



Judgment

wp5639.16.odt

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

WRIT PETITION NO.5639 OF 2016

Shri Mahadeo s/o Jagannath Dekate,
aged about: 70 years, occupation: agriculturist,
permanent resident of Hingni, tahsil Selu,
district Wardha. **Petitioner.**

:: VERSUS ::

1. The State of Maharashtra,
through its Additional Principal
Secretary, Department of Revenue
and Forest, Mantralaya,
Mumbai-400032.

2. The Principal Chief Conservator
of Forest, (wild life),
Government of Maharashtra, Van Bhavan,
Ramgiri Road, Civil Lines,
Nagpur-440001.

3. Chief Conservator of Forest
(terrotorial) Nagpur Circle,
Civil Lines, Nagpur.

4. Deputy Conservator of Forest,
(terrotorial) Civil Lines, Wardha.

5. Range Forest Officer,
Hingni Range, Tahsil Selu,
district Wardha.

6. The Collector,
Wardha, Civil Lines, district Wardha. **Respondents.**

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Shri A.A.Sambarey, Counsel for the Petitioner.
Shri D.V.Chauhan, Government Pleader (Senior Counsel)
assisted by Shri A.B.Badar, AGP for Respondents.
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CORAM : URMILA JOSHI-PHALKE & NIVEDITA P.MEHTA, JJ.
CLOSED ON : 15/04/2026
PRONOUNCED ON : 24/04/2026

JUDGMENT : (Per : Urmila Joshi-Phalke)

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

2. By this petition, the petitioner is seeking compensation for damages caused to fruit bearing trees of Pomegranates by Wild Animals (Birds) at field No.212, mouza Hingni, tahsil Selu, district Wardha.

3. The petitioner, who is agriculturist, contended he is owner of field bearing No.212, mouza Hingni, tahsil Selu, district Wardha along with other agricultural lands. Being an agriculturist, he has cultivated various seasonal crops in his agricultural field and he also planted Pomegranate trees in the above said field. 7/12 extract filed on record shows entry in respect of the Pomegranates. The Bore Wild Life Sanctuary

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covers area of 61.10 square meters, which includes 3237 Hectors of Reserved Forest, 2213 Hectors of Protected Forest and 660 Hectors of Unclassified Forest. The wild animals and birds are important faunas of this sanctuary. The field of the petitioner is adjacent to the said Wild Life Sanctuary. Under advice of Horticulture Expert, the petitioner has undertaken plantation of 800 trees of Pomegranates (special variety named as “Bhagwa”) in about 1.5 acres in his agricultural field. In the month of May 2016, damage was caused to Pomegranates fruits due to Parakeets (Parrots). Virtually, all the Pomegranates trees laden with fruits were ransacked by the said birds and loss was caused to the petitioner to the extent of Rs.20.00 lacs to Rs.25.00 lacs. Therefore, he immediately approached respondent No.1 to lodge a complaint. However, respondent No.4 refused to accept the report. The petitioner lodged an OnLine complaint and, thereafter, he approached to an Agricultural Officer through the Collector. He demanded a survey and consequent compensation from the said authority. On the advice of the

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Office of the District Collector, he approached the District Agriculture Officer. Therefore, the District Agriculture Officer directed the Taluka Agriculture Officer, Selu to visit the spot. Accordingly, he visited the spot and submitted his report. The Agriculture Officer has noted that 50 to 55% fruits were damaged by the said birds. Accordingly, panchanama was drawn. Despite these formalities completed by the Agriculture Officer, they have shown their inability to pay amount of compensation as there is no provision in Government Resolutions dated 2.7.2010, 5.9.2013, and 25.11.2013 if damage is caused by the birds like Parrots.

4. Thus, it is contention of the petitioner that though the Agriculture Officer has admitted that the damage is being caused by the wild birds, but in absence of express provisions, they are unable to pay any compensation and thereby claim of the petitioner was rejected.

Hence, this petition.

