



- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO. 7380 OF 2019

AZAM KHAN KHAISAR KHAN PATHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.J.Salunke, Advocate for the Petitioners.
Mr.V.M.Kagne, AGP for Respondent Nos. 1 and 2.
Mr.Vinod Patil, Advocate for Respondent Nos. 3 to 5.
Mr.A.M.Gaikwad, Advocate for Respondent No.6.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : SEPTEMBER 12, 2024

PER COURT :

1. On 23.08.2024, we had passed the following order, in paragraph numbers 1, 2 and 3 as under :-

"1. This is one more case of a Revenue authority not obeying the order passed by this Court (Coram: Nitin Jamdar, Acting CJ & S. G. Chapalgaonkar, J.), dated 24th July, 2023. Relevant paragraphs are reproduced as under:-

"2. According to the Municipal Council, the action of the respondent Municipal Council in using the land for a pipe-line is governed under the provisions of the Maharashtra Underground Pipelines and Underground Ducts (Acquisition

of Right of User in land) Act, 2018 and it is not an acquisition of the land but acquisition of a right of user in the land. The learned counsel for Municipal Council states that for the purpose of damages under the Act of 2018, a proposal is submitted to the Special Land Acquisition Officer, which is pending.

3. Irrespective of the controversy as to under which head the compensation/damages are to be paid, since even as per the respondents some amount is payable under the Act of 2018, we direct the Special Land Acquisition Officer, without prejudice to the rights and contentions of the petitioners, to proceed further and assess the amount of damages and deposit the same with the Registry of this Court within a period of 12 weeks."

2. The concerned S.L.A.O. Ms. Kavita Bhimsen Jadhav was in-charge S.L.A.O from 21.09.2023 to 10.12.2023 and holding full charge from 12.02.2024, until today. The order of this Court, dated 24th July, 2023 was to be complied with within 12 weeks, which is approximately three months. In short, the order was to be complied with by 25th October, 2023. The said SLAO was Incharge from 21.09.2023 to 10.12.2023. Thereafter, from 12th February, 2024, she is regular S.L.A.O. Yet the direction of this Court reproduced above has not been complied with. Therefore, vide our order dated 8th August, 2024, we issued notice to the said SLAO seeking explanation as to why the Court should not initiate proceeding against her for the disobedience of the order dated

24th July, 2023.

3. She has filed an affidavit in reply dated 21st August, 2024 and has stated in paragraph No. 3 that "the deponent tenders is unconditional apology for the inconvenience cause to this Hon'ble High Court the deponent have highest regards towards this Hon'ble Courts and others Courts of Law." The apology is casual. It is conditionally tendered, if inconvenience was caused to the Court. No where has it been stated that the deponent is tendering an apology for not obeying the order of this Court dated 24th July, 2023. The apology is obviously conditional that if this Court feels that inconvenience is caused to it, the deponent tenders an apology. The conduct of the deponent is glaring."

2. We have considered the strenuous submissions of the litigating parties. We have perused the affidavit in reply dated 21.08.2024, filed by the S.D.O., Beed.

3. The learned Advocate for the Municipal Council submits that an amount of Rs.50,064/-, quantified towards the damages to be paid to the Petitioners, has been deposited in this Court. The learned Advocate for the Petitioners submits that the application to withdraw the said amount may be granted. Moreover, since the Petitioners are of

the view that a meagre amount towards the user of the land has been paid, they would avail of a remedy as may be permissible in Law for seeking enhancement in such charges/damages.

4. The learned AGP and the learned Advocate for the Municipal Council submits that if the Petitioners desire to initiate litigation for enhancement in the damages / compensation, the amount deposited in this Court, may not be disbursed to the Petitioners and more so, in the light of the fact that though the pipes were laid more than 2 meters below the soil, the said pipeline has been long abandoned and is not in use.

5. Having considered the submissions of the learned Advocates, there can be no debate that the Petitioners have a right for compensation or damages for the using of the land in view of the provisions of The Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018. The Pipes had been laid in the land of the Petitioners in 2002. The pipeline was used for around 18-20 years. Thereafter, a new pipeline has been laid rendering the present pipeline defunct and out of use. The Municipal

Council makes a statement on instructions from the Chief Officer present in the Court, that the pipes presently lying beneath the soil of the agricultural fields of the Petitioners, would be taken out and the land would be restored to the original position in which it was, within a period of 30 days. This statement is made in the light of the statement of the learned Advocate for the Petitioners that presently there is no crop standing in the said parcel of the land.

6. In the light of the peculiar facts as recorded above and keeping in view that the pipes were utilized by the Municipal Council for around 18-20 years, on the one hand, the compensation deposited in this Court needs to be paid to the Petitioners and they cannot be deprived of the same. On the other hand, if the Petitioners have a grievance as regards the quantum of the compensation, they cannot be precluded from raising an issue and approaching an appropriate Court.

7. In view of the above, **this Writ Petition is disposed off** with the following directions :-

[a] The Municipal Council shall remove the said pipes from land S.No.576, at Gevrai, belonging to the Petitioners, who are biological

brothers, within 30 days. Care be taken that the land is restored to the original condition within 30 days from today.

[b] The leveling of the soil may be done by the Municipal Council after the pipes are removed.

[c] The Petitioners are at liberty to withdraw the amount of Rs.50,064/- under proper identification of the learned Advocate and by tendering the copies of their Aadhar Card or the Voter ID.

[d] If the Petitioners desire to approach the appropriate Court for seeking damages/compensation, all contentions of the litigating parties are kept open including any issue that may crop up in such litigation.

[e] If the Petitioners are held entitled for additional compensation, the amounts withdrawn from this Court would be adjusted against the said amount.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)