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

WRIT PETITION NO. 4648 OF 2024

Raghunath Ganpati Patil And Another ...Petitioners
V/s.
State Of Maharashtra And Others ...Respondents

...

Mr. Chetan Patil a/w. Mr. Prathamesh Magadum, Ms. Siddheshwari Chavan, Mr. Mandar Bagkar, Advocate for the Petitioners.
Ms. S. D. Vyas, Additional GP, Mrs. M. S. Bane, AGP for the Respondent – State.

...

CORAM : ABHAY AHUJA &
NEERAJ P. DHOTE, JJ.
DATE : 3rd November, 2026

ORAL JUDGMENT (PER ABHAY AHUJA, J.):

1. Rule. By consent of parties' Counsel, rule is made returnable forthwith and is heard finally.

2. The Petitioners claiming to be project affected persons whose land has admittedly been acquired with respect to the Megholi Irrigation Project are seeking not only allotment of alternate land but also payment of the balance amount of compensation that would remain in the District Court at Kolhapur after payment of 65% of the amount of compensation to the Collector in respect of the share of the two Petitioners as declared by order dated 30th April 2008 by the

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District Court at Kolhapur resolving the dispute in respect of the apportionment of compensation between the co-owners who include the two Petitioners as well.

3. When the matter is called out, Mr. Patil, learned Counsel appearing for the Petitioners submits that the Petitioners in the present Petition are project affected persons viz. the Petitioner No. 1 and the heirs of Petitioner No. 2 whose lands were acquired by the Respondent – Authorities functioning under the Land Acquisition Act, 1894 and also under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1999 (the 'PAP Act').

4. Mr. Patil submits that land admeasuring a total of 0.06 Ares each of the two Petitioners was acquired in respect of the Gat No. 283 in Village Megholi**,** Taluka Bhudargad, District – Kolhapur. That, there were in all seven co-owners in the said Gat Number including the Petitioners and the dispute between the co-owners has been decided by the Judgment dated 30th April 2008 by the District Court whereby, the two Petitioners have been declared together to be entitled to half share in the compensation amount of Rs. 33,585/-. Mr. Patil submits that, the Petitioners are entitled for grant of alternate land and if the project affected persons are to get alternate land, they have to deposit 65% of the amount of compensation which is received as per the award. It is

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submitted that the Petitioners' land admeasuring 0.06 Ares each having been acquired for the Irrigation Project, they were entitled to land admeasuring 0.40 Ares each as per the Sankalan Register of the State which learned Counsel submits is at pages 32 and 33 of the Petition.

5. Mr. Patil submits that, in terms of Section 16 of the PAP Act, Petitioners were always desirous of getting the alternate land and also willing to deposit 65% of compensation which they were due to receive as per award and which monies had been deposited by the Collector, in the District Court Kolhapur pending the reference and that even after the order dated 30th April 2008, the amounts have not been withdrawn.

6. Mr. Patil submits that thereafter, the Petitioners have approached the Respondent No. 4 vide letter dated 29th July 2009 for allotment of alternate land to the Petitioners and also there was a follow-up, however, the Respondent No. 3 has by letter dated 7th January 2014 stated that although, the Petitioners had sought allotment of alternate land however, since no evidence had been produced showing that 65% of the compensation amount has been deposited, the application was disposed of also stating that the land which was sought for by the Petitioners could not be allotted to them as there was a stay to the allotment of such land.

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7. Mr. Patil, submits that, in response to the aforesaid communication, by letter dated 23rd November 2016, it was clarified that there was no question of showing any proof of depositing 65% of the compensation as no compensation had been received and that depositing 65% of the compensation has to be done only when notice to that effect under Section 16(2) of the PAP Act is received. Mr. Patil submits that in the present case, no notice as contemplated under Section 16(2) of the PAP Act has ever been served upon the Petitioners and therefore the question of depositing 65% of the compensation amount has not arisen till date, although, an application had been made for allotment of alternate land.