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5. The present petition is strongly opposed by the State on the ground that there is no material to show that the damage is caused by the birds like Parrots. The State has admitted that the petitioner has made a representation in May 2016 alleging damage to the Pomegranate trees by flock of birds and inspection note dated 19.5.2016 recorded that about 50% to 55% fruits were found eaten. As per the contention of the State, the birds like Parrots are not covered under the Wild Animal and there is no express provision in the Government Notifications also to compensate the present petitioner in case of damage is caused by the birds and, therefore, the petition deserves to be dismissed.

6. Learned counsel for the petitioner submitted that the birds like Parakeets are covered under Schedule-II of The Wild Life (Protection) Act, 1972 (the Wild Life Act). He submitted that in view of definition given under Section 2(36) of the Wild Life Act itself states that “wild animal, means any animal specified in Schedule-I or Schedule-II and found wild in nature. He submitted that Schedules specifically include
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parrots which also includes Alexandrine Parakeets and other species of parakeets.

He further invited our attention towards the spot panchanama and submitted that it specifically shows that there was no other sign for damage of the said fruits. The said panchanama specifically discloses that loss is caused to the petitioner due to flock of birds. He submitted that though there is no express provision in the Government Resolutions, the said Resolutions show that when loss is caused to the agricultural field or the fruit bearing trees, agriculturists are entitled for compensation.

7. Learned counsel for the petitioner has placed reliance on the decisions of this court in the cases of **Vimal Haribhau Naik vs. State of Maharashtra, thr.its Additional Principal Secretary (Forest) and others, reported in 2015 SCC OnLine Bom 2025** and **Baburao Abaji Aglawe vs. State of Maharashtra and ors, reported in 2012(3) AIR Bom R 171.**

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8. Per contra, learned Government Pleader for the State vehemently submitted that after considering relevant judgments and the Government Resolutions, the birds like Parrots though included in Schedule-II are not covered by the Government Resolutions and, therefore, the petitioner is not entitled for any compensation. He submitted that under the Wild Life Act, wild animal is defined broadly in Section 2(36) of the Wild Life Act to include animals specified in Schedules appended to the Wild Life Act. By virtue of this definition of the Wild Life Act, Parakeets and Parrots are included. However, such inclusion is for a limited purpose. In fact, under the Scheme of the Wild Life Act, there is no statutory framework for dealing with payment of compensation.

He also invited our attention towards Government Resolutions dated 2.7.2010, 5.9.2013, and 25.11.2013 and submitted that specific animals are covered under the said Resolutions. The said Resolutions, consistently, over a period of more than five years, enumerate only these quadrupedes and compensation is required to be paid in view of the said
.....7/-

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Government Resolutions if the listed animals caused any damage either to the fruit bearing trees or the agricultural field. Admittedly, the Parakeets and Parrots are not included in the said list and, therefore, the petition being devoid of merits is liable to be dismissed.

9. Learned Government Pleader further submitted that if the Legislature willfully omits to incorporate something of the analogous law, it is to be interpreted considering intention behind the said enactment.

10. In support of his contentions, learned Government Pleader has placed reliance of the decisions in the cases of **The Commissioner of Sales Tax, U.P., Lucknow vs. M/s.Parson Tools and Plants, Kanpur, reported in (1975)4 SCC 22** and **Ekta Shakti Foundation vs. Government of NCT of Delhi, reported in (2006)10 SCC 337.**

11. We have given a thoughtful consideration to submissions made by learned counsel for the petitioner and learned Government Pleader for the State.

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12. There is no dispute that the petitioner is the owner of the agricultural field bearing No.212, mouza Hingni, tahsil Selu, district Wardha. Undisputedly, he has planted Pomegranate trees about 1.5 acres in his agricultural field. It is also not disputed that he made a representation to respondent No.4 as damage was caused to the fruit bearing trees especially to fruit of pomegranate. The spot panchanama conducted by the Taluka Agriculture Officer also substantiates the said contention. It specifically shows that there were 800 pomegranate trees of 3 feet to 5 and 1/2 height. 50% of the said trees were having fruits. The panchanama further shows that maximum fruits were damaged. It further shows that there are no signs of uprooting of the said plants or any other traces of any animal. It is further opined in the panchanama that such type of loss can be caused only by the birds like parrots.

