

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1092 OF 2024

- | | |
|-------------------------------|-----------------|
| 1. Parubai Chintaman Pasalkar | ... Petitioners |
| 2. Vijanti Dinkar Pasalkar | |
| 3. Laxmibai Nivrutti Pasalkar | |
| 4. Hirabai Kisan Pasalkar | |

Versus

- | | |
|---|-----------------|
| 1. Deputy Collector (Rehabilitation), Pune | |
| 2. Additional Collector, Pune | |
| 3. Deputy Commissioner, Pune Revenue Division | |
| 4. Divisional Commissioner, Pune Revenue Division | |
| 5. The Principal Secretary, Relief & Rehabilitation,
Mantralaya, Mumbai. | |
| 6. State of Maharashtra | ... Respondents |

Mr. Nitin P. Deshpande for the petitioners.

Ms. S.D. Vyas, Addl. G.P. a/w. Ms. P.J. Gavhane, AGP for the State.

**CORAM: G. S. KULKARNI &
 KISHORE C. SANT, JJ.**

DATED: 24 January, 2024

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

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. The question which falls for our consideration is as to whether the provisions of Section 21 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short “**1999 Act**”) can be interpreted to recognize the entitlement for any monetary compensation to be paid to the

project affected persons, on the ground that they had suffered obstruction in having the benefit of the alternate land allotted to them.

3. The petitioners claim to be project affected persons, who state that they have lost their lands in Veer Baji Pasalkar Irrigation Project.

4. By an order dated 6 June, 2001, the Collector, Pune allotted lands to the petitioners under the provisions of the 1999 Act. The petitioners were put in formal possession of the land on 9 July, 2001. The possession receipt is annexed to the petition. However, insofar as the physical possession is concerned, obstructions were created by the original landowners from cultivating the allotted lands. Considering such obstructions, the Collector (Rehabilitation), Pune passed an order dated 20 May, 2011 invoking the provisions of Section 21(4) of the 1999 Act *inter alia* levying penalty on the landowners as also creating a lien of such amounts, on the balance land belonging to the landowners. The relevant extract of the said order is required to be noted, which reads thus:

(Translation of a photocopy of an Order, typewritten in Marathi)

Exhibit – ‘F’

Read :-

- 1) Application dated 08.04.2010 of the Cadestral Surveyor
- 2) Report No. Land/W.S./406/11 dated 03.02.2011 from the Tahasildar, Haveli.
- 3) Application dated 07.02.2011 of Shri Chintaman Dinkar Pasalkar made on the ‘Lokshahi Din’.
- 4) Under section 21 of the Maharashtra Project affected Persons Rehabilitation Act, 1999.

Collector Office, Pune,
(Rehabilitation Branch,
No. D.R.O./Vi.Ba.Pa./W.S./544/11
Date : 20.05.2011.

Subject :- Regarding levying monetary penalty on the Original owner as he is causing hindrance to the management of the land allotted to the project affected person.

ORDER :-

Your land bearing Gat No. (Illegible)/2, 602/2, 609/2, 1065/2, 1146/2 situated at Uruli Kanchan, Tal. Haveli, District Pune has been acquired as per Slab under Land Acquisition Act and it has come into the possession of the Government in prescribed manner and the name of the Collector and Deputy Director (Land), Pune has been entered against the said land.

Thereafter, under the Maharashtra Project affected Persons Rehabilitation Act, 1999 and pursuant to the order of this Office, the said land has been allotted to the Project affected persons by names Smt. Parubai Chintaman Pasalkar, Smt. Vijayanti Dinkar Pasalkar, Smt. Hirabai Kisan Pasalkar and Laxmibai Nivrutti Pasalkar.

