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

**WRIT PETITION NO. 1397 OF 2017**

M/s. Devi Construction LLP ... Petitioner  
Versus  
The State of Maharashtra & Ors. ... Respondents

**WITH  
CIVIL APPLICATION NO. 200 OF 2020  
IN  
WRIT PETITION NO. 1397 OF 2017**

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Mr. Rompal Singh Kohli a/w Ms. Sejal i/by Ms. C. K. Legal for the  
Petitioner.

Mrs. Pooja Patil, AGP for Respondent Nos.1 and 5 to 7-State.

Mr. G. H. Keluskar for Respondent Nos.2 to 4.

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**CORAM : MANISH PITALE AND  
SHREERAM V. SHIRSAT, JJ.**

**RESERVED ON : 17<sup>th</sup> FEBRUARY 2026  
PRONOUNCED ON : 6<sup>th</sup> APRIL 2026**

**Judgment (*Per Manish Pitale, J.*) :**

. The petitioner has approached this Court seeking a direction against the respondents for payment of rental compensation as per the policy of the State, manifested in a number of Government Resolutions issued from time to time. It is the case of the petitioner that while the respondents took possession of the subject land belonging to the petitioner, for establishing an octroi naka or octroi post, the process of acquisition of land and

payment of compensation was undertaken much later. The amount of rental compensation is claimed from the point in time the respondents took possession of the said piece of land, till the determination and payment of compensation, as per the land acquisition award.

2. The petitioner owned lands in survey Nos.10 (part), 11 (part) and 160 (part) of Village Wakad, Taluka Mulshi, Dist. Pune. The said land was included within the limits of the respondent No.3-Pimpri Chinchwad Municipal Corporation (PCMC). In the year 1997 and in the year 2000, PCMC published draft development plan for the city of Pimpri-Chinchwad. In the draft development plan, the lands of the petitioner were reserved for octroi post. It is the case of the petitioner that in the year 2003, PCMC encroached upon the land and started using it for the purpose of the octroi post, without initiating any process for acquisition and in the absence of any negotiation with the petitioner. Apart from the octroi post, PCMC needed land for the purpose of 12 meter wide road under the development plan.

3. In this backdrop, on 24<sup>th</sup> February 2006, an agreement/*taba pavati* (possession receipt) was executed between the petitioner and PCMC for handing over 4849.80 sq. mtrs. for the octroi post and 1379 sq. mtrs. for the 12 meters road. The said agreement recorded that the petitioner had agreed for the same on the condition of payment of damages, as advance possession was being taken.

4. Thereafter, the petitioner addressed a number of communications to the respondents, particularly respondent No.3-PCMC, for taking necessary steps for acquisition of land and for payment of damages, as advance possession was taken from him. Certain communications were received from the officers of PCMC about intended steps to be taken. Eventually, on 16<sup>th</sup> July 2009, a declaration under Section 6 of the Land Acquisition Act, 1984 (hereinafter referred to as 'LA Act' for short) was issued and published in the official gazette. But, further progress was extremely slow and therefore, the petitioner was constrained to send communications and representations to the respondents to take necessary steps in the matter urgently, particularly because the petitioner stood deprived of enjoyment of its land.

5. In this context, the petitioner was constrained to file Writ Petition No.2970 of 2013 before this Court. The said writ petition was disposed of by an order dated 12<sup>th</sup> June 2013. In the said order, the Division Bench of this Court took note of the fact that advance possession of the land of the petitioner was taken and that apart from seeking acquisition and compensation for the said land, the petitioner was also pursuing its prayer for rental compensation. By the said order, the writ petition was disposed of by directing the respondents to complete acquisition of the said land under the provisions of the LA Act, within 15 months from the date of the order. As regards the claim of rental compensation, the petitioner was permitted to move an application before the

appropriate Authority, as per the policy of the State and the concerned Authority was directed to decide the representation expeditiously and in accordance with law.

6. In this backdrop, the petitioner sent representation to respondent-PCMC for the payment of rental compensation. This was followed by a number of letters, but there was no response from respondent-PCMC. On 22<sup>nd</sup> January 2015, the land acquisition award was passed. The prayer for rental compensation was not entertained, on the ground that possession was handed over by the petitioner to the PCMC by way of private negotiation, prior to initiation of acquisition proceeding. It was observed that the issue of rental compensation would therefore be dealt with by the respondent-PCMC.

