IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12660 OF 2023

Sharada Promoters and Builders]
Regi. Partnership Firm]
Through Partner Rahul Balasaheb Karadge,]
R/at : 249/1A/66E, E Ward]
Nagala Park, Kolhapur 416003.] **...Petitioner.**

Versus

1) Special Land Acquisition Officer No. 11]
Collector Office]
Nagala Park, Kolhapur 416003]

2) Collector, Collector Office,]
Nagala park, Kolhapur, 416003]

3) Divisional Commissioner]
Vidhan Bhavan]
Land Acquisition Dept.]
Camp, Pune, Maharashtra 411001]

4) State of Maharashtra]
Through Principal Secretary]
Revenue and Forest Dept. Mantralaya,]
Madam Cama Road, Mumbai 400001.]

5) Commissioner]
Municipal Corporation of Kolhapur]
Mahanagarpalika office,]
Bhausinghji Road, Kolhapur, 416002.]

6) Assistant Director of Town Planning,]
Kasaba Bawada Main Rd,]
Ramanmala, Kolhapur, 416003] **...Respondents.**

Mr. Yuvraj Narvankar and Raul Patil for the Petitioner.
Mr. Siddheswhar B. Kalel, AGP for the Respondent-State.

Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.

Date : October 8, 2025.

Judgment (Per Sharmila U. Deshmukh, J.) :

1. ***Rule.*** Rule made returnable forthwith and taken up for final hearing with consent.

2. The challenge in this petition is to the retention of 50% amount from the compensation payable for acquisition of Class-II *Inam* land under the Award dated 5th November 2018 as *Nazarana.*

3. The Petitioner is the owner of subject land which was reserved for the purpose of public garden in the development plan of city of Kolhapur under Reservation No.369. As the land was not acquired, purchase notice dated 14th May 2015 was issued under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 [for short ***"MRTP Act"***]. The Respondent No. 5 inquired as to whether the Petitioner was ready to accept the TDR in lieu of monetary compensation. By communication dated 16th June 2015, the Petitioner called upon Respondent No.5 to pay monetary compensation instead of TDR. The Respondent No. 5 by communication dated 17th June 2015, reiterated the factum of reservation and filed the purchase notice. On 3rd November 2017 and 7th July 2017, the Petitioner's land came to be compulsorily acquired for public garden and declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for short, ***"LARR Act, 2013"***] came to be published. On 4th December

2017, communication was addressed by Tahsildar to the Land Acquisition Officer informing the Land Acquisition Officer that the acquired subject land is *Inam* land. On 5th November 2018, the Award came to be published. In pursuance of the passing of Award, possession of the subject land was handed over to the Respondent No.1 on 22nd January 2019.

4. Subsequent to the passing of Award of 5th November 2018, Government Resolution was issued on 27th December 2018 which contemplated retention of 10% amount of compensation in event the land to be acquired was *Inam* land. The petition pleads that 50% of the total compensation assessed, i.e. 50% of the land valuation plus solatium plus interest amount, was retained by the Respondent No.1. There was subsequent communication addressed by the Petitioner setting out its grievance about the illegal retention of compensation amount. As there was no response to the Petitioner's representation, the present came to be filed.

5. Mr. Narvankar, learned Counsel for the Petitioner submits that the object of LARR Act, 2013 is to provide just and fair compensation to the affected person whose land has been acquired and in case of acquisition by exercise of eminent domain, the Government cannot retain any part of compensation amount even in case of *Inam* lands. He submits that retention of the amount is valid only in case of bilateral transaction under Section 43 of the Bombay Tenancy and Agricultural Lands Act and will not apply to a compulsory acquisition. He would further submit that implementation of Government Resolution dated 27th December 2018 cannot be retrospective as the final Award was passed on 5th November 2018. In support, he relies upon following decisions :

> ***Diskha Dilip Pawar v. Competent Authority[1] ;***
> ***Sadu Kamble v. State of Maharashtra[2] ;***
> ***State of Maharashtra v. Babu Gavate[3] ;***
> ***State of Maharashtra v. Govindrao Ghorpade[4];*** and
> ***Kamgar Nandur v. State of Maharashtra[5].***

6. *Per contra*, Mr. Kalel, learned AGP would submit that land under acquisition was *Inam* land which is restricted tenure and hence 50% of the amount as *Nazarana* was retained from the compensation amount as per Government Resolution dated 9th July 2002. He submits that the act of retention of 50% compensation amount was in consonance with the Government Resolution dated 9th July 2002 and not Government Resolution dated 27th December 2018 as the same is not applicable retrospectively. He would further submit that in the present case, the land is acquired for Kolhapur Municipal Corporation whereas the

1 (2022) 4 Mah LJ 687.
2 2018(5) Mh.L.J 656.
3 1996(1) SCC 305.
4 1985 SCC OnLine Bom 12.
5 2018 SCC OnLine Bom 8453.