8. Mr. Patil submits that thereafter, correspondence had been exchanged with the Respondents however, there had been no response and therefore, this Petition has been filed seeking a direction to the Respondents to pay balance compensation amount to the Petitioners as per the provisions of law after deducting 65% of the compensation amount and a further direction to grant alternate land to the Petitioners as per their entitlement.

9. Mr. Patil has further submitted that, the Respondent has in its reply also taken the very same position that since the Petitioners have not deposited 65% of the amount to get the land, they do not fit into

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the definition of project affected persons and are not eligible to get the land which Mr. Patil submits is *ex-facie* erroneous and untenable. Mr. Patil further submits that the entire compensation amount has been deposited in the District Court and therefore, there was no question of the Petitioners showing any proof of depositing 65% amount as in the first place, the Petitioners have not received any compensation. Mr. Patil further submits that, for depositing 65% compensation there should have been a notice issued and served under Section 16(2) of the PAP Act to the project affected persons which has not been done in this case and hence, the occasion for depositing 65% of the compensation has not arisen. As regards, the denial of the entitlement of the Petitioners to get alternate land, as submitted in the reply, learned Counsel submits that there is no explanation offered in the reply as to why the Respondent No. 5 had earlier recommended the grant of alternate land admeasuring 0.28 Ares in Mouje Ajra to the Petitioners and draws this Court's attention to Exhibit – D (page 34) of the Petition in support.

10. Mr. Patil however submits that, the Petitioners are open to allotment of alternate land anywhere else but it cannot be said that the Petitioners are not entitled to the same as their entitlement is clear from the Sanakalan Register and also from Exhibit – D to the Petition

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which was a recommendation for alternate land admeasuring 0.28 Ares land in Mouje Ajra. In support, Mr. Patil has also relied upon the decision of Division Bench of this Court in the case of ***State of Maharashtra and Others Vs. Shantaram B. Nawale***[1]. Mr. Patil submits that it is clear from the proposition of law with respect to Section 16(2) of the PAP Act that until and unless the Collector serves a notice upon the land losers as provided under Section 16(2)(a), the question of limitation as claimed by the Respondent will not begin to run and to say that since the Petitioners have not deposited 65% of the amount with the government to get the land in 45 days as per provisions of the PAP Act, they are not eligible project affected persons to get land is untenable.

11. Mr. Patil submits that therefore, this Court may allow the Petition in terms of prayer Clause (a).

12. On the other hand, Ms. Bane, learned AGP appearing for the Respondent – State has reiterated the submissions made in the reply dated 15th March 2023 to submit that only if the Petitioners make an application under Section 16(1) of the PAP Act by depositing 65%, the application will be considered and only if the said Petitioners are eligible project affected persons. Ms. Bane has relied upon the decision

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of the Division Bench of this Court in the case of ***Maruti Ganu Supnekar Vs. The State of Maharashtra and Others***[2] and submitted that vide the said decision, this Court has clearly observed that since the Petitioner and her husband did not deposit 65% of the amount and that the notice under Section 16(2) of the PAP Act is dependent upon the application under Section 16(1) and not independent.

13. We have heard learned Counsel at considerable length and considered the rival contentions.

14. It is not in dispute that the amount of compensation of Rs. 33,585/- in respect of Gat No. 283 of Village Megholi, Taluka Bhudargad, District – Kolhapur has been deposited in the District Court at Kolhapur. Nor, is it disputed that the order dated 30th April 2008 decides the apportionment between the co-owners of the acquired land. It is also not in dispute the Petitioners who were Opponents No. 6 and 7 have been declared together to have half share in the compensation amount of Rs. 33,585/- awarded by the SDO vide Award dated 30th June 1999.

15. Under Section 16(1) of the PAP Act, an eligible project affected person who is desirous of getting land or plot or both, should make an application to the Collector for grant of land or plot, which application

2 Writ Petition No. 10346 of 2022 (Principal Seat), dated 8th December 2022

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to our mind has already been made by the Petitioners on 29th July 2009 to which the Respondent No. 3 addressed a letter dated 7th January 2014 stating that although, the Petitioners had sought allotment of alternate land however, no evidence was produced to show that 65% of the compensation amount had been deposited. And also, that the land sought for by the Petitioners could not be allotted as there was a stay to the allotment of the said land.