7. In this backdrop, the petitioner was constrained to repeatedly approach respondent-PCMC by making representations in the year 2015-16. Since there was no response from the said respondent, in September 2016, the petitioner was constrained to file Writ Petition No. 12305 of 2016 before this Court, seeking a direction to the said respondent-PCMC to comply with the order dated 12<sup>th</sup> June 2013 passed by this Court in Writ Petition No. 2970 of 2013. During the pendency of the said writ petition, on 25<sup>th</sup> October 2016, the PCMC sent a letter to the petitioner, forwarding a demand draft of Rs.3,22,308/- towards the demand of rental compensation. Since the petitioner was totally unaware about the basis on which the amount was calculated, it sent letters

to the respondent No.3-PCMC, seeking details thereof. Eventually, on 4<sup>th</sup> November 2016, the respondent No.3-PCMC sent a letter, furnishing a copy of its order dated 10<sup>th</sup> October 2016. In the said order, it was recorded that the aforesaid amount was calculated for the period between August 2003 and 24<sup>th</sup> February 2006 on the basis of per square foot per annum rent of the area.

8. The petitioner immediately sent a letter dated 11<sup>th</sup> November 2016 to respondent No.3-PCMC, stating that the said order dated 10<sup>th</sup> October 2016 was not in terms of the policy of the State, for payment of rental compensation. Thereafter, the petitioner filed the instant writ petition in this Court. The petitioner prayed for quashing and setting aside of the said impugned order dated 10<sup>th</sup> October 2016 issued by the respondent No.3-PCMC; a further direction to the respondent No.6 i.e. the Special Land Acquisition Officer (SLAO) to decide the claim of the petitioner for rental compensation in terms of the Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979 and 24<sup>th</sup> March 1988; a direction for working out rental compensation and for payment of the same along with interest at the rate of 6% per annum, in terms of Government Resolution dated 24<sup>th</sup> March 1988 and in the meanwhile, the petitioner prayed for interim directions.

9. The respondent No.6-SLAO filed affidavit in reply in the writ petition, stating that the land acquisition award dated 22<sup>nd</sup> January 2015 had correctly made remarks on the aspect of rental

compensation claimed by the petitioner and that on the said aspect, the appropriate Authority was the respondent No.3-PCMC. The respondent No.1 i.e. the State of Maharashtra through the Principal Secretary of Urban Development Department, also took a similar stand in its reply affidavit. Respondent Nos.2 to 4 filed an additional affidavit, simply placing on record subsequent Government Resolutions dated 17<sup>th</sup> April 2003, 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003, claiming that the entire scheme of payment of rental compensation as per earlier Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979, was cancelled and therefore, the petitioner was not entitled to the relief claimed in the writ petition.

10. The petitioner filed rejoinder affidavit and a further affidavit, refuting the claims made by the respondents and insisted upon the relief of rental compensation, as per the policy of the State. It was submitted that the last Government Resolution dated 26<sup>th</sup> December 2003 inured to the benefit of the petitioner. In this backdrop, the petition was taken up for hearing.

11. Mr. Rompal Singh Kohli, learned counsel appearing for the petitioner, submitted that the policy of the State was manifested in the aforementioned Government Resolutions dated 1<sup>st</sup> December 1972, 2<sup>nd</sup> April 1979, 17<sup>th</sup> April 2003, 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003. It was submitted that a proper reading of the said Government Resolutions demonstrated that the petitioner was entitled for payment of rental compensation at the rate of 8% per

annum on the quantum of the compensation determined in the land acquisition award from the point in time that possession of the land was taken, till the full amount in the final award was paid. It was submitted that all the respondents, including respondent No.3-PCMC, are bound by the said policy and since the respondents have granted such rental compensation to other land owners and in some cases, upon directions issued by this Court, the present writ petition deserves to be allowed. It was submitted that the impugned order dated 10<sup>th</sup> October 2016 is wholly unsustainable, as it does not take into account the aforementioned policy of the State and in any case, it illegally restricts the payment of rental compensation from August 2003 to 24<sup>th</sup> February 2006.

12. It was submitted that although, formal agreement/*taba pavati* (possession receipt) about advance possession of the subject land was executed on 24<sup>th</sup> February 2006, the possession of the land was actually taken by the respondent No.3-PCMC much earlier i.e. in August 2003. As a matter of fact, the petitioner specifically pleaded in the writ petition that the respondent No.3-PCMC encroached upon the lands of the petitioner in the year 2003, in the light of the reservation of the said lands for establishment of octroi post. On this basis, it was submitted that the period for which the petitioner is entitled for rental compensation begins from August 2003. It was submitted that although the respondents were now claiming that advance possession was taken on 24<sup>th</sup>

February 2006, the impugned order which calculates payment of compensation from August 2003 belies the aforesaid stand taken by the respondents.