13. The communication given by respondent No.4 shows that Government Resolutions do not disclose any provision to pay compensation if damage is caused by birds and, therefore,
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they are unable to pay the compensation. The petitioner has also made a representation to the District Collector, Wardha. Thereafter, office of the District Collector, Wardha directed him to approach the District Agriculture Officer. On receipt of the said representation, the District Agriculture Officer issued communication dated 19.5.2016 to the Taluka Agriculture Officer stating that the agricultural field of the petitioner is adjacent to the Bore Wild Life Sanctuary. It further discloses that the petitioner has cultivated 800 plants of pomegranate and report of the Taluka Agriculture Officer shows that while drawing the panchanama, he has chosen ten plants and observed that damage was caused to 50-55 fruit trees of said ten plants.

14. Thus, as far as the report of the Taluka Agriculture Officer is concerned, it discloses that the agriculture field of the petitioner is adjacent to the said Bore Wild Life Sanctuary. He has cultivated 800 plants. Average age of plants is two-and-half to three years. The said plants are having fruits and flowers to the extent of 60-70%. He has chosen ten plants
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and observed that 50-55% fruits of said ten plants were damaged by the birds.

15. Thus, there is no dispute that the damage was caused to the fruit bearing trees cultivated by the petitioner.

16. Now, coming to the aspect of Government Resolutions, the Government of Maharashtra, Revenue and Forests Division issued Government Resolution dated 9.7.2015. For reference, the said Government Resolution is reproduced as under:

"वन्यप्राण्यांपासून शेतपिकांचे, फळझाडांचे नुकसान झाल्यास संबंधितास नुकसान भरपाई देण्याबाबत.....

महाराष्ट्र शासन
महसूल व वन विभाग
शासन निर्णय क्रमांक : डब्ल्यूएलपी-२०१२/प्र.क्र.३२६/फ-१,
मंत्रालय, मुंबई-४०००३२
दिनांक : ०९ जुलै, २०१५.

पहा :

१. शासन निर्णय, महसूल व वन विभाग, क्रमांक-डब्ल्यूएलपी-१०.०८/प्र.क्र.२७०/फ-१, दिनांक २.७.२०१०.

२. शासन निर्णय, महसूल व वन विभाग, क्रमांक-डब्ल्यूएलपी-२०१२/प्र.क्र.३२६/फ-१, दिनांक ५.९.२०१३.

३. शासन निर्णय, महसूल व वन विभाग, क्रमांक-डब्ल्यूएलपी-०४१३/प्र.क्र.१२३/फ-१, दिनांक २५.११.२०१३.

४. प्रधान मुख्य वनसंरक्षक (वन्यजीव), महाराष्ट्र राज्य, नागपूर यांचे पत्र क्रमांक कक्ष-२३(४/प्र.क्र.२३/२(२०१३-१४)/२३६, दिनांक २८.४.२०१४.

प्रस्तावना:

राज्यातील रानडुक्कर, हरिण (सारंग व कुरंग), रानगवा, रोही (निलगाय), माकड, वानर तसेच वन्यहत्ती या वन्यप्राण्यांपासून शेतपिकाला किंवा फळबागांना नुकसान झाल्यास दिनांक २.७.२०१०, दिनांक ५.९.२०१३ व दिनांक २५.११.२०१३ रोजीच्या शासन निर्णयामधील तरतुदीनुसार नुकसान भरपाईची रक्कम संबंधितांना अदा करण्यात येते. सदर नुकसान भरपाईची रक्कम अपुरी असल्यामुळे वन्यप्राण्यांच्या अस्तित्वाबद्दल जनसामान्यात निर्माण होणारे प्रतिकूल मत विचारात घेता सदर रकमेत वाढ करण्याची बाब शासनाच्या विचाराधीन होती. त्यानुसार शासनाने खालीलप्रमाणे निर्णय घेतला आहे.

