

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2013 OF 2023

Late Ambalal Sogalal & Ors ..Petitioners

Versus

The State of Maharashtra & Ors ..Respondents

ANJALI
TUSHAR
ASWALE

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***Mr.Karl Tamboly, with Mr. Aadil Parasurampuria,
Aalam Parasurampuria i/b Prashant Parasurampuria,
Advocates for the Petitioner***

***Mr.A. I. Patel, Addl. GP, with Mrs.M. S. Bane, AGP, for
the Respondent/State.***

**CORAM : B. P. COLABAWALLA, J &
M. M. SATHAYE, JJ.**
DATE : OCTOBER 23, 2023

P.C.

1. Rule. Rule is made returnable forthwith. Learned AGP waives service for the Respondents / State. Heard finally by consent of parties.
2. This Petition is filed under Article 226 of the Constitution of India inter alia seeking a direction to the Respondents to determine and pay the compensation amount payable towards acquisition of the Petitioner's lands bearing Survey

Numbers 77 (Part) and 78 (Part) at Village Khaire, Taluka & District Palghar in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The present Writ Petition pertains to land admeasuring about 21 Hectares & 3.5 Ares bearing Survey No. 77 (part) and 78 (part) at Village Khaire, Taluka & District Palghar (“***the said lands***”). The said lands were taken over from the original owners thereof for the purpose of an irrigation / dam project called ‘Vandri Irrigation Project’, also known as the ‘Surya Dam’. Possession of the said lands was taken over by the State Government from the original owners in or around the year 1984. The Petitioners are the successors in title to the original owners of the said lands.
4. Due to the fact that land acquisition proceedings in respect of the said lands were not formally completed till year 1999 [even though possession thereof had been taken over in the year 1984], the original owners of the said lands filed Writ Petition No. 1056 of 1999 in this Court seeking directions against the Respondents to pass the necessary award under

the Land Acquisition Act, 1894.

5. By an order dated 20th August, 2001, the then Division Bench of this Court directed the concerned authorities to complete the land acquisition proceedings and to pass an award in relation to the said lands, within a period of three months from receipt of the order. The previous Writ Petition was accordingly disposed of in those terms.
6. As no award was passed within the time stipulated in the aforesaid order of this Court, the State Government sought an extension of time to complete the acquisition proceedings. By its Order dated 3rd April 2006, the Division bench of this Court directed the Special Land Acquisition Officer to complete the acquisition proceedings within three months and to file the award passed by him in Court.
7. Though certain steps were taken by the Special Land Acquisition Officer including issuance of Public Notices calling for objections, if any, to the acquisition of the said lands and obtaining the consent of the Petitioners for acquisition of the said lands by way of 'direct purchase by

private negotiation method’, no final award was passed.

8. The Petitioners, therefore, initially filed Interim Application (L) No. 12438 of 2021 in the disposed of Writ Petition No. 1056 of 1999, alleging that the authorities were in contempt of the aforesaid two orders passed by this Court. This Court permitted that Interim Application to be withdrawn on 17th November 2022, reserving liberty to the Petitioners to file appropriate proceedings.

9. Accordingly, the Petitioners have filed the present Writ Petition seeking directions against the Respondents to determine the compensation amount payable to the Petitioners for acquisition of the said lands and to pass an award in that regard.

10. During the pendency of this Writ Petition, Respondent No. 4 i.e. the Special Land Acquisition Officer, Surya Project, passed an Award dated 26th April 2023 determining the compensation payable to the Petitioners for acquisition of the said lands as Rs.9,08,70,925/-. In the award, it was noted that once the lands are purchased by the concerned Irrigation Department of the State Government [which is

the acquiring body in this case], prior permission of the Forest Department should be obtained by such acquiring body before putting the said lands to any non forest use.

11. The context for the aforesaid observation in the award dated 26th April 2023 appears to be that it is the case of the Respondents that the provisions of the Forest Conservation Act, 1980 (“***the 1980 Act***”) are applicable to the said lands. If that is indeed the case, then under Section 2 of the 1980 Act, no state government or other authority is permitted to allow any forest land to be put to any non forest use, without the prior permission of the Central Government.

12. The matter was heard by us on 17th October, 2023. On that date, Mr. Tamboly on behalf of the Petitioners informed us that Respondent No. 4 had passed the aforesaid Award dated 26th April 2023. He submitted that to that extent, the Petition stands worked out and all that remains is for the acquiring body to enter into a Purchase Deed with the Petitioners in respect of the said lands and to pay over the amounts determined under the aforesaid award passed by Respondent No. 4. In view of the same, though we had not

passed any formal order, we orally directed Mr. Patel, the learned AGP appearing on behalf of the State Government to take instructions from the concerned officers and inform us on 20th October 2023 in this regard.

13. Accordingly, the matter was taken up on 20th October, 2023.

On that date, Mr. Sanjeev G Jadhawar, I/c, Deputy Collector, Land Acquisition, Surya Project and one Mr. Yogesh Patil, Executive Engineer, Irrigation Department, Palghar were present in Court to assist Mr. Patel and give him instructions. On that date, we were informed that a meeting was held on 24th January, 2023 by the District Level Committee and the minutes of meeting record that the necessary approval of the Forest Department should be taken before purchasing the said lands and that prior permission of the Central Government should be taken before using the said lands for non-forest purposes.