13. The learned counsel for the petitioner referred to the contents of the aforementioned Government Resolutions. He submitted that initially as per Government Resolution dated 1<sup>st</sup> December 1972, it was provided that whenever land was taken over by private negotiation and possession was taken in advance, rental compensation was payable at the rate of 6½% per annum from the date on which possession of land was taken over, till the date on which full amount was paid as per the final award. By subsequent Government Resolution dated 2<sup>nd</sup> April 1979, the rate was increased to 8% per annum for calculating the amount of rental compensation. Thereafter, circular dated 24<sup>th</sup> March 1988 was issued, directing that whenever possession was taken by negotiation with the land owner, expeditious steps were required to be taken for acquisition, so that the State Exchequer was not unnecessarily overburdened. It was submitted that thereafter, Government Resolution dated 17<sup>th</sup> April 2003 was issued, which cancelled the earlier Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979, in the light of the financial implications on the State. It was submitted that the said Government Resolution itself clarified that it would be implemented from the date of issuance of the same and that those cases wherein possession of lands was taken by private negotiation prior to

issuance of the said Government Resolution, further action would be taken in the light of the cancelled Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979. Thereafter, reference was made to Government Resolutions dated 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003, to submit that only the basis of calculation of rental compensation was changed, but the entitlement of land owners like the petitioner was not adversely affected.

14. The learned counsel for the petitioner placed heavy reliance on judgment of Division Bench of this Court in the case of *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors.*, **2009 (3) Mh.L.J. 413**, wherein the aforementioned Government Resolutions were taken into consideration and it was eventually concluded that the land owner was entitled to rental compensation at the rate of 8% per annum specified in the aforementioned Government Resolutions and that the said amount would be paid along with interest at the rate of 6%. It was submitted that in the said judgment, this Court took into consideration various judgments of the Supreme Court that recognized the concept of rental compensation, since the land owners were deprived of enjoyment of their lands, even before the acquisition proceeding was undertaken. Attention of this Court was also invited to judgments in the cases of *Jagdish s/o. Kashiprasad Tiwari vs. The Special Land Acquisition Officer & Ors.* (judgment and order dated 16<sup>th</sup> November 2017 passed in Writ Petition No. 1092 of

2013) and *Uttam Ganpat Ubale & Ors. vs. State of Maharashtra & Ors.*, **2012 SCC OnLine Bom 692**, wherein this Court granted relief of rental compensation to similarly situated land owners.

15. As regards reliance placed on behalf of respondent No.3-PCMC on the judgment of this Court in the case of *Ashok s/o. Masu Bansode & Anr. vs. State of Maharashtra & Ors.*, **2023 (4) Mh.L.J. 119**, it was submitted that the said case was concerned with a different set of facts, giving rise to completely distinct issues. This Court in the said judgment took into consideration the fact that under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'Act of 2013' for short), upon acquisition of land through private negotiation an additional compensation of 25% was payable.

16. The learned counsel for the petitioner further submitted that there is no substance in the contention raised on behalf of the respondent No.3-PCMC that the Government Resolutions pertain only to irrigation projects, simply for the reason that the policy of the State cannot be restricted to acquisitions for the purpose of irrigation projects and that in any case, the Supreme Court had also recognized the concept of rental compensation and relief had been granted to land owners. On this basis, it was submitted that the said judgment is clearly distinguishable and the present writ petition ought to be allowed.

17. On the other hand, Mrs. Pooja Patil, learned AGP, appearing

on behalf of respondent No.1 and 5 to 7 i.e. the State Authorities, submitted that the policy of the State was evident from the aforesaid Government Resolutions. In terms of Government Resolution dated 17<sup>th</sup> April 2003, the earlier Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979 had been cancelled. It was further submitted that this Court may take into consideration the subsequent policy of the State, as per Government Resolutions dated 17<sup>th</sup> April 2003, 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003. It was emphasized that the change in policy was brought about due to heavy financial burden on the public exchequer in respect of payment of rental compensation.

18. Mr. Keluskar, learned counsel appearing for respondent Nos. 2 to 4, including respondent No.3-PCMC, submitted that in the first place, the aforementioned Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979 and even the subsequent Government Resolutions, all apply only to land acquisition concerning irrigation projects. Since the present petition concerns utilization of land for establishment of octroi post, the Government Resolutions are not applicable at all. It was submitted that on this basis itself, the writ petition deserves to be dismissed. It was further submitted that the Government Resolution dated 17<sup>th</sup> April 2003 cancelled the earlier Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979, thereby demonstrating a departure from the earlier policy of the State. No rental compensation is payable in the light of the cancellation of

the earlier Government Resolutions. It was submitted that the petitioner was duly compensated for acquisition of its land as per the award dated 22<sup>nd</sup> January 2015. The petitioner had initiated reference proceeding for enhancement of the quantum of compensation and therefore, it cannot be permitted to claim further relief of rental compensation.