शासननिर्णय:-

राज्यातील रानडुक्कर, हरिण (सारंग व कुरंग), रानगवा, रोही (निलगाय), माकड, वानर तसेच वन्यहत्ती या वन्यप्राण्यांपासून शेतपिकाला किंवा फळबागांना नुकसान झाल्यास खालीलप्रमाणे नुकसान भरपाई देण्यात यावी.

पीक नुकसानीपोटी द्यावयाचे आर्थिक सहाय्य

अ.क्र.	तपशील	आर्थिक सहाय्य
१	शेतपिकाचे नुकसान रु.१००००/- पर्यंत झाल्यास	पूर्ण किंमत परंतु किमान रु.१०००/-
२	शेतपिकाचे नुकसान रु.१००००/-पेक्षा जास्त	रु.१००००/- अधिक रु.१००००/- चे वरील नुकसानीचे ८०% रक्कम (रु.२५०००/- चे कमाल मर्यादित)
३	ऊस पिकाचे नुकसान	रु.८००/- प्रती मे.टन प्रमाणे (रु.२५०००/- चे मर्यादित)

फळबागांच्या केलेल्या नुकसानीपोटी द्यावयाचे आर्थिक सहाय्य

अ.क्र	प्रजाती	आर्थिक सहाय्य
१	नारळ	रु.४८००/- प्रती झाड
२	सुपारी	रु.२८००/- प्रती झाड
३	कलमी आंबा	रु.३६००/- प्रती झाड
४	केळी	रु.१२०/- प्रती झाड
५	इतर फळझाडे	रु.५००/- प्रती झाड

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२. इतर अटी व तरतूदी दि. २.७.२०१०. दिनांक ५.९.२०१३ व दिनांक २५.११.२०१३ च्या शासन निर्णयाप्रमाणे लागू राहतील.

३. सदर शासन निर्णय, निर्गमित झाल्याच्या दिनांकापासून लागू करण्यात येत आहे.

४. हा शासन निर्णय वित्त विभागाचे अनौपचारिक संदर्भ क्रमांक १९७/व्यय-१०, दिनांक ०५.०६.२०१५ अन्वये दिलेल्या सहमतीस अनुलक्षून निर्गमित करण्यात येत आहे.

५. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१५०७०९१६१०३७५४१९ असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.”

Another Government Resolution dated 2.7.2010 reads

as under:

"वन्यप्राण्यांपासून पिकांचे, फळझाडांचे झालेले
नुकसान आणि मनुष्य व पाळीव प्राण्यांच्या झालेल्या
हानीसाठी नुकसान भरपाई
देण्याबाबत...

महाराष्ट्र शासन
शासन निर्णय क्र. डब्ल्यूएलपी- १०.०८/प्र.क्र.२७०/फ-१
महसूल व वन विभाग, मंत्रालय, मुंबई ४०० ०३२
दिनांक : ०२.०७.२०१०.

पहा :

- 1) शासन निर्णय, महसूल व वन विभाग, क्र.डब्ल्यूएलपी- १०९४/प्र.क्र.११५/फ-१,दि. २३/८/२००४,
- २) शासन निर्णय, महसूल व वन विभाग, क्र. डब्ल्यूएलपी-१००४/प्र.क्र.२१९/फ-१,दि.२/६/२००६,
- ३) शासन निर्णय, महसूल व वन विभाग, क्र. डब्ल्यूएलपी-१००२/प्र.क्र.२५८/फ-१, दि.१७/१/२००३,
- ४) शासन निर्णय, महसूल व वन विभाग, क्र. डब्ल्यूएलपी-१००२/प्र.क्र.२५८/फ-१, दि.२०/५/२००३,

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५) शासन निर्णय, महसूल व वन विभाग, क्र. डब्ल्यूएलपी-१००१/प्र.क्र.२२०/फ-१, दि.७/७/२००४.