Earlier, the date 31.05.2007 had been fixed for handing over the possession of the said land. Moreover, the Tahasildar and Taluka Executive Magistrate, Haveli have given strict warning to the persons concerned that no one shall cause any hindrance to the management and that if hindrance is caused then, legal action shall be taken. However, despite the same, on the date 07.04.2010, when the Circle Officer/Talathi/Cadestral Surveyor had come to take possession, the possession has not been handed over. The Cadestral Surveyor has submitted the report to that effect on the date 08.04.2010. Thus, it has clearly come to my notice that you have been causing hindrance to the management of the said land intentionally. Moreover, the Tahasildar, Haveli has informed that the original land owner is causing hindrance as of today and requested to pass order of penalty against Shri Dnyanoba Kanchan and others.

Thus, it has clearly come to my notice that you have been causing hindrance to the management of the said land intentionally. Therefore, you have violated the provisions of Section 21 of the Maharashtra Project affected Persons Rehabilitation Act, 1999 and have not handed over possession of your acquired land to Smt. Parubai Chintaman Pasalkar, Smt. Vijayanti Dinkar Pasalkar, Smt. Hirabai Kisan Pasalkar and Laxmibai Nivrutti Pasalkar, (...incomplete) Virbaji Pasalkar, the project affected persons and have not complied with the order of the Collector issued under Sub-Section 4 and thus, have become liable for the penalty of an amount of Rs.1000/- for the period from the date 06.06.2001 to 28.02.2011.

Hence, I hereby pass order that entry of an encumbrance of the

monetary penalty of an amount of Rs.1,28,88,000/- at the rate of Rs. 1000/- per person per day for the period from the date 06.06.2001 to 30.04.2011, thus, Rs.32,22,000/- per person for total four Dam affected persons, till removing the hindrance being caused by you, shall be made against the other remaining land belonging to you and that the said amount shall be recovered as per the provisions of the Maharashtra Land Revenue Code.

(Sd/-)
Collector and Deputy Director
Rehabilitation (Land)

5. The case of the petitioners is that despite the authorities handing over the possession of the lands to the petitioners, the petitioners were prevented from cultivating the allotted lands and it is for such reason, Section 21 (4) of the 1999 Act was invoked by the Collector, whereby a fine of Rs.1000/- per day came to be imposed on the original land owners. The petitioners have contended that such fine is now admittedly shown as encumbrance in 7/12 extracts of the lands belonging to the land owners.

6. The petitioners contend that, in fact, it is the petitioners who were the allottees of the land and who had suffered due to such obstruction as created by the original landowners and accordingly, the petitioners would become entitled to such amounts. The petitioners have contended that on account of frequent obstructions from the original landowners preventing the petitioners from peacefully occupying the lands, the petitioners were compelled to sell the lands in question by a registered sale deed dated 19 January, 2015, copy of which is annexed to the petition.

7. Thus, the contention of the petitioners that they being project affected persons, having lost their lands for the irrigation project, the alternate lands which were allotted to them by way of rehabilitation, could not be enjoyed by them due to obstruction of the landowners and ultimately they were required to sell the said lands. It is hence the petitioners contention that the provisions of Section 21 of 1999 Act needs to be interpreted by the Court to hold that the amount of penalty as levied and collected under section 21(4) ought to enure to the benefit of the petitioners and such amounts need to be paid by the Collector to the petitioners. On such premise, the petitioners are before the Court praying for the following only relief:

“A) this Hon’ble Court may, by way of appropriate writ Order or direction, direct the respondents to pay to the petitioners amount paid by the landowners pursuant to the order bearing no. gi.pu.aa/vi.ba.pa/ka.vi/544/2011, dated 20.05.2011 passed by the Addl. Collector, Pune (Exh. F) and order bearing no. gi.pu.aa/vi.ba.pa/ka.v/26/2012 dated 05.09.2012 passed by the Additional Collector, Pune (Exh. G).”