19. It was submitted that there is no statutory basis for grant of rental compensation and since such relief is purely based on executive instructions in the form of Government Resolutions and since the said Government Resolutions providing for rental compensation have been cancelled, there is no question of payment of rental compensation to the petitioner. It was submitted that the petitioner cannot rely upon judgments passed by this Court in the cases of *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors. (supra)*, *Jagdish s/o. Kashiprasad Tiwari vs. The Special Land Acquisition Officer & Ors. (supra)* and *Uttam Ganpat Ubale & Ors. vs. State of Maharashtra & Ors. (supra)*. The learned counsel for the said respondents placed heavy reliance on judgment of this Court in the case of *Ashok s/o. Masu Bansode & Anr. vs. State of Maharashtra & Ors. (supra)*, wherein it was categorically held that rental compensation is not payable in the context of the Act of 2013. Since the LA Act has been repealed and it is no longer available, the petitioner cannot be granted rental compensation.

20. Having heard the learned counsel for the rival parties, this

Court is of the opinion that the claim of the petitioner for payment of rental compensation will have to be decided upon the policy of the State manifested in the said Government Resolutions dated 1<sup>st</sup> December 1972, 2<sup>nd</sup> April 1979, 17<sup>th</sup> April 2003, 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003. It is to be noted that the concept of rental compensation is not found in the provisions of the LA Act and it is payable as per the policy of the State. This pertains to cases where possession of the subject land was taken even before initiation of the land acquisition proceedings. The said concept of rental compensation in the context of the respondent-State of Maharashtra, came up for consideration before the Supreme Court in the case of *State of Maharashtra & Ors. v/s. Maimuma Banu & Ors.*, (2003) 7 SCC 448. In the said judgment, it was observed as follows :

*“7. It is to be noted that the resolutions adopted by the Government were intended to benefit the landowners whose lands were acquired. To avoid unnecessary delays in payment urgency for follow-up action was indicated in the resolutions. To that extent, learned counsel for the landowners are on terra firma. But legally the landowners are not entitled to any interest. There is no provision either in the resolutions or in the statutes concerned which entitles the landowners to payment of interest. Whatever is statutorily payable has been clearly indicated in the Act itself. Section 23(1-A) of the Act was introduced by the Amendment Act of 1984. There is no dispute, and in our opinion rightly, that rental compensation is not relatable to the Act. The entitlement of the claimants is on the basis of the government resolutions i.e. on the basis of executive orders.*

*8. It is crystal clear from a bare reading of the provisions of the Act that it does not provide for payment of any rental compensation. Therefore, the appellants are correct in their*

*stand to the extent that the liability for rental compensation does not have its source under the Act. Therefore, the logic of Sections 17(3-A), 23(1-A) and 28 of the Act and Section 34 has no application in law to rental compensation. That being the position, the High Court was not justified in relying on Sections 17(3-A), 23(1-A) or Section 28 of the Act to grant interest.*

*9. But the problem does not end there. Admittedly, the possession of land was taken long years back. Thereafter, the landowner does not practically possess any right over the land in question except to the compensation as statutorily provided for. But it would be illogical and improper to turn a Nelson's eye to the factual position as highlighted by the respondents. It is not in dispute that in most of the cases the rental compensation has not been paid. If that factual position continues, it clearly is a case where the amount to which a person is entitled is withheld without any legitimate excuse. The learned counsel for the appellants strenuously urged that in most of the cases the proceedings have not yet attained finality and are pending either before the Reference Court or in appeal. That does not provide a legitimate excuse to the appellants to withhold payment of the rental compensation. The amount calculated on the basis of award by the Land Acquisition Officer cannot be below than the amount to be ultimately fixed. If in appeal or the reference proceeding, there is any variation, the same can be duly taken note of as provided in law. There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary, redetermination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If, however, the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step. Looking at the problem from another perspective, one thing is clear that authorities have clearly ignored the sense of urgency highlighted in the various resolutions.”*

21. Thereafter, in the said judgment, the Supreme Court proceeded to grant interest at the rate of 6% from 1<sup>st</sup> April 2000 on the amount of rental compensation payable to the land owner. Thus, despite recognizing that there was no statutory obligation, it was held that the State was liable to pay rental compensation for the period that the land owner was deprived of enjoyment of its land, even before initiation of land acquisition proceeding.

