

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15662 OF 2022

Madhukar Jaywant Patil

...Petitioner

Versus

The State of Maharashtra
thr. The Prin. Secretary,
Irrigation Dept. & Ors

...Respondents

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Mr Machhindra A Patil, for *the Petitioner*.

Ms MS Bane, AGP, for *the Respondent-State*.

Mr Divyesh Jain, i/b, Mr Nitin Gaware Patil, for *the Respondent*.

CORAM M.S. Sonak &
 Jitendra Jain, JJ.

DATED: 03 April 2025

Oral Judgment:- *per M. S. Sonak, J*

1. Heard learned Counsel for the parties.
2. On 25 July 2024, a Coordinate Bench of this Court made the following order: -

“1. We have heard Mr. Patil, learned counsel for the petitioner, Ms. Diwan, learned AGP for respondent nos. 1 to 3/State and Mr. Nitin Patil, learned counsel for respondent no. 6.

2. The petitioner is before the Court making a grievance that the petitioner’s land in question admeasuring 60 Gunthas being Gat No. 226 situated at Upalai, Taluka Tasgaon, District Sangli was sought to be acquired for the Takari Irrigation Project. It is submitted that the possession of the land was taken over in March 2019 and the value of the petitioner’s land as also the fruit bearing trees was subject matter of survey and assessment by the Assistant Engineer when he made the following report:

(Translation of a photocopy of a LETTER, typewritten in Marathi).

Exhibit - A

MAHARASHTRA KRISHNA VALLEY DEVELOPMENT CORPORATION,
PUNE-11

(Government of Maharashtra Undertaking)

Assistant Engineer, Grade-1, Takari Project and Planning

Sub Division – Tasgaon,

Taluka – Tasgaon, District – Sangli, Pin Code – 416 312.

Outward No. T. P and P
S/Admin/175/2019.

Date: 11.03.2019

To,

Madhukar Jayawant Patil and Others.

Subject : Regarding purchasing your land situated at
Village – Upalavi for Takari Main Canal.

In connection with the aforesaid subject, you are informed that, your land admeasuring approximately 60 Gunthas from out of the land bearing Gat No. 226 is going to be acquired for Takari Main Canal. However, the JMC and JMP in respect of Village – Upalavi have not yet been received by this Office. There are 153 Mango trees and 17 Custard Apple trees standing in the land to be acquired and the approximate valuation thereof comes to Rs.84,91,648/-. Presently, the valuation for acquisition of land (trees and land) comes to approximately Rs.1,16,36,061/-. The said amount for acquisition of land will be paid as early as possible after the approval therefor is received from the Collector.

(Signature Illegible)

Assistant Engineer, Grade-1,
Takari Project and Planning Subdivision,
Tasgaon.”

3. It is submitted that there is also a panchnama of the trees, a copy of which is annexed at page 20 of the paper book. Our attention is also drawn to a certificate which is jointly signed by the Assistant Engineer, Grade-I, Mr. V.S. Kamble, Assistant, Tahsildar, Tasgaon, Village Kamgar Talathi, Village U[alavi, Taluka Tasgaon which is to the following effect referring to the compensation of

Rs.2,12,29,120/- proposed to be paid to the petitioner:

(Translation of a photocopy of a CERTIFICATE, typewritten in Marathi).

CERTIFICATE

Name of Work : Regarding paying compensation for the orchard standing in the land bearing Gat No. 226, situated at Village – Uplavi, Taluka – Tasgaon, District – Sangli, acquired for Takari Main Canal K.M. 137/710 to 140/880.

The total valuation amount of the Project Affected Farmer (Madhukar Jayawnat Patil) mentioned in the said proposal is Rs. 2,12,29,120/- (in words – Rupees Two Crores Twelve Lac Twenty Nine Thousand One Hundred Twenty only) and calculation of the said valuation amount is proper and fair. Therefore, this office does not have any objection to receive the said amount by the farmer concerned. Hence, it is recommended to grant sanction.

Recommended for sanction,
(Signature Illegible)
Assistant Engineer, Grade-1,
Takari Project and Planning Subdivision,
Tasgaon.

Prepared by :

(Signature Illegible)
[Shri V. S. Kamble]
[Illegible] Assistant.

(Signature Illegible)
Village Kamgar Talathi,
Village – Uplavi, Taluka – Tasgaon.

(Signature Illegible)
Tahasildar, Tasgaon,
District – Sangli.”