8. Mr. Deshpande, learned counsel for the petitioners would submit that Section 21(1) treats obstruction by the landowners, as an offence. According to him, it is a one time offence, however, the order under section 21(4) being not complied by the landowners, then it is certainly a damage which is caused to the project affected persons and for which, an amount of Rs.1000/- per day is fixed to compensate the persons like the petitioners as provided in terms of

Section 21(4) of the 1999 Act. Mr. Deshpande submits that it is for such reason, necessarily such amounts of penalty as levied by the Collector, is required to be paid to the petitioners by the Collector as compensation.

9. In supporting the contentions, Mr. Deshpande has referred to the provisions of Section 357(1)(b) of the Code of Criminal Procedure (for short “Cr.P.C.”), which provides for “Order to pay compensation” when a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part. This, provided that the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied *inter alia* in the payment to any person as compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. It is Mr. Deshpande’s contention that the intent of what has been provided by the legislature under section 357(1)(b) of Cr. P.C. needs to be applied even qua the provisions of Section 21 of the 1999 Act and accordingly, for such reason the petitioners are required to be compensated by making payment of such amounts of fine imposed by the Collector.

10. On the other hand, Ms.Gavhane would submit that the intent of the provision of Section 21 of the 1999 Act imposing fine is independent from what the provisions of Section 357 of Cr. P.C. would provide. She submits that

the petitioners are indirectly seeking compensation which can be the claim of the petitioners to be agitated in a Civil Suit and that too against the private respondents. It is her submission that the petitioners cannot make a claim of such amounts from the State Government, considering the clear purport of the provisions of Section 21 of the 1999 Act, which is in the nature of “penalty” and levied on persons who are not complying with the order and/or who fail to comply with the order passed by the authorities under the provisions of the 1999 Act. It is her contention that such penalty as recovered can never form part of any compensation or any loss or damage caused to the persons like the petitioners, and for any such loss or damage the petitioners would be required to pursue appropriate remedy as may be available to them in law.

11. We have heard the learned counsel for the parties and with their assistance we have also perused the record and the relevant provisions.

12. To appreciate the contentions as raised by the petitioners, we may note the provisions of Section 21 of the 1999 Act, which falls under Chapter IV titled as “Miscellaneous”. Section 21 reads thus:

21. Penalty

(1) If any person knowingly furnishes any false information under this Act or obstructs in cultivation of land given to an affected person under this Act, he shall be punished with imprisonment which may extend to three months or with a fine which may extend to five thousand rupees, or with both :

Provided that, in the absence of special and adequate reason to hold the contrary to be mentioned in the judgment of the court, such fine shall not be less than one thousand rupees.

(2) Whoever abets any offence punishable under this Act or attempts to commit any such offence shall be deemed to have committed that offence and shall, on conviction, be punished with the punishment provided for such offence under sub-section (1).

(3) Nothing in sub-sections (1) and (2) above shall prevent the Collector from holding a summary inquiry and from removing the obstruction forthwith.

(4) If any person refuses or fails to comply with the order of the collector in accordance with sub-section (3) above, he shall be liable to fine up to rupees one thousand per day till he removes obstruction.

(5) If any beneficiary contravenes the provisions of clauses (a) and (b) of subsection (3) of section 10, the Collector, after conducting a summary enquiry, may order the stoppage of water supply and power supply or stoppage of grant-in-aid, or recall the Government's share contribution to the beneficiary :

Provided that, an appeal may be filed within a period of fifteen days against the order of the Collector passed under sub-section (3), (4) or (5) as the case may be, to the Commissioner and the Commissioner shall dispose of the appeal within a period of one month from the date of filing of such appeal."

(emphasis supplied)

13. On a plain reading of sub-section (1) of Section 21 of the 1999 Act, it is clear that it is a penal provision and is attracted in a situation, if any person knowingly furnishes any false information under the 1999 Act or obstructs in cultivation of land given to the project affected person under the Act, in such an event, it provides that he shall be punished with imprisonment which may extend to three months or with a fine which may extend to five thousand rupees, or with both. However, what is of relevance in the context of the issue

as raised by the petitioners, are the provisions of sub-section (3) and (4) of Section 21. Sub-section (3) provides that nothing in sub-sections (1) and (2) shall prevent the Collector from holding a “summary inquiry” and from removing the obstruction forthwith. Further, sub-section (4) provides that if any person refuses or fails to comply with the order of the Collector in accordance with sub-section (3) above, he shall be liable to pay a fine up to rupees one thousand per day, till he removes obstruction. Proviso to Section 21 ordains that an appeal may be filed within a period of 15 days against an order passed by the Collector *inter alia* under section(3), (4) and (5) to the Commissioner.