22. In a subsequent judgment in the case of *R. L. Jain (D) by LRS. vs. DDA & Ors., (2004) 4 SCC 79*, the Supreme Court took into consideration situations where the land owners stood dispossessed prior to issuance of preliminary notification under Section 4(1) of the LA Act. It was found that only possession was taken over in such situations, while the title continued to vest in the land owner. In this context, in the said judgment, the Supreme Court observed as follows :

*“18. In a case where the landowner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act the Government merely takes possession of the land but the title thereof continues to vest with the landowner. It is fully open for the landowner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the landowner is entitled while determining the compensation amount payable to the landowner for the acquisition of the property. The provisions of Section 48 of the Act lend support to such a course of action. For delayed payment of such amount*

*appropriate interest at prevailing bank rate may be awarded.”*

23. Thus, the Supreme Court recognized the fact that as per State policy, the land owners in such cases would be entitled to rental compensation and that in any case, the land owner would be entitled to rent or damages for use of the property, as it would be just and equitable to grant such relief.

24. A Division Bench of this Court in the aforesaid case *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors. (supra)* considered the aforementioned Government Resolutions in detail and thereupon, found that the rental compensation would be payable to such land owners whose lands were taken over even prior to initiation of land acquisition proceeding. It was found that where possession was taken over prior to 17<sup>th</sup> April 2003, the Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979 would apply and that in any case, even if possession was taken subsequent to 17<sup>th</sup> April 2003, rental compensation would be payable in terms of the Government Resolutions dated 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003. It was held that as per Government Resolution dated 26<sup>th</sup> December 2003, the basis of calculating the rental compensation would change and it would be different from the basis as specified in Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979. The relevant observations in the said judgment are as follows :

*“8. In answer to the Petition, which claims rental compensation, a reply has been filed on behalf of respondent No. 2, by Rambhau Dalsing Rathod, Special Land Acquisition*

*Officer, Jayakwadi Project No. 2, Aurangabad. It is admitted that possession of the petitioner's land was taken by respondent No. 3 by private negotiations on 17-4-2002 and award was passed on 9-5-2007. It is, however, pointed out that by Government Resolution dated 17-4-2003, the State of Maharashtra has cancelled the Government Resolution dated 1-12-1972. It is then set out that consequent upon the Government Resolution dated 26-12-2003 there is no question of granting rental compensation for acquired land which was acquired by private negotiations. The affiant then, sets out that, however, it is made clear that in pending cases lands which are acquired by private negotiations prior to 26-12-2003 the Government has decided to pay the rental compensation on the amount of open land awarded by the Land Acquisition Officer and not on the amount of trees, structure etc. i.e. total amount of award value. It is reiterated that rental compensation payable, has to be calculated based on Government Resolution dated 26-12-2003.*

*9. There is, therefore, no dispute that rental compensation in respect of lands where possession was taken prior to 17-4-2003, the rental compensation is still payable and also in respect of those lands where possession was taken after that date, which are covered by Government Resolution dated 17-10-2003. The question that we are called upon to answer is, whether the rental compensation should be paid based on the Government Resolution dated 1-12-1972 read with Government Resolution dated 2-4-1979 or based on the Government Resolution dated 26-12-2003. Reason for payment of rental compensation is that the State takes possession of the land even before proceedings are initiated under the provisions of the Land Acquisition Act. The loss by way of income to the landowner on account of such dispossession is not provided for under the provisions of the Land Acquisition Act.*

*10. Is it therefore, open to the State Government, by a subsequent Resolution dated 26-12-2003, to provide for determination of rental compensation on a different yardstick than that provided by Resolution dated 1-12-1972 and 2-4-1979? Insofar as Resolutions dated 1-12-1972 and 2-4-1979, we have earlier referred to Para (6). It is clear from the*

*language of the said Resolution that, rental compensation is based on “the award value.” The award value in terms of section 23 of the Act would be what is payable under section 23 to the exclusion of additional compensation payable under section 23 (1-A). This, as pointed out earlier, was in issue in the Judgment before this Court in State of Maharashtra v. Maimuna Banu (supra). The Supreme Court in Appeal accepted the principle, that the landowner is entitled for rental compensation in terms of the Government Resolution and that in the event in a reference or otherwise the market value is enhanced, the rental compensation will have to be re-determined. Under the Government Resolution of 1-12-1972, the rental compensation was 6 and ½% of the award value. By Resolution of 2-4-1979 it has been made 8%. Therefore, from 2-4-1979, the rental compensation payable would be at the rate of 8% of the market value.*

