisions of said Act to Nira (Deoghar) flow-cum-Lift Irrigation Project and many villages including Petitioners' entire villages, both Shirwal and Dhangarwadi were notified as benefitted zone.

(iii) On 28.11.1989, Petitioners' lands at Village Shirwal were notified u/s. 4 of the Land Acquisition Act, 1894 for Krantisinh Nana Patil College of Veterinary Science at Shirwal and ultimately an Award came to be passed on 03.04.1991 acquiring the Petitioners lands at Village Shirwal. This award is hereinafter referred to as "the earlier Award of 1991" for short. This is neither in respect of Nira Deoghar Project nor in respect of Petitioners' land at Village Dhangarwadi.

(iv) On 23.06.1993, by a declaration u/s. 13(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, 138 H and 88 R of Village Dhangarwadi was declared as benefitted zone for Nira Deoghar Irrigation Project affected persons.

(v) By Notification dated 30.03.1994, the Petitioners' land admeasuring 84 R situated at Village Dhangarwadi, came to be notified u/s. 4 of the Land Acquisition Act for resettlement of

Nira Deoghar Irrigation Project affected persons.

(vi) Petitioners filed objection/representation dated 05.07.1994, informing the Land Acquisition officer that the earlier acquisition of 1991 has been done by the same office in respect of Petitioners' lands at Village Shirwal and requested not to acquire their land at Dhangarwadi also, since they will be left with very little land not sufficient for the livelihood of their big family.

(vii) By a report dated 28.04.1994 u/s. 5A of the Land Acquisition Act, the Special Land Acquisition Officer No. 19, Satara rejected the Petitioners' prayer of excluding their land at Dhangarwadi on the ground that Petitioners' land holding is 4H, 48R which comes under applicable slab.

(viii) Impugned Award was passed on 19.03.1996 u/s. 11 of the Land Acquisition Act, 1894 and the Petitioners' writ land admeasuring 84R of Gat No. 533 at village Dhangarwadi was acquired.

4. Heard learned Counsel Mr. Kapse for the Petitioners and Ms. Bane, learned AGP for the Respondents. Perused the record.

5. Mr. Kapse took us through various documents annexed to the Petition explaining above dates and events. He submitted that it is the case of the Petitioners that as out of their total land holding admeasuring 4H, 48R, land at Village Shirwal admeasuring 2H, 38R was already acquired under the earlier Award of 1991 for some other project (Krantsinh Nana Patil College of Veterinary Science) they were left with only 2H 10R land at Dhangarwadi. He submitted that when the impugned award was made and land at Dhangarwadi was acquired for Nira Deoghar project affected persons, Petitioners' holding was less than applicable slab of 3H 23R as per Slab III of Part II of schedule of applicable Maharashtra Project Affected Persons Rehabilitation Act, 1986 as on date of notification (30/03/1994) mentioned in the impugned Award.

6. It is submitted by Mr. Kapse that the Petitioners have neither signed the so called possession receipt dated 06.08.1996 nor received any compensation under the impugned Award. Petitioners are in possession of the writ land. Petitioners are relying on a Certificate dated 23.10.2012 issued by Talathi of village Dhangarwadi, showing that Petitioners do not have any other land except total area of 1H, 33R and also a Certificate

dated 29.11.2012 issued by Talathi of Village Shirwal stating that Petitioners have no land holding at all in village Shirwal. It is contended that the same Office has issued earlier Notification and earlier Award in respect of the Petitioners' other land at Village Shirwal and therefore the same office could not have passed the impugned Award in respect of writ land at Village Dhangarwadi.