14. On a cumulative reading of sub-section (3) and sub-section(4), it is clear that sub-section (4) is required to be read in the context of a ‘summary inquiry’, which the Collector may hold in sub-section (3) and as a consequence thereof, if the Collector forms an opinion that if any person refuses or fails to comply with the order of the Collector, he shall be liable to pay a fine up to rupees one thousand per day till he removes obstruction. Thus, such provision clearly indicate that it is a penal provision, in regard to the non-compliance of the order passed by the Collector under Section 21(3), for which penalty is imposed on persons who refuse or fail to comply with the order of the Collector, as passed in accordance with sub-section (3), and for which the provision itself quantifies such amount to be paid.

15. Considering the purport of such provision which is purely in the nature of a penalty, it would be difficult to accept Mr. Deshpande's contention that such penalty being recovered by the Collector, is in the nature of any compensation for any loss or damage being caused to the project affected persons. The amount of penalty as prescribed by sub-section (4) is in the nature of a deterrent to the person who is refusing to comply with the orders passed by the Collector. Such reading of sub-sections (3) and (4) would in fact run contrary to the plain language of the provision.

16. No doubt, damage or loss may be suffered by the project affected persons and if such person is not permitted to use the land allotted to him, however, such person would be required to be compensated from the amounts of penalty as levied under sub-section (4) of Section 21, cannot be accepted. This for the reason, that as to what Mr. Deshpande would canvass in a given situation, would be required to be held to be a civil damage as suffered by the project affected persons (being quantified in monetary terms), which is subjective and in a given situation which would be required to be proved.

17. It can never be construed that the amount of Rs.1000/- per day as provided under sub-section (4) of Section 21 can be recognized as an exact measure of civil damage on the principles and/or akin to any liquidated damages as Section 74 of the Contract Act would provide in the event of a

breach of a contract. To read into Section 21(4) any principle of a fixed quantum of damage, in terms as to what the law would mean to be any “liquidated damages”, under Section 74 of the Contract Act, cannot be the test. Such principle cannot be recognised or borrowed to be applicable or implied under sub-section (4) of Section 21 of the 1999 Act.

18. The provisions of Section 21 of 1999 Act by its very existence and purport remains to be a penal provision. It cannot be construed to be a provision conferring any right, entitlement on the project affected person even if he has suffered on account of any obstruction, to receive compensation which itself would be required to be proved, and more particularly that their claim to Rs.1000/- per day would be the exact quantum of the damage as suffered by them.

19. We may observe that it is a settled principle of law that a penal provision is required to be strictly construed. In such context, we may refer to the decision of the Supreme Court in *R. Kalyani vs. Janka C. Mehta & Ors.*¹ wherein the Supreme Court considering the interpretation of penal provisions, referred to the celebrated works on interpretation of statutes of *Francis Bennion’s Statutory Interpretation* as also *Craies Statute Law*. Also the

¹ (2009) 1 SCC 516

decision in *Tuck & Sons vs. Priester*² was considered in such context. The relevant extract of the said decision needs to be noted, which reads thus:

"36. Although the legal principle that a penal statute must receive strict construction, it is not in doubt or dispute, we may notice some authorities in this behalf. In Section 263 of the Francis Bennion's Statutory Interpretation it is stated :

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The Court presumes, unless the contrary intention appears, that the legislator intended to conform to this legal policy. A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

38. In Craies and Statute Law (7th Edn. At p. 529) it is said that penal statutes must be construed strictly. At page 530 of the said treatise, referring to *U.S. v. Wiltberger*, [18 US (5 Wheat) 76 (1820)], it is observed, thus :

"The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."