14. In so far as the first decision taken in the aforesaid meeting (which requires the necessary approval of the Forest Department prior to completing the transfer) is concerned, we clarify that the same is not required as there is no legal

requirement for such permission to be taken before the acquisition by private transfer is completed. We are fortified in our view by the Circular dated 8th December, 2017, bearing No. S-30/2008/PK281/Bhag-a/F-3 issued by the Government of Maharashtra which provides that where lands are restored under Section 22-A of the Maharashtra Private Forest Act, 1975, there is no restriction on sale-purchase of such lands. In the present case, the said lands were declared as a forest in the year 1975 and were subsequently released from reservation on 11th November 1981, as set out in Paragraph 6 of the Affidavit in Reply filed by Respondent Nos. 1 to 5 in this Petition. In this context it is also worth bearing in mind that the said lands were taken over from the predecessors of the Petitioners in the year 1984 and the same have since been deployed by the acquiring body for the Surya Dam project. All that is required to be done is for formal transfer of title to the acquiring body and payment of compensation for the acquisition. The same cannot be delayed any further given the inordinate amount of time already taken for passing the award dated 26th April, 2023. We therefore hold that the completion of transfer of title by the Petitioners to the

acquiring body does not require any prior permission of the Forest Department.

15. In so far as the second decision contained in the minutes of the meeting dated 24th January, 2023 is concerned, the Petitioners are in no way concerned with the same. The acquiring body would obviously have to use the said lands in accordance with law and if the same are put to any future use for non-forest purposes, the same would obviously require the prior sanction of the Central Government under Section 2 of the 1980 Act. In so far as the present use for the irrigation project is concerned, we may only note that the explanation to Section 2 of the 1980 Act stipulates that non forest purpose would not include *inter alia* any work relating to dams. In any event, once again this condition is not an impediment to the completion of the transfer of the said lands and most importantly, payment of compensation to the Petitioners, whose families have waited for almost close to four decades for the same.

16. Mr. Tamboly, the learned counsel for the Petitioners, submitted that the Award dated 26th April, 2023 has been

declared on the basis of 7/12 extracts which do not have the updated names of the Petitioners and continue to reflect names of some of the deceased owners. He invited our attention to Page 182 of the Petition compilation, which is Mutation Entry No.172, setting out the branch-wise share distribution of entitlement of the Petitioners to the compensation. He therefore requested that the distribution of the compensation should be done branch-wise as per the shares set out on Page 182. Mr. Patel, Ld. AGP submitted that so far as the Petitioners' entitlement is concerned, as on today, there is no difficulty about the names mentioned in the Award in respect of subject matter Survey Nos.77/1 and 78/1, as set out in the award on page 240 of the Petition compilation; however, if there are any Petitioners whose names do not appear in the said list, then, the concerned Authority will have to be satisfied by the Petitioners about they being the legal heirs. Mr. Tamboly on instructions, fairly submitted that the Petitioners are ready for the said exercise. Subject to this, and further on taking instructions from the officers of Respondent No. 1 who were present in Court, on 20th October, 2023, Mr. Patel stated that both, the process of completing the necessary documentation for

transfer of the said lands by the Petitioners in favour of the Irrigation Department / concerned acquiring body and payment of the Compensation of Rs.9,08,70,925/- to the Petitioners shall be completed without fail within a period of ten weeks from today i.e. on or before 2nd January, 2024. The statement is accepted.

17. Accordingly, we direct the Petitioners to comply with the necessary procedure including giving declarations/ undertakings / indemnity etc before the Dy. Collector (Land Acquisition, Surya Project) Palghar within two weeks from today. On the said compliance by the Petitioners, the Respondents are directed to complete the procedure and execute the necessary documents with the Petitioners and pay them the compensation amount, as per the said Award dated 26th April, 2023, in accordance with the branch-wise share distribution as stated on Page 182 (Mutation Entry No.171) within a period of eight weeks thereafter.

18. Mr. Tamboly, the learned counsel appearing on behalf of the Petitioners submitted that the possession of the land was taken away back in 1984 and the Award is passed on 26th April, 2023. The payment under the Award has not been

made till date. He therefore submitted that the Petitioners would also be entitled to the interest from the date of the Award till the date of the payment. He, however, on taking instructions, submitted that if the entire exercise as more particularly set out by us above is complied with within a period of ten weeks, then, the Petitioners are willing to give up their claim for interest from the date of the Award. We find that the stand taken by Mr. Tamboly is a very fair one. We, therefore, direct that if the entire exercise as mentioned by us above is undertaken within a period of ten weeks from today, then, the State shall not be liable to pay any interest. If for any reason the same is delayed, then, the State will be liable to pay interest as per the provisions of Section 80 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 from the date of the Award, namely, 26th April 2023, till payment.

19. Rule is made absolute and the Writ Petition is disposed of in the aforesaid terms. No order as to costs.

20. Place the above Petition for reporting compliance on 8th January, 2024.

21. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on
production by fax or email of a digitally signed copy of this
order.

[M. M. SATHAYE, J.]

[B. P. COLABAWALLA, J].