



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.210 OF 2023

1. Pandit Laxman Nagekar, aged 57 years,
Occ. Agriculturist, R/o Thalegaon, Tal.
Babhulgaon, Dist. Yavatmal.
2. Yashvant Shamrao Mahure, aged – 50
yrs, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
3. Gangadhar Namdeo Kadam, aged – 55
yrs, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
4. Shriram Krushna Meshram, aged – 60
yrs, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
5. Uttam Mahadev Choudhari, aged 52
yrs, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
6. Ambadas Mahadev Hendve, aged – 55
yrs, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
7. Sheshrao Laxman Pachpute, aged – 46
yrs, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
8. Vitthal Bapurao Chahakar, aged 57
years, Occ. Agriculturist, R/o Thalegaon,
Tal. Babhulgaon, Dist. Yavatmal.
9. Dattu Maroti Nagose, aged 63 years,
Occ. Agriculturist, R/o Thalegaon, Tal.

Babhulgaon, Dist. Yavatmal.

10. Laxman Ganpat Khadse, aged 65 years, Occ. Agriculturist, R/o Thalegaon, Tal. Babhulgaon, Dist. Yavatmal.
11. Bhanudas Dnyanoba Thakare, aged 73 years, Occ. Agriculturist, R/o Thalegaon, Tal. Babhulgaon, Dist. Yavatmal.
12. Vinayak Keshav Gayakwad, aged 58 years, Occ. Agriculturist, R/o Thalegaon, Tal. Babhulgaon, Dist. Yavatmal.
13. Nago Dinba Misare, Aged 52 years, Occ. Agriculturist, R/o Thalegaon, Tal. Babhulgaon, Dist. Yavatmal.
14. Dnyaneshwar Narayan Sarkate, aged 48 years, Occ. Agriculturist, R/o Thalegaon, Tal. Babhulgaon, Dist. Yavatmal.
15. Gulab Shripat Taksande, aged 55 years, Occ. Agriculturist, R/o Thalegaon, Tal. Babhulgaon, Dist. Yavatmal.

... PETITIONERS

VERSUS

1. The State of Maharashtra, Irrigation Department, through its Secretary, Mantralaya, Mumbai.
2. The Collector, Yavatmal.
3. The Special Land Acquisition Officer, Minor Irrigation Works No.2, Yavatmal, Tal. And Dist. Yavatmal.
4. The Executive Engineer, Bembala Project Department, Yavatmal, Tal.

And Distt. Yavatmal.

... RESPONDENTS.

Shri P.S. Kshirsagar, Advocate for the petitioners
Mrs. Khan, Assistant Government Pleader for the State.
Ms. M.V. Babhulkar, Advocate for respondent no.3.

CORAM : VINAY JOSHI AND SMT. M.S. JAWALKAR, JJ.
DATED : 28.06.2024.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. The petitioners' claim for enhanced compensation in terms of Section 28-A of the Land Acquisition Act ('the Act') has been rejected vide order dated 12.08.2020 on the ground that the amount of rehabilitation compensation has already been determined and granted to the petitioners. It is the petitioners' contention that their application under Section 28-A of the Act has been wrongly rejected by the respondent no.3 in view of the decision rendered by this Court in case of *Motiram Zingar Wawre vs. State of Maharashtra and ors.* 2017(4)

Mh.L.J. 627. In the said decision, learned Single Judge of this Court has held that the land holder has statutory right to seek enhancement in compensation amount despite he has received the amount under the Rehabilitation Package Scheme.

4. In response, the State made two submissions that the order passed by this Court in case of *Motiram Zingar Wawre vs. State (supra)* has been challenged by the Acquiring Body in the Apex Court bearing Special Leave Petition (Civil) Diary No.36522/2022, wherein notices have been issued. Secondly, in terms of observations made by this Court in paragraph 9 of the case of *Motiram Zingar Wawre vs. State (Supra)*, the Acquiring Body is entitled to adjust the amount which has been received by the petitioner.

5. In case of *Motiram Zingar Wawre vs. State (Supra)*, this Court has held that despite landowner receiving compensation he has statutory right to seek enhanced compensation. Similar view is expressed by this Court in another decision in case of Vidarbha Irrigation Development Corporation thr. Its Executive Engineer, Nagpur vs. The Deputy Collector (Land Acquisition No.1), Nagpur and ors. With other connected matter (Writ Petition No.3634 of 2022)_dated 20.07.2022. We see no reason or justification to take different view.

The petitioners are legally entitled to claim enhanced compensation under Section 28-A of the Act. Merely on the premise of filing of SLP wherein admittedly no interim orders have been passed, it is not appropriate to stall the right of the petitioners. Of-course the amount which the petitioners have already received under the Award has to be deducted/adjusted while assessing the enhanced compensation.

6. In view of the above, by allowing the writ petition, we hereby quash and set aside the impugned order dated 12.08.2020 passed by respondent no.3. We remit the matter back to the respondent no.3 to consider the application filed by the petitioners under Section 28-A of the Act, in accordance with law. All questions are kept open. The petition stands disposed of in above terms.

(SMT. M.S. JAWALKAR, J.)

(VINAY JOSHI, J.)

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