2024:BHC-AUG:18367-DB

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8418 OF 2024

DATTRATRAY BHAGWAN PARDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
....

Mr. D. S. Patil, Advocate h/f Mr. A. S. Jagtap, Advocate for the Petitioners
Mr. S. R. Wakale, AGP for the Respondent – State
Mr. R. B. Bhosale, Advocate for Respondent No.3
....

CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 12.08.2024

PER COURT :-

1. Leave to correct the first name of Petitioner No.1 and the date in prayer clause-C.

2. The issue raised by both these Petitioners is as regards the action of the Competent Authority deducting 10% of the compensation amount as Nazrana while delivering the award dated 10.04.2017. This was done in pursuance of the Government Resolution dated 15.07.2010.

3. The learned Advocate representing Respondent No.3 has tendered an affidavit-in-reply dated 09.08.2024, along with documents and has strenuously opposed this Petition. Respondent No.3 has relied upon the letter dated 02.07.2009, issued by the Under Secretary of the Revenue and Forest Department.

4. We have heard the learned advocates for the respective sides. The issue of deduction raised in these petitions, was before the Hon'ble Supreme Court in the ***State of Maharashtra vs. Babu Govind Gavate and others, 1996 (1) SCC 365***, with reference to a Circular dated 26.04.1972. This issue was also considered by this court at the Principal Seat in Writ Petition No. 3545 of 2020, filed by Diksha Dilip Pawar and others vs. The Competent Authority and Sub Divisional Officer and others. It has been concluded in paragraph Nos. 14 to 18, as under:-

> "*14. Though the impugned Circular states that endeavour is to be made to give maximum compensation to the tribals, the said object would not be fructified if 10% from the compensation amount is deducted by the Government. Only because the land given to the tribals is Occupancy Class II land, that itself would not empower and/or authorize the State to deduct 10% from the compensation amount payable to the petitioners on account of compulsory acquisition. The same does not stand to any reason and erodes upon the occupancy rights of the petitioners.*

15. The state has the authority to take policy decisions under Article 162 of the Constitution. The Government Resolution dated 15/07/2010 is an executive instruction issued by the Government. The decision should not be unreasonable and arbitrary. The arbitrariness is antithesis to the rule of law, justice, equity, fair play and good conscious. The MLRC, the Act, 2013 nor any Statute authorizes the State to deduct and/or retain part of the compensation amount. The provisions of the Act, 2013 do not authorize the State to deduct 10% amount from the amount of compensation payable to tribals. If 10% amount is deducted by the Government, then the tribals will not get the true market value of the lands.

16. The Apex Court in the case of State of Maharashtra Versus Babu (supra) had an occasion to consider the similar issue of deducting 10% from the compensation amount payable on account of compulsory acquisition of restricted land held by tenant under the provisions of B.T. & A.L. Act. In the said case, the Government Circular dated 26/04/1972 mandated deduction of 1/3rd of the market value of the land towards the interest of the Government. The Court held that the said Circular is invalid. The requirement of prior sanction of Collector for transfer of land does not apply to the compulsory acquisition of land by the Government.

17. The Division Bench of this Court in the case of Salubai Sahadeo (Sadhu) Kamble (supra) also considered the similar issue wherein as per the Government Resolution dated 11/01/2017, 10% of the amount towards royalty was directed to be deducted. The lands acquired therein were also restricted lands. Similar view was taken by the Division Bench of this Court in the case of Kamgar Mahar Nadur (supra).

18. In view of the aforesaid discussion, the impugned Government Resolution dated 15/07/2010 being violative of

Article 14 of the Constitution is set aside. It is held that the respondents do not have authority to deduct 10% from the amount of compensation payable to the petitioners on account of compulsory acquisition."

5. In view of the above, **this Writ Petition is allowed.** The impugned order dated 06.10.2017, at annexure-C, page 51, is quashed and set aside. The Respondent no.4 Competent Authority, would ensure that the amount deducted towards Nazrana is refunded to the Petitioners, as expeditiously as possible and in any case within a period of 90 days. A request for extension of time would not be entertained. If the payment is delayed, the same shall carry interest at the rate of 6% p.a. from the date of deduction until its actual payment.

[Y. G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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