39. In *Tuck & Sons v. Priester*, [(1887)] 19 QBD 629(CA)] which is followed in *London and County Commercial Properties Investments v. Attn Gen.*, [(1953) 1 WLR 312], it is stated:

"We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear terms they are not

² (1887) 19 QBD 629 (CA)

enforceable. Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."

20. We may also observe that the reliance of Mr. Deshpande on the provisions of Section 357 of Cr. P.C. so as to persuade us to import the logic and intent of such provision into section 21(4) is also not well-founded. Section 357 of Cr.P.C. is the power of the Court to be exercised when the Court *inter alia* imposes a sentence or a sentence of which fine forms a part of the order of the Court, when passing a judgment in criminal proceedings. It is in such context, it provides that the Court may order the whole or any part of the fine recovered to be applied *inter alia* as what has been provided in subsection (1)(b) of Section 357, namely, in the payment to any person, as compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. Thus, when the provision itself contemplates that the whole or any part of the fine recovered may be applied to the payment of any person as and by way of compensation, it would be certainly a different situation, from what the legislature has provided in Section 21(4) of 1999 Act, when it does not make the provision of payment of such fine to the project affected person who has suffered any obstruction.

21. For the above reason to borrow the purport of Section 357 (1)(b) of Cr. P.C. into Section 21(4) of 1999 Act would in fact amount to providing

something which the legislature itself has refrained from providing. If such contention of Mr. Deshpande is accepted, we would entrench on the legislative field amounting to judicial legislation which is not the province of the Court, being purely the legislature's prerogative. A penalty provision which is certainly penal in nature cannot be construed to be a compensatory provision, intended to compensate the person, who alleges that he was deprived of his land because of any obstruction. Such proposition if accepted would travel contrary to the intention of the legislature.

22. This apart in the present case, it clearly appears to us that the Writ Petition is completely an after thought, inasmuch as in 2015 the petitioners have already sold their lands. They have received the amounts by sale of such lands which came to be allotted to them as project affected persons. We cannot delve on the issue as to whether selling such land was as a result of any obstruction or otherwise, which itself is an issue requiring evidence to be laid. In any event, the order on the basis of which claim is being made by the petitioner is also dated 20 May, 2011. Even if the petitioners were to assert any cause of action to make a claim for any damages either against the persons obstructing or even against the State Government, the petitioners could not have maintained a Civil Suit in the year 2024, when the present petition has been filed. Any suit to be filed by the petitioners thus even otherwise was barred by limitation. Hence, the cause of action for the petitioners to claim any

damages against the State Government or to claim such amount on the basis of the order dated 20 May, 2011 cannot be said to have accrued in the year 2024.

23. For the aforesaid reasons, we are not inclined to entertain this petition. It is accordingly dismissed. Rule discharged. No costs.

24. Needless to observe that our aforesaid observations would not in any manner affect any recovery of the said amounts which appears to be a charge of the State Government under the order dated 20 May, 2011 passed by the Collector as also reflected in the revenue records.

25. We may also observe that in any proceedings wherein order under section 21(4) of the 1999 Act has been passed, the jurisdictional Collectors shall immediately take steps and recover such amounts which are due and payable to the State Government. The orders passed by the Collector(s) under Section 21(4) of the 1999 Act cannot merely remain in the files of the Collector and are required to be executed expeditiously and without any delay.

26. Let this order be circulated by the Secretary of the rehabilitation and resettlement department, to all the District Collectors in Maharashtra, with directions that appropriate recovery of the revenue be undertaken on orders passed under section 21(4) of the 1999 Act.

(KISHORE C. SANT, J.)

(G. S. KULKARNI, J.)

Corrected as per speaking to minutes of the order dated 6 February, 2024.