4. Mr. Patil has submitted that although compensation of the land has been arrived at, however, till date no award is passed, when the petitioner indisputedly is landless since almost about 5 years. Mr. Patil submits that the petitioner is an agriculturist. He has severely suffered. His valuable rights of land as guaranteed under

Article 300A of the Constitution stand breached, as the possession of his land is already taken over without following the due procedure in law. It is submitted that the petitioner is in a situation that no compensation has been paid despite all the formalities in that regard beingn completed.

5. Mr. Patil has drawn our attention to the reply affidavit filed on behalf of respondent no. 6, wherein respondent no. 6 purports to dispute the aforesaid joint certification/documents, in regard to number of trees. He submits that there is nothing on record, to show any material contrary to what was certified earlier by the several officers, as also the panchnama. Mr. Patil would also submit that it would not lie in the mouth of the acquiring body to dispute any of these documents when SLAO has taken possession of the petitioner's land on the basis of such certificates and documents and the petitioner, who is a poor agriculturist, being informed of such compensation as proposed to be paid to the petitioner.

6. It is Mr. Patil's submission that such stand on the part of respondent no. 6 is not only untenable in law but also highly inappropriate and unacceptable, as there is no privity whatsoever between the petitioner and respondent no. 6 who is only the beneficiary of the acquisition. It is his submission that on such plea taken by respondent no. 6 in the affidavit and without any supporting material whatsoever, no credence can be given to what has been said by respondent no. 6. It is submitted that the affidavit of respondent no. 6 needs to be discarded in totality.

7. Insofar as the State Government is concerned, we find that Ms. Diwan, learned AGP is helpless inasmuch as there appears to be a lapse on the part of the office of Government Pleader in communicating the order dated

24 February, 2023 to the concerned respondent, hence no reply affidavit is filed. We need to note the said order passed by this Court, as there is complete non-compliance of the said on the part of respondent nos. 1 to 3, which reads thus:

- “1. The matter is mentioned, not on board by the learned counsel for the petitioner for seeking circulation of the Writ Petition. He states that an Affidavit-in-reply is not filed by the State Government till date. Statement is accepted. Affidavit in Reply shall be filed within two weeks from today with a copy to be served upon the petitioner’s advocate simultaneously. Rejoinder, if any, shall be filed within one week thereafter.*
- 2. Place the matter on board for admission on 3rd April, 2023.”*

8. It is almost a year and six months that the aforesaid order was passed by the co-ordinate Bench of this Court and till date the order stands not complied. There is also no application filed by the State seeking extension for compliance of the order. In these circumstances, as to why we should now permit respondent nos. 1 to 3 to file reply affidavit, is the question. The Court in fact would be required to proceed on the ground that respondent nos. 1 to 3 are not inclined to file reply affidavit and proceed on the basis that these respondents have accepted the case of the petitioner as pleaded in the petition.

9. In the present case, we are more than satisfied that the petitioner’s valuable rights, as guaranteed under Article 300A of the Constitution read with Articles 14 and 21, are taken away in the manner not known to law inasmuch as despite 5 years of the possession of land being taken away, thereby rendering the petitioner landless, which was the very livelihood of the petitioner,

the petitioner is left high and dry without payment of compensation. We may observe that the State although would have all the powers recognizing the doctrine of eminent domain to acquire the land, however, it cannot be contrary to the law. In these circumstances, the interest of justice would require us to pass the following order:

ORDER

(i) We direct respondent nos. 1 to 3 to deposit in this Court an amount of Rs.2,12,29,120/- along with interest @15% p.a. from 19 March, 2019. Let such amount without any further extension be deposited in this Court within a period of 10 days from today.

(ii) We were inclined to impose cost on the State Government for not complying with the orders dated 24 February, 2023 passed by this Court, however, we refrain from imposing any cost at this stage of the proceedings and/or to hold the concerned accountable for breach of the order passed by this Court. In this regard, we shall pass such appropriate order at the further stage of the proceedings.

10. We, accordingly, adjourn the proceedings to be taken up at 8 August, 2024 (F.O.B.).

3. After that this Court made orders dated 8 August 2024, 9 August 2024, 30 August 2024 and 6 September 2024.

4. The order of 6 September 2024 is important, and therefore, is transcribed below for the convenience of reference: -

“1. We have heard learned counsel for the parties on the backdrop of our earlier orders and more particularly, the orders dated 25 July 2024, 09 August 2024 and 30 August 2024.

2. At the outset, we may observe that the petitioner is ready and willing to execute a sale deed in favour of respondent No.6 / Executive Engineer, Krishna Valley Takari Pump House Division-1, Devrashtre, Tq. Kadegaon District Sangli. It is not in dispute that alongwith the petitioner, there are names of other persons appearing in the occupancy column of the 7/12 extract of land in question bearing Gut No.226 of Village Tasgaon. The petitioner has agreed that the consent of all such persons / occupants shall be obtained before the execution of the registered sale deed and be submitted to respondent No.6. The petitioner is also agreeable to execute necessary indemnity bond in favour of respondent No.6.