16. Section 16 (2)(a) of the PAP Act clearly provides that project affected person eligible for the grant of land or plot under Section 16(1) shall forfeit his right to get the same if -

> *"(a) he fails to communicate his willingness to accept the grant of land or plot made to him, to the Collector within a period of forty-five days from the date of receipt by him of a notice in that behalf from the Collector; or*
> *(b) he fails to deposit with the Collector, towards occupancy price of the land, sixty-five per cent. of the amount of compensation which he has received for his land which is acquired from him in the affected zone of of the likely cost of the land to be granted to him under sub-section (l), whichever is less, at the time of payment of such compensation to such affected person."*

17. It it is not in dispute in the facts of this case that no notice had been issued by the Collector to the project affected persons to communicate the willingness to accept the grant of land or plot made to the Petitioners. Despite that, the Petitioners have pointed out that by

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the communication dated 23rd November 2016 in response to the letter dated 7th January 2014 refusing to consider the application of the Petitioners that, the compensation amount has been deposited with the District Court and the apportionment has been decided on 30th April 2008 and that the Respondents may deduct the 65% amount deposited with the District Court and pay the balance amount and grant alternate land to the Petitioners that since no compensation had been received that therefore, there would be no question of making payment of the 65% of the compensation amount.

18. This Court in the case of *State of Maharashtra and Others Vs. Shantaram B. Nawale (supra)* has considered Section 16(2) of the PAP Act in paragraph 7 and 8 and observed as under :

> *"7. Section 16(2) provides for the circumstances in which the entitlement of the project affected person, who is eligible for the grant of land under sub-section (1), shall stand forfeited. Forfeiture of an entitlement visits the land holder with serious civil consequences. When the legislature has provided for the statutory conditions on which a forfeiture can be made, a forfeiture can be justified only on those conditions and strictly subject to the fulfillment of the conditions laid down in the enactment. Sub-section (2) of Section 16 envisages in clause (a) that an affected person, who is eligible for the grant of land, would forfeit his right upon a failure to communicate his willingness to the Collector to accept the grant of the land or plot made to him within a period of forty-five days from the date of receipt of a notice in that behalf from the Collector. In other words, what clause (a) postulates is, in the first*

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instance, that a notice must be issued under clause (a) by the Collector. Moreover, the notice must indicate to the affected person of the grant of land or plot which has been made to him. Unless such a notice is issued to the project affected person, there would be no occasion for the affected person to obtain knowledge of the fact that such a grant has been made. In the absence of a notice of the nature referred to in clause (a), there would be no occasion to treat the affected person as having failed to communicate his willingness to accept the grant of land or plot made to him. A failure to communicate willingness postulates that the person is made aware of his entitlement and of the grant which was made to him. The requirements of Section 16(2)(a) must, therefore, be strictly observed since a deprivation of the entitlement to the allotment of alternate land results in the forfeiture of a valuable right. Even otherwise, it is a well settled principle of law that in order to constitute a waiver of a legal right, there must be a clear and unequivocal and decisive act on the part of the party. (See the judgment of the Calcutta High Court in Pradip Kumar Chatterjee vs. State of West Bengal (1977) 2 Cal. LT 4 HC) waiver as defined in the Black's Law Dictionary is the intentional or voluntary relinquishment of a known right. This principle was adopted in clause (a) of sub-section (2) of Section 16.