प्रस्तावना :-

वन्यप्राण्यांकडून शेतपिकांचे नुकसान झाल्यास दि. २३.८.२००४ च्या शासन निर्णयामधील तरतुदीनुसार नुकसान भरपाईची रक्कम संबंधितांना अदा करण्यात येते. सदर आर्थिक मदत कमी असल्यामुळे वन्यप्राण्यांपासून होणाऱ्या नुकसानभरपाईमध्ये समुचित वाढ करण्याची बाब शासनाच्या विचाराधीन होती तसेच यासाठी वन्यप्राण्यांपासून पिकांचे, फळझाडांचे, मनुष्य व पशुधनाच्या झालेल्या नुकसानभरपाईबाबत सर्वसमावेशक शासन निर्णय निर्गमित करण्याची बाब देखील शासनाच्या विचाराधीन होती त्यानुसार शासनाने पुढीलप्रमाणे निर्णय घेतला आहे.

शासन निर्णय:-

अ) राज्यातील रानडुकर, हरिण (सारंग व कुरंग), रानगवा, रोही (निलगाय), माकड तसेच वन्यहत्ती या वन्यप्राण्यांपासून शेतातील पिकांच्या नुकसानीची भरपाई खालीलप्रमाणे आणि पद्धतीने देण्यात यावी.

अ.क्र	बाब	द्यावयाची आर्थिक मदत
१	नुकसान रु.२०००/- पर्यंत झाल्यास	पूर्ण परंतु किमान रु. ५००/-
२	नुकसान रु २,००१/- ते १०,०००/- पर्यंत झाल्यास	रु.२०००/- अधिक त्यापेक्षा जास्तीच्या नुकसानीच्या ५०% रक्कम (रु.६,०००/- चे कमाल मर्यादित)
३	नुकसान रु.१०,०००/- पेक्षा जास्त झाल्यास	रु.६०००/- अधिक रुपये १०,०००/- पेक्षा जास्त नुकसानीच्या ३०% रक्कम (रुपये १५,०००/- चे कमाल मर्यादित)
४	ऊस	रु.४०० प्रती मे.टन

त्याचप्रमाणे वन्यहत्ती व रानगवे यांनी फळबागांच्या केलेल्या नुकसानीबाबत खालीलप्रमाणे अर्थसहाय्य देण्यात यावे.

बाब	द्यावयाची आर्थिक मदत

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फळझाडे	नारळ	रु.२,०००/- प्रति झाड
	सुपारी	रु.१,२००/- प्रति झाड
	कलमी आंबा	रु.१,६००/- प्रति झाड
	केळी	रु.४८/- प्रति झाड
इतर फळझाडे		रु.२००/- प्रति झाड

१. पिक नुकसानीची तक्रार अधिकारक्षेत्र असलेले नजीकचे वनरक्षक, वनपाल अगर वनपरिक्षेत्राधिकारी यांचेपैकी कोणाकडेही घटना घडल्यापासून तीन दिवसात करावी.

२. त्याची शहानिशा संबंधित वनपाल, सरपंच, ग्रामसेवक/तलाठी व कृषी अधिकारी/फलोत्पादन अधिकारी या चार सदस्यांच्या समितीमार्फत १० दिवसांच्या आत करण्यात येईल. त्यासाठी जागेवर जाऊन पंचनामा करणे, नुकसान क्षेत्राची मोजणी करणे, पुरावे तपासणे व नुकसानीचे मूल्य ठरविणे हे या समितीकडून अपेक्षित आहे.

३. प्रत्येक प्रकरणी नुकसान भरपाई देण्याचे आदेश संबंधित उपवनसंरक्षक यांनी घटनेच्या तारखेपासून ३० दिवसांचे आंत काढावे.