Government Resolution dated 27th December 2018 applies when the acquiring body is State Government and *Nazarana* amount is 10%. He submits that in the present petition, there is no challenge to the Government Resolution dated 9th July 2002 and without challenging the same, retention of *Nazarana* from the compensation amount cannot be faulted.

7. We have considered the submissions and perused the record.

8. The final Award in respect of Petitioner's subject land was passed on 5th November 2018. At the time of passing of final Award, the Government Resolution dated 27th December 2018 was not in force and is not applicable to the acquisition. Mr. Kalel, learned AGP would fairly concede to the said position. The Respondent No.1 justifies retention of 50% of the compensation amount by placing reliance on the Government Resolution dated 9th July 2002. Perusal of Government Resolution dated 9th July 2002 would indicate that it applies when the land is sought to be re-classified from Class-II to Class-I tenure. In the present case, the Petitioner's land came to be acquired by the Government in exercise of powers of eminent domain and the acquisition did not constitute bilateral transfer. The Government Resolution dated 9th July 2002 would apply where the owner seeks re-classification of Class-II land as Class-I land and not when there is compulsory acquisition. The direction of retention of

Nazarana equivalent to 10% of compensation amount in cases of compulsory acquisition came by way of Government Resolution dated 27th December 2018, which the Respondent's affidavit itself states that cannot be applied retrospectively. Considering that the Government Resolution dated 9th July 2002 would not apply to compulsory acquisition and the Government Resolution dated 27th December 2018 does not apply retrospectively, the retention of 50% of the compensation amount is not supported by any source of power. In the present case, the subject land was RS No. 85/2B and 86/2 and the pleading in the petition is that insofar as RS No.86/2 is concerned, the same is not *Inam* land, which is not factually disputed. Retention of amount as *Nazarana* in respect of RS No.86/2 in any event cannot be countenanced.

9. In ***Diskha Dilip Pawar v. Competent Authority*** (supra), reliance was placed on the Government Resolution dated 15th July 2010 for justifying the retention of 10% of the compensation amount payable to the Petitioner therein. The issue arising for consideration before the Hon'ble Division Bench was whether it would be appropriate for the Government to deduct 10% amount from the compensation amount payable to the Petitioner under the Award and the validity of Government Resolution dated 15th July 2010. The Hon'ble Division Bench in paragraph 12 held as under :

> "The petitioners in the present proceedings are not alienating their lands, but the lands are subject to compulsory acquisition. In case of compulsory acquisition of the lands for public purpose, the occupier/owner of the land does not have any voice. He has to yield to the acquisition. The restrictions contemplated under Section 36A are applicable only if the tribal on his own volition enters into the transaction of sale and/or alienation with the non-tribal. The same does not apply to the compulsory acquisition. The acquisition of the lands is not at the behest of the petitioners nor at the will and wish of the petitioners. The State exercises its power of eminent domain in compulsorily acquiring the property. Sections 29, 36 and 36A of the MLRC do not take within its fold the exigency wherein the land is acquired compulsorily. These provisions do not prohibit compulsory acquisition of lands by the Government. In case of compulsory acquisition, the petitioners even if they are reluctant to part with the properties have no option but to divest their rights over the properties which are source of their livelihood. It would be inequitable for the Government to retain 10% amount from the amount of compensation payable to the tribal. Moreover, no source of power exists with the Government to retain 10% of the compensation payable to tribals."

10. The Hon'ble Division Bench has held that it would be inequitable for the Government to retain 10% amount from the amount of compensation payable and there is no source of power. In that case, lands were Occupancy Class-II lands. In the present case, the Petitioner is on a better footing as the Government Resolution dated 9th July 2002 does not vest any power in the Respondent No.1 to deduct any amount from the compensation amount towards *Nazarana* in case of compulsory acquisition. In the present case, without being vested with power, the Respondent No.1 has arbitrarily deducted 50% amount from the compensation amount as *Nazarana,* which is unsustainable.

11. In the light of above discussion, as the final Award was passed on 5th November 2018 and there is no Government Resolution or statutory provision demonstrated which would support the retention of 50% amount from the compensation amount, petition deserves to succeed.

12. The retention of 50% amount towards *Nazarana* from the compensation payable to the Petitioner under the final Award dated 5th November 2018 is illegal and bad in law. The Respondent No.1 is directed to release the entire amount of compensation in favour of the Petitioner as expeditiously as possible and in any event within eight weeks from today. In event the compensation amount is not released within eight weeks, the same shall carry interest @ 6% p.a. till the date of payment or realisation.

13. Rule made absolute in above terms.

[Sharmila U. Deshmukh, J.] **[M. S. Karnik, J.]**