13. *Even if it is to be read that there is a departure in Government Resolution of 26-10-2003. If possession is taken after 26-12-2003, the rental compensation would be payable in terms of Government Resolution dated 26-12-2003. If a party has acted on a promise by the State to his detriment, the State would be bound to be held by its promise. The doctrine of promissory estoppel and the principle thereto has evolved over a period of time in this Country. The Supreme Court in M.P. Mathur v. D.T.C., (2006) 13 SCC 706 : AIR 2007 SC 414 has observed that promissory estoppel is based on equity or obligations. It is not based on vested right. In equity the Court has to strike a balance between individual rights on one hand and the larger public interest on the other hand. The principle of promissory estoppel was invoked by the Supreme Court in the Case of Union of India v. Anglo Afghan Agencies, AIR 1968 SC 718, wherein it was laid down that even though the case would not fall within the terms of section 115 of the Indian Evidence Act, which indicates the rule of estoppel, it would be still open to a party who has acted on the representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of formal contract as required by Article 299 of the Constitution. The principle has been evolved by equity to avoid injustice and is neither in the rule of contract nor in the*

*rule of estoppel.”*

25. On the question of payment of interest on such delayed payment of rental compensation, after referring to the judgment of the Supreme Court in the case of *State of Maharashtra & Ors. v/s. Maimuma Banu & Ors. (supra)*, the Division Bench of this Court in the aforesaid case of *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors. (supra)*, held as follows :

*“15. We then come to the issue of cases where a party though entitled to be paid rental compensation on yearly basis after possession is taken, has not been paid rental compensation. In State of Maharashtra v. Maimuma Banu (supra) the Supreme Court while interfering with the interest awarded by this Court, held as under:*

*“It would therefore be appropriate if appellants pay interest @ 6% from 1-4-2000 till amounts payable as rental compensation are paid to the concerned landowners. This direction shall not apply to those cases where the payments have already been made prior to 1-4-2000.”*

*It is thus, clear that interest on delayed rental compensation is also payable, but the same is fixed at the rate of 6% and from 1-4-2000. The Supreme Court took the approach as many landowners approached the Court after considerable lapse of time. In our opinion, therefore, the interest on unpaid rental compensation, would be payable at the rate of 6% and that would be from 1-4- 2000. It is true that we have not fixed any cut off period for payment of interest in the Judgment of Dinkar Sandipan Gholve (supra), the same is fixed now, considering the Judgment of the Supreme Court in State of Maharashtra v. Maimuma Banu.”*

26. This Court finds that in the subsequent judgments in the cases of *Jagdish s/o. Kashiprasad Tiwari vs. The Special Land Acquisition Officer & Ors. (supra)* and *Uttam Ganpat Ubale &*

*Ors. vs. State of Maharashtra & Ors. (supra)*, this Court followed the said position and granted relief of rental compensation to the land owners.

27. The said position of law will have to be applied to the present case, on the basis of documents available on record.

28. The respondents have placed much emphasis on the fact that the petitioner itself relied upon the agreement/*taba pavati* (possession receipt) dated 24<sup>th</sup> February 2006 executed between the respondent No.3-PCMC and the petitioner, to contend that possession by way of private negotiation was taken on the said date i.e. 24<sup>th</sup> February 2006. On this basis, it was submitted that since Government Resolution dated 17<sup>th</sup> April 2003 cancelled the earlier Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979, there was no question of applicability of the concept of rental compensation as manifested in the said two Government Resolutions. It was submitted that in any case, possession having been taken beyond 17<sup>th</sup> April 2003, the petitioner was not entitled to any relief in this petition. On the other hand, the petitioner claims that possession of the subject land was taken in the year 2003. In the writ petition, the petitioner has not specified the date on which the possession was taken in the year 2003, although, it is claimed that possession was taken in the year 2003 and the land acquisition award was passed at a belated stage on 22<sup>nd</sup> January 2015.

29. We find that the document at Exhibit 'A', which is the

impugned order dated 10<sup>th</sup> October 2016, whereby the respondent No.3-PCMC has determined the amount of rent payable to the petitioner, itself records such amount payable from August 2003 to 24<sup>th</sup> February 2006. Thus, the said document issued by the respondent No.3-PCMC itself shows that possession of the aforesaid land of the petitioner was taken in August 2003 for establishing the octroi post.