४. उपवनसंरक्षक यांनी आदेश काढल्यानंतर एक महिन्याचे आंत बाधित व्यक्तीस रकमेचा रेखांकित धनादेश हस्तांतरीत करावा.

५. ऊस पिकाचे नुकसानीसाठी रु.४०० प्रती मे.टन असे वजनावर आधारीत न ठेवता ज्या तालुक्यामध्ये ऊस पिकाचे नुकसान होईल त्या तालुक्याच्या मागील ८ वर्षांची कृषी विभागाने काढलेल्या उसाच्या उत्पादकतेवरून सरासरी उत्पादकता काढावी व त्यानुसार ऊस पिकाची नुकसान भरपाई क्षेत्रावर आधारीत उत्पादकतेनुसार (प्रती मे.टन रु.४००/- प्रमाणे गणना करून) देण्यात यावी.

६. ज्या व्यक्तींना पीक संरक्षणार्थ बंदूक परवाने देण्यात आले आहेत अशा व्यक्तींच्या शेतीची नुकसान भरपाई विहित दराने वन्यहत्ती किंवा रानगवा किंवा इतर वन्यप्राणी यांना इजा किंवा त्यांची शिकार संबंधीताकडून झाली नसल्यास अनुज्ञेय राहिल.

७. ही मदत प्रती हेक्टरी न राहता प्रत्यक्षात झालेल्या नुकसानीवर अवलंबून राहिल.

८. सदरची मदत कसत असलेल्या शेतक-यास / मालकास देय राहिल.

९. सदर आर्थिक मदत ही या संदर्भात शासन निर्णय निर्गमित झाल्यापासूनच्या प्रकरणांमध्ये लागू करण्यात यावी.

खालील प्रकरणे नुकसानभरपाईसाठी अपात्र राहतील

- १) वनजमिनीवर अतिक्रमणाद्वारे करण्यात येणारी शेती
- २) भारतीय वन अधिनियम किंवा वन्यजीव (संरक्षण) अधिनियमांतर्गत ज्यांचे विरुद्ध गुन्हा नोंदविला गेला आहे अशा व्यक्तीची शेती.
- ३) ज्या कुटुंबाची ४ पेक्षा अधिक गुरे मुक्त चराईसाठी जंगलात जातात त्या कुटुंबाची शेती.
- ४) मागील एक महिन्याचे काळात वन्यप्राण्यांच्या शिकारीची घटना झालेली गांवे.
- व) वन्यप्राण्यांच्या हल्ल्यामुळे व्यक्ती जखमी/मृत आणि पशुधनाची झालेली हानी वाघ, बिबट्या, अस्वल, गवा (बायसन), रानडुक्कर, लांडगा, तरस, कोल्हा, हत्ती, मगर व रानकुत्रे (ढोल) यांच्या हल्ल्यामुळे व्यक्ती जखमी मृत झाल्यास किंवा पशुधनाचा मृत्यू झाल्यास खालील प्रमाणे आणि अटीवर नुकसान भरपाई देण्यात यावी.

1) व्यक्ती जखमी मृत झाल्यास

अ.क्र.	तपशील	देय अर्थसहाय्याची रक्कम
१	व्यक्ती मृत झाल्यास किंवा कायमचे अपंगत्व आल्यास	रु. २,००,०००/- (रु. दोन लाख फक्त)
२	व्यक्ती गंभीररित्या जखमी झाल्यास	रु. ५०,०००/- (रु. पन्नास हजार फक्त)
३	व्यक्ती किरकोळ जखमी झाल्यास	औषधोपचारांसाठी येणारा खर्च देण्यात यावा. मात्र खाजगी रुग्णालयात औषधोपचार करणे अगत्याचे असल्यास त्याची मर्यादा रु. ७,५००/- (रु. सात हजार पाचशे फक्त) प्रती व्यक्ती अशी राहिल. शक्यतो औषधोपचार शासकीय / जिल्हा परिषद रुग्णालयात करावा.