8. Clause (b) of Sub-section (2) of Section 16 contemplates a forfeiture upon a failure of the affected person to deposit with the Collector towards occupancy price of the land, sixty-five per cent of the amount of compensation which he has received for the land which is acquired from him in the affected zone or, of the likely cost of the land to be granted under sub-section (1) at the time of payment of such compensation to such affected persons. The provisions of sub-section (2) have been interpreted in the judgment of the Division Bench of this Court in Ram Shankar Deshmukh vs. State of Maharashtra – Writ Petition No. 8385 of 2010

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together with connected batch of matters decided on 2 May 2011, The Division Bench has observed as follows:

> *"The statutory provisions are very clear and therefore limitation stipulated in sub-section (2) of section 16 of the Act will begin to run only after the Collector serves a notice upon the land losers as provided in section 16(2)(a). The learned AGP sought to contend that 65% amount is required to be deposited at the time when the land loser received compensation as provided under clause (b) of section 16(2). It is not possible to accept the above contention for the simple reason that the land loser will come to know about the entitlement to get alternate land only when he receives the notice in that behalf from the Collector as specifically provided under clause (a) of subsection (2). Hence, it has to be held that for a land loser to forfeit his right to get alternate land under the provisions of the above Act, mere non deposit of 65% of the compensation at the time of receiving the compensation is not sufficient unless the land loser was given the notice under section 16(2)(a) by the Collector in the first place. In view of the above discussion, the petitions are allowed."*

We are in respectful agreement with the view which has been adopted by the Division Bench in the judgment of the Learned Chief Justice. For a land loser to forfeit his right to get alternate land, mere non deposit of sixty-five per cent of the compensation at the time of receiving compensation is not sufficient unless, in the first place, a notice was issued under Section 16(2)(a)."

19. It is therefore, clear from the aforesaid exposition of law with respect to Section 16(2) of the PAP Act that until and unless a notice is received from the Collector, there would be no opportunity for the land

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owner to express or communicate the willingness which in the facts of this case has admittedly not been issued and the time period of 45 days cannot commence. Further, as regards the amount of 65%, the said amount having already been, as noted above, deposited with the District Court and the apportionment having already been decided on 30th April 2008, it cannot be disputed that the Petitioners are not eligible project affected persons. All that is being said is that, 65% amount has not been deposited. The Sankalan Register maintained by the State at pages 32 and 33 clearly indicates that the name of the project affected person and "देय पात्र जमीन" as 40 Are against which, there is not a word in the reply nor any contrary material placed before us.

20. The decision cited by the learned AGP in support of her contentions with respect to the dependency of notice under Section 16(2) on the outcome of the application under Section 16(1) of the PAP Act, in the facts of this case may not assist the case of the Respondents: firstly because we have already observed that an application was preferred by the Petitioners under Section 16(1) on 29th July 2009 and secondly, as no notice has been issued by the Collector under Section 16(2)(a) despite the willingness shown by the Petitioners, the question of forfeiture or even a lapsing of the period of

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45 days would not arise. Even otherwise the said decision cited by the learned AGP is distinguishable on facts as in that case, there was a clear finding that the Petitioners who were not desirous of getting any alternate land or compensation for 20 years which is not the fact herein as the Petitioners have been repeatedly requesting not only for balance compensation but also for alternate land. Also in the said case, it has been submitted that the Sanakalan Register clearly indicates that the Petitioner therein was ineligible to get any land which is not the case here as the extract of the Sankalan Register at pages 32 and 33 clearly indicates that the Petitioners are project affected persons and entitled to 0.40 Are land each. This Court however, is in respectful agreement with the finding that the notice under Section 16(2) of the PAP Act is dependent upon the outcome of the application under Section 16(1) of the Act and not independent but that is not the consideration here and cannot be so as firstly the compensation amount is lying deposited in the District Court and secondly no notice has been issued by the Collector under Section 16(1)(a) of the PAP Act.

21. Accordingly, this Court is inclined to allow the Writ Petition. Rule is made absolute in terms of prayer Clause (a) which reads thus:

> *(a) That this Hon'ble Court may be pleased to issue a writ of mandamus thereby directing the Respondents to forthwith*

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pay the balance compensation amount to the Petitioners as per the provisions of law, after deducting 65% of the compensation amount, and further direct the Respondent Authorities to forthwith grant alternate land to the Petitioners as per their entitlement in the affected Zone of Megholi Irrigation Project or any other land forming part of land pool of the Government.

22. The Writ Petition accordingly stands allowed and disposed as above.

(NEERAJ P. DHOTE, J.) (ABHAY AHUJA, J.)

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