3. Mr. Macchindra Patil, learned counsel for the petitioner submits that such exercise can be undertaken as expeditiously as possible and in any event within a period of 15 days from today, so that all the formalities to transfer clear title of the land in favour of respondent No.6 is completed within such period. Needless to observe that the respondents would also cooperate in execution of the sale deed and its registration which needs to be undertaken before the Sub-Registrar, Tasgaon, District Sangli.

4. Mr. Nitin Gaware Patil, learned counsel for the respondent No.6 on instruction stated that respondent No.6 shall pay an amount of Rs. 22,17,000/- alongwith interest at 15% per annum with effect from 23 August 2020 upto 23 August 2024 which according to him is totaling to an amount of Rs.34,78,868/-. Such amount pertains to land Adm. 0.6H of Gut No.226, payable to the petitioner and which would be paid on the date of execution of a registered sale deed by a pay order.

5. Considering such consensus as arrived between the parties, respondent No.3 / The Collector, Sangli or the Competent Revenue Authority under him would be required to take appropriate steps of making necessary changes in the revenue records in regard to Gut No.226 and incorporate the name of respondent No.6 “Executive Engineer, Krishna Valley Takari Pump House Division-1”. This be undertaken as expeditiously as possible and within a period of two months from a copy of the sale deed being presented before the Collector Competent Officer.

6. Insofar as the amount in regard to the compensation qua the trees and subject matter of our order dated 25 July 2024 being an amount of Rs.

3,83,98,534/- is concerned and which is deposited in this Court shall be permitted to be withdrawn by the petitioner after completion of all the aforesaid formalities and by appropriate orders to be passed in that regard on the adjourned date of hearing.

7. Thus, we leave the parties to complete the aforesaid formalities in regard to the sale deed.

8. Mr. Nitin Gaware Patil state that his statements are on instructions received by him from the Competent Officer Mr. Rajan Davani, Executive Engineer.

9. We appreciate the fair stand taken by respondent No. 6 and the learned counsel Mr. Nitin Gaware Patil.

*10. List the proceedings “for compliance” on **19 September 2024**. To be listed on the “**Supplementary Board**”.*

5. Since the parties were in the process of complying with the modalities noted in the previous orders, the matter was adjourned on 19 September 2024 and 25 October 2024. On 25 October 2024, the praecipe for speaking to the minutes of the order dated 6 September 2024 was also disposed of.

6. Today, Mr Machhindra Patil the learned Counsel for the Petitioner and Mr Divyesh Jain, holding for Mr Nitin Gaware Patil state that modalities in terms of our order dated 6 September 2024 have been duly complied with. They state that the parties have executed the necessary sale deeds on 4 November 2024.

7. Accordingly, the learned Counsel for the parties’ submit that this Petition could be disposed of by recording the above compliance and permitting the Petitioner to withdraw the amount of Rs.3,83,98,534/- (Three Crores Eighty Three Lakhs Ninety Eight Thousand Five Hundred Thirty Four) which is deposited by Respondents 1, 2, 3 and 6 in this Court.

8. In fact, in paragraph 6 of our order dated 6 September 2024, we had clarified that this amount of Rs.3,83,98,534/- (Three Crores Eighty

Three Lakhs Ninety Eight Thousand Five Hundred Thirty Four) shall be permitted to be withdrawn by the Petitioner after completion of all the formalities and by appropriate orders to be passed in that regard on the adjourned date of hearing.

9. Now that the learned Counsel for the parties' state that all necessary formalities including execution of sale deed have been completed, we see no difficulty in allowing the Petitioner to withdraw the above amount.

10. Accordingly, with the consent of the learned Counsel for the parties, this Petition is disposed of. The Registry is directed to transfer this amount to Rs.3,83,98,534/- (Three Crores Eighty Three Lakhs Ninety Eight Thousand Five Hundred Thirty Four) together interest, if any, that shall have accrued on this amount into the Petitioner's bank account. Mr Macchhindra Patil states that the details of Petitioner's bank account will be furnished to the Registry within two weeks from today, and after that, the Registry should, within a period of two weeks thereafter, transfer this amount.

11. The Petition is disposed of with the above directions without order for costs.

12. All concerned to act on an authenticated copy of this order. We appreciate the fair approach of the learned Counsel for the parties in resolving the dispute raised in this Petition.

(Jitendra Jain, J)

(M.S. Sonak, J)