अटी :-

- १) वन्यप्राण्यांकडून झालेला हल्ला हा सदर व्यक्तीने वन्यजीव (संरक्षण) अधिनियम, १९७२ च्या तरतूदीचा भंग करताना झालेला नसावा.

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२) हल्ला झालेल्या व्यक्तीने अथवा त्यांच्या नातेवाईक / मित्रांनी हल्ला झाल्यापासून ४८ तासांच्या आत नजिकच्या वन अधिका-याला / कर्मचा-याला कळवावे.

३) हल्ला झाल्यापासून तीन दिवसांच्या आत स्थानिक पोलीस अधिकारी अथवा वनाधिकारी यांनी प्रत्यक्ष जागेवर जाऊन झालेल्या हल्ल्याचा पंचनामा करावा. पंचनामा करणारा अधिकारी पोलीस उपनिरीक्षक वा वनक्षेत्रपाल यांच्या दर्जापेक्षा खालच्या दर्जाचा नसावा.

४) वन्यप्राण्यांकडून झालेल्या हल्ल्यामुळे सदर व्यक्ती मृत अथवा जखमी झाली हे तपासण्याकरिता देण्यात येणारे वैद्यकीय प्रमाणपत्र सक्षम राजपत्रित वैद्यकीय अधिकारी, जो शासकीय रुग्णालयाचा प्रमुख आहे व ज्याचा दर्जा वैद्यकीय अधिका-याच्या (मेडीकल ऑफिसर) खालचा नाही असा अधिकारी प्रमाणपत्र देण्यास सक्षम अधिकारी मानला जावा.

५) वन्यप्राण्यांच्या हल्ल्यामुळे मृत व्यक्तीकरिता द्यावयाचे आर्थिक सहाय्य त्या व्यक्तीच्या कायदेशीर वारसालाच (Legal Heir) देण्यात यावे.

६) वन्यप्राण्यांच्या हल्ल्यामुळे जखमी झालेल्या व्यक्तीला देण्यात येणारी आर्थिक सहाय्याची रक्कम खुद्द जखमी व्यक्तीलाच देण्यात यावी.”

Third Government Resolution dated 5.9.2013 which is to the extent of enhancement of compensation in case of damage by wild animals, which is reproduced as under:

"वन्यप्राण्यांपासून शेतपिकाचे, फळझाडांचे नुकसान झाल्यास संबंधितास नुकसान भरपाई

महाराष्ट्र शासन
शासन निर्णय क्रमांक: डब्ल्यूएलपी-२०१२/प्र.क्र.३२६/फ-१,
महसूल व वन विभाग,
मंत्रालय, मुंबई-४०००३२
दिनांक: ५ सप्टेंबर, २०१३

पहा : १० शासन निर्णय, सहसूल व वन विभाग, क्रमांक-डब्ल्यूएलपी-१०.०८/प्र.क्र.२७०/फ-१, दिनांक २.७.२०१०.

२. प्रधान मुख्य वनसंरक्षक (वन्यजीव), महाराष्ट्र राज्य, नागपूर यांचे पत्र क्रमांक-कक्ष-२३(३)/प्र.क्र.०२३/३१८६/२०१२-१३, दिनांक २०.११.२०१२.

प्रस्तावना:-

राज्यातील रानडुक्कर, हरिण (सारंग व कुरंग), रानगवा, रोही (निलगाय), माकड तसेच वन्यहत्ती या वन्यप्राण्यांपासून शेतपिकाला किंवा फळबागांना नुकसान झाल्यास दिनांक २.७.२०१० रोजीच्या शासन निर्णयामधील तरतुदीनुसार नुकसान भरपाईची रक्कम संबंधितांना अदा करण्यात येते. सदर नुकसान भरपाई पुरेशी नसल्याबाबत जनप्रतिनिधीकडून, शेतकऱ्यांकडून शासनाकडे तक्रारी येत असतात. राज्यातील रानडुक्कर, हरिण (सारंग व कुरंग), रानगवा, रोही (निलगाय), माकड, वानर तसेच वन्यहत्ती या वन्यप्राण्यांपासून शेतपिकाला किंवा फळबागांना नुकसान झाल्यास नुकसानभरपाईमध्ये समुचित वाढ करण्याची बाब शासनाच्या विचाराधीन होती. त्यानुसार शासनाने पुढीलप्रमाणे निर्णय घेतला आहे.