7. *Per contra* Ms. Bane, learned AGP appearing for the Respondents / State invited our attention to the affidavit in reply dated 04.06.2019 affirmed by Deputy Collector, (Rehabilitation), Satara. It is contended on behalf of the State that relevant date for considering the Petitioners' holdings, and for application of slab, is the date of original Notification when the lands were notified for Nira Deoghar Irrigation Project. It is contended that on the said date 05.02.1986, the Petitioners' land at Village Shirwal was also available and notified and therefore, holdings of the Petitioners, as on that date will have to be considered. She submits that at the relevant time the Petitioners' total holdings (4H, 48R) was above the applicable slab of 3H, 23R. It is further contended that for the purpose of acquiring land as per Section 16 read with Schedule A of

Maharashtra Resettlement of Project Displaced Persons Act, 1976, the holding of a person on the date u/s. 11 of the Notification, is relevant.

8. It is contended that such date will be relevant because thereafter there are restrictions on transfer particularly subdivision and partition of the land covered under the said Notification. It is contended that even if by earlier Award dated 03.04.1991, the Petitioners' lands at Village Shirwal are acquired, even then, the Petitioners' holdings will not be considered as changed, having been reduced after the appointed date. According to the learned AGP, for the purpose of Award dated 19.03.1996, the holding of the Petitioners as on 03.04.1991 cannot be taken into account. It is further contended that earlier Award dated 03.04.1991 was not under the Resettlement Act. Principally on this argument, the learned AGP supported the impugned Award and the impugned Order passed by the Minister.

### **REASONS AND CONCLUSION**

9. We have perused the record, specially Notification dated 05.02.1986 which was issued under Maharashtra Resettlement

of Project Displaced Persons Act, 1976, in which entire villages Shirwal and Dhangarwadi were notified, including Petitioners' both lands. We have also perused earlier Award dated 03.04.1991 based on notification dated 28.11.1989 u/s. 4 of the Land Acquisition Act and impugned Award dated 19.03.1996, based on notification dated 30.03.1994 u/s. 4 of the Land Acquisition Act. It is important to note that both Awards are passed by the same Land Acquisition Office namely Special Land Acquisition Officer No.19, Satara and therefore the earlier Award and its proceedings are completely within its knowledge and record.

10. It is further material to note that the earlier Award was in respect of acquisition for Krantisinh Nana Patil College of Veterinary Science at Shirwal and impugned Award is for resettlement of Nira Deoghar Irrigation Project affected persons. These 2 Awards, apart from being for different projects, also refer to different notifications u/s. 4 of the Land Acquisition Act and different declarations thereunder. Though both the Awards are under Land Acquisition Act, the purpose for the earlier Award is for acquisition for educational purpose of a College and impugned award under which the writ land at Village

Dhangarwadi is acquired, is for resettlement of Nira Deoghar Irrigation Project affected persons.

11. If that be so, then in what manner the same Notification u/s. 4 dated 05.02.1986 would apply, is not explained by the Respondent-State in its affidavit in reply. It is also necessary to note that the Notification dated 05.02.1986 relied upon by the Respondents / State is issued u/s. 11(1) of Maharashtra Resettlement of Project Displaced Persons Act, 1976 and is stated to apply to Nira Deoghar Irrigation Project, only and not for the purpose of Krantisinh Nana Patil College of Veterinary Science at Shirwal.

12. The argument of the Respondents / State that after the Notification dated 05.02.1986, transfer was restricted and therefore holding of the Petitioners as on that date has to be considered, is fallacious argument for the simple reason that acquisition of the part of the Petitioners holding under earlier Award dated 03.04.1991 is not a transfer *inter vivos* or voluntary transfer / sale / mortgage by the Petitioners in favour of private third party. It is compulsory acquisition of Petitioners' holding (part thereof) by operation of law and that too for a

completely different project (College of Veterinary Science). The Petitioners have not breached any restriction due to said earlier Award. To say that *'transfer restricted by law due to earlier notification will hit subsequent compulsory acquisition under law and therefore reduction in holding can not be considered'* is nothing short of perverse interpretation. If a citizen is subjected to such interpretation, that too in respect of an expropriatory legislation such as Land Acquisition Act, it will be travesty of justice.