30. Even if that be so, we find that taking over possession of the aforesaid land of the petitioner was after 17<sup>th</sup> April 2003. Therefore, the position as regards applicability of Government Resolutions for payment of rental compensation would be the one obtaining as per Government Resolution dated 17<sup>th</sup> April 2003. A perusal of the said Government Resolution shows that the earlier Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979 were cancelled. This was in the backdrop of the financial liability on the State Exchequer, due to payment of such sums towards rental compensation and the need for completing land acquisition proceeding for public purpose, at the earliest. The said Government Resolution indeed specified that it came into effect from 17<sup>th</sup> April 2003 and that those cases where possession was taken prior to the said date, rental compensation would continue to be payable under Government Resolutions dated 1<sup>st</sup> December 1972 and 2<sup>nd</sup> April 1979.

31. But, it is crucial to note that subsequent Government Resolution issued within a few months on 17<sup>th</sup> October 2003,

specified that in cases where possession was required to be taken urgently before initiation of land acquisition proceeding as per four categories identified therein, the Government Resolution dated 1<sup>st</sup> December 1972 would continue to apply and for other projects, the Government Resolution dated 17<sup>th</sup> April 2003 would be applicable.

32. Thereafter, Government Resolution dated 26<sup>th</sup> December 2003 was issued, which clarified that in the light of the financial burden on the State Exchequer, rental compensation as per the aforesaid Government Resolutions of the years 1972 and 1979 would be payable on the value of open land. The said Government Resolutions dated 1<sup>st</sup> December 1972, 2<sup>nd</sup> April 1979, 17<sup>th</sup> April 2003, 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003, will all have to be read together for determining the policy of the State as regards the entitlement of land owners like the petitioner, towards payment of rental compensation.

33. A submission was made on behalf of respondent No.3-PCMC that the policy of rental compensation was applicable only for irrigation projects and since the present case concerned utilization of the land for octroi post, the said Government Resolutions could not be made applicable. We are of the opinion that the said contention cannot be accepted, for the reason that there cannot be any discrimination between land owners on the basis of the purpose for which possession of their lands is taken over, even prior to initiation of land acquisition proceedings. In

the case of *Union of India & Anr. vs. Tarsem Singh & Ors.*, (2019) 9 SCC 304, the Supreme Court relied upon its own earlier judgments in the cases of *P. Vajravelu Mudaliar vs. Special Deputy Collector for Land Acquisition*, AIR 1965 SC 1017 and *Nagpur Improvement Trust vs. Vithal Rao*, (1973) 1 SCC 500, to hold that for the land owner the only relevant aspect is deprivation of enjoyment of its own land and that the public purpose for which the land is ultimately utilized is hardly of any relevance. It was found that if held otherwise it would amount to discriminatory treatment to similarly situated land owners, thereby violating Article 14 of the Constitution of India. Thus, we find that the respondents cannot escape liability of suitably compensating the petitioner, only on the basis of the purpose for which the land has been ultimately utilized. Hence, we hold that the payment of rental compensation to the petitioner is governed by the aforesaid executive instructions in the form of Government Resolutions.

34. This Court in the case of *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors.* (supra), after analyzing the effect of subsequent Government Resolutions dated 17<sup>th</sup> April 2003, 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003, in the above quoted portion of the said judgment, held that if possession is taken after 26<sup>th</sup> December 2003, the rental compensation would be payable in terms of the said Government Resolution i.e. on the basis of price/value of open land, instead of the price fixed under the award for “land” as defined under the LA Act. Hence, we find that the

respondents cannot escape their liability of payment of rental compensation to the petitioner on the basis that possession of the subject land was taken for establishing octroi post after 17<sup>th</sup> April 2003. On a proper reading of Government Resolutions dated 17<sup>th</sup> October 2003 and 26<sup>th</sup> December 2003, we hold that only the basis of calculation of the rental compensation changed from the one specified in Government Resolution dated 1<sup>st</sup> December 1972 read with Government Resolution dated 2<sup>nd</sup> April 1979 to the one specified in Government Resolution dated 26<sup>th</sup> December 2003. We also find that restricting the effect of Government Resolution dated 17<sup>th</sup> October 2003 to only certain irrigation projects is also not sustainable, again in the light of the said position of law reiterated by the Supreme Court in the case of *Union of India & Anr. vs. Tarsem Singh & Ors.* (**supra**) that the use to which the land is put cannot be the basis for determining the relief to which the land owner would be entitled, as the fact that the land owner has been deprived of enjoyment of its own land in all such cases, can never be disputed.