13. For that reason, we are not impressed with the above argument of the Respondents / State. Perusal of the part II slab III of the Schedule of Maharashtra Project Affected Persons Rehabilitation Act, 1986 applicable on the date of notification dated 30.03.1994 shows that the for slab 'not more than 3H and 23R', area to be acquired is 'Nil'. Obviously therefore, the Petitioners' holding on the date of Notification (30.03.1994) of the impugned Award dated 19.03.1996 was below the said slab. The Petitioners writ land at Dhangarwadi could not have been acquired under law.

14. Perusal of the impugned Order of the learned Minster

shows that in paragraph 6.1 to 6.4 thereof, reasons are stated. The aspect of 2 different Awards under 2 different Notifications for 2 different purposes, has been totally missed and rejection of the Petitioners' application under Section 48(1) by Order dated 19.09.2016 seems to have been confirmed on limited ground that power under the said section can not be exercised again.

15. The Petitioners have denied the possession receipt, which is relied upon by the Respondents. Perusal of said possession receipt dated. 06.08.1996 shows that it is a printed format receipt made for various lands including writ land, which is signed by the Authorities and some other land holders; but it is certainly not signed by the Petitioners (Veers). It is material to note that the Respondent / State has not denied specific averments of the Petitioners not signing the said possession receipt. So also Respondent / State has stated in their Reply that the compensation for the Petitioners is kept / deposited in revenue account, which means that it is not paid over to Petitioners.

16. Careful perusal of record further reveals that way back in the year 2012, concerned Tahsildar has written to concerned Dy

Collector (Resettlement) in communication dated 15.12.2012 giving NOC for removing / excluding writ land from the impugned Award. In view of such recommendation already given by Circle Officer, the Petitioners' land-holding was indeed reduced at the relevant time when impugned Award was drawn by erroneous application of slab. The letter dated 26.03.2002 issued by concerned District Resettlement Officer to concerned Additional Collector, stating similar aspects, also seem to have been ignored without action. We fail to see why these communications /NOC / recommendation were not acted upon.

17. It is seen from the record that the Petitioners were permitted to amend this Petition to add averments, grounds and prayers for challenging the impugned Award. Respondents / State has not filed any additional reply raising objection to belated challenge to the impugned Award. It also appears from the record that Petitioners were pursuing their case, by filing objection dated 05.07.1994 to concerned SLAO which was rejected. The Petitioners filed application dated 14.12.2000 to Additional Commissioner, Pune Division, Pune for excluding writ land from the impugned Award, was rejected on 19.09.2016.

18. The Petitioners thereafter moved the State Government through learned Minister by filing appeal application No. LST-3517/INO-23/A-3, in which impugned Order of Minister was passed on 10.08.2018, turning down the Petitioners' grievance. Thereafter, the Petitioners seem to have knocked the doors of this Court by filing present Petition. Considering these dates, it is clear that the Petitioners were diligently following up their cause and in that view of the matter, we have no hesitation in exercising our extra-ordinary jurisdiction under Article 226 of the Constitution of India.

19. The sum and substance of the case made out by the Petitioners is that this is a petition by a diligent litigant, whose land has been acquired by illegal application of slab, who has neither parted with possession nor received any compensation. Therefore, in peculiar facts and circumstances narrated above, there is merit in the petition and it must succeed.

20. Hence, we pass following Order:

[A] Petition is allowed in terms of prayer clause (a) and (aa). Impugned Award dated 19.03.1996 bearing No.LAQ/19/SR/362 is quashed and set aside only

in respect of Petitioners' writ land bearing Gat No.533 area 84R at Village Dhangarwadi, Taluka Khandala, District Satara.

[B] Concerned Office of the Respondents, is directed to pass necessary consequential orders in favour of the Petitioners, thereby suitably modifying the revenue record of the writ land. The Respondent State is at liberty to take back amount of compensation in respect of writ land deposited in revenue account.

[C] Writ Petition is allowed and Rule is made absolute in above terms. No order as to costs.

[D] All concerned to act on authenticated copy of this Order.

(M.M. SATHAYE, J.)

(R.D. DHANUKA, J.)