35. In this context, the above quoted observations made by the Supreme Court in the case of *R. L. Jain (D) by LRS. vs. DDA & Ors.* (**supra**) assume great significance, for the reason that the Supreme Court, without any reference to executive instructions like the Government Resolutions issued by the respondent-State of Maharashtra, observed that a land owner who is deprived of possession of its land, even before initiation of land acquisition

proceeding is entitled to get rent or damages for use and occupation for the period that the State authority has retained possession of the property even prior to acquisition. Therefore, we are inclined to read the aforementioned Government Resolutions to hold that the petitioner is entitled to payment of rental compensation from the point in time that possession of the subject land was taken, till the time compensation for acquisition of the land was actually paid to it under the land acquisition award. As per Government Resolution dated 26<sup>th</sup> December 2003, the calculation of rental compensation would be on the price/value of open land, instead of value determined under the land acquisition award for "land" as defined under the LA Act.

36. We also find that as per the law laid down by the Supreme Court in the case of *State of Maharashtra & Ors. v/s. Maimuma Banu & Ors.* (**supra**) followed by this Court in various judgments, including the judgment of Division Bench of this Court in the case of *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors.* (**supra**), the petitioner is also entitled to payment of interest at the rate of 6% on the amount of rental compensation that shall be determined in the light of the observations made hereinabove.

37. As regards reliance placed on behalf of respondent No.3-PCMC on the judgment of this Court in the case of *Ashok s/o. Masu Bansode & Anr. vs. State of Maharashtra & Ors.* (**supra**), suffice it to say that the said judgment is distinguishable on facts. In the said case, the acquisition was under the provisions of the

Act of 2013 by way of private negotiations and in terms of the provisions of the said Act, the land owner was already paid 25% additional compensation. It was in this context that certain observations were made with regard to entitlement of rental compensation under the LA Act and Government Resolutions. In the present case, the respondent No.3-PCMC simply walked into the property of the petitioner in August 2003 for establishing octroi post. Subsequently, it executed the aforesaid document dated 24<sup>th</sup> February 2006 titled as agreement/*taba pavati* (possession receipt).

38. The petitioner had to knock the doors of this Court in writ jurisdiction, as the land acquisition proceeding initiated by issuance of declaration under Section 6 of the LA Act in the year 2009, was not followed up by the respondents-Authorities. It was only after this Court issued specific directions in its order dated 12<sup>th</sup> June 2013 passed in Writ Petition No. 2970 of 2013 filed by the petitioner that further steps were taken in the matter and the land acquisition award was eventually rendered on 22<sup>nd</sup> January 2015. In the said order itself, this Court had granted liberty to the petitioner to make an application to the appropriate Authority for grant of rental compensation, as per the policy of the State. In that regard, the respondent No.3-PCMC determined the amount payable towards rental compensation only for the period between August 2003 to 24<sup>th</sup> February 2006, as per the impugned order dated 10<sup>th</sup> October 2016. The said order was not in terms of the

policy of the State as manifested in the aforementioned Government Resolutions, culminating in the Government Resolution dated 26<sup>th</sup> December 2003.

39. Hence, we find substance in the contentions raised on behalf of the petitioner and further, that the respondents are not justified in contending that rental compensation is not payable to the petitioner, despite the admitted position that respondent No.3-PCMC took possession of the subject land in August 2003 and the compensation payable under the land acquisition award was eventually determined as per the award passed after about 12 years on 22<sup>nd</sup> January 2015.

40. In view of the above, the writ petition is allowed in the following terms :

- (a) The impugned order dated 10<sup>th</sup> October 2016 is quashed and set aside.
- (b) The respondent No.3-PCMC is directed to calculate the amount of rental compensation payable to the petitioner from August 2003 till the date on which amount of compensation under the said award dated 22<sup>nd</sup> January 2015 was paid to the petitioner. The amount shall be calculated as per Government Resolution dated 26<sup>th</sup> December 2003 i.e. on the basis of the price/value of open land and rental compensation shall be at the rate of 8% p.a. of the said price/value, instead of the price/value determined under the said award, as per the definition of "land" under the LA Act.

- (c) The respondent No.3-PCMC shall pay the aforesaid amount of rental compensation along with interest at the rate of 6% p.a. in terms of the judgment of the Supreme Court in the cases of *State of Maharashtra & Ors. v/s. Maimuma Banu & Ors. (supra)* and *Bhagwat s/o. Nathu Patil vs. State of Maharashtra & Ors. (supra)*.
- (d) The said exercise of determining the amount payable in terms of the directions issued hereinabove, shall be completed, and the amounts shall be paid to the petitioner, within a period of four months from today.
- (e) The amount of Rs.3,22,308/- already paid to the petitioner as per the impugned order dated 10<sup>th</sup> October 2016 shall be adjusted, while making payment of the amount as per the directions given hereinabove.
41. Pending applications also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)