शासन निर्णय :-

अ) राज्यातील रानडुक्कर, हरिण (सारंग व कुरंग), रानगवा, रोही (निलगाय), माकड, वानर तसेच वन्यहत्ती या वन्यप्राण्यांपासून शेतपिकाला किंवा फळबागांना नुकसान झाल्यास खालीलप्रमाणे वाढीव नुकसान भरपाई देण्यात यावी.

शेतपिक

अ.क्र	बाब	द्यावयाची आर्थिक मदत
१	नुकसान रुपये २०००/- पर्यंत झाल्यास	पूर्ण परंतु किमान रुपये ७००/-
२	नुकसान रुपये २,००१/- ते रुपये १०,०००/-पर्यंत झाल्यास	रुपये २०००/- अधिक त्यापेक्षा जास्तीच्या नुकसानीच्या ७५% रक्कम (रुपये ८,०००/- चे कमाल मर्यादित)
३	नुकसान रुपये १०,०००/- पेक्षा जास्त झाल्यास	रुपये ८,०००/- अधिक रुपये १०,०००/- पेक्षा जास्त नुकसानीच्या ४०% रक्कम (रुपये १८,०००/- च कमाल मर्यादित)
४	ऊस	रुपये ४०० प्रती मे.टन

फळबाग

बाब		द्यावयाची आर्थिक मदत
फळझाडे	नारळ	रुपये २,४००/ पर्यंत प्रति झाड

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	सुपारी	रुपये १,४००/- पर्यंत प्रति झाड
	कलमी आंबा	रुपये १,८००/- पर्यंत प्रति झाड
	केळी	रुपये ६०/- पर्यंत प्रति झाड
इतर फळझाडे		रुपये २५०/- पर्यंत प्रति झाड

Similarly, Government Resolution dated 25.11.2013

was also issued, which is reproduced as under:

"शासन निर्णय:-

दिनांक ०२.०७.२०१० च्या शासन निर्णयामधील उल्लेखित अर्थसहाय्य/नुकसान भरपाई मजूर करण्याचे अधिकार उप वनसंरक्षक/विभागीय वन अधिकारी यांचे बरोबर आत संबंधीत परिक्षेत्राचे प्रभारी सहाय्यक वनसंरक्षक प्रदान करण्यात येत आहेत.

17. Perusal of said Government Resolutions shows that there is no dispute that the birds like parrots are not covered under the said Government Resolutions. However, in view of definition given under Section 2(36) of the Wild Life Act, wild animals are defined which are specified in Schedule-I and Schedule-II and found wild in nature.

Schedule-II includes birds like parrots. Native Indian Parrot Species (parakeets) are classified as wild animals and

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are protected under the Wild Life Act. Indigenous parrots such as Rose-ringed or Alexandrine Parakeets are covered under Schedule-II of the Wild Life Act.

18. Thus, in view of the definition given under Section 2(36) of the Wild Life Act, the parrots are covered under the definition of the Wild Animals.

19. Learned Government Pleader for the State vehemently submitted that as Government Resolution does not cover birds like parrots and the Government Resolution is published with an intention to compensate the farmers and to safeguard the interest of the farmers if any loss is caused to crops or any fruit bearing trees. He submitted that if specific animals are covered under the said Government Resolution, the Legislature willfully omits to incorporate some birds and that intention is required to be looked into.

20. In support of his contentions, learned Government Pleader for the State has placed reliance on the decision in the case of **The Commissioner of Sales Tax, U.P., Lucknow** *supra*

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wherein the Hon'ble Apex Court in paragraph Nos.15 and 16 observed as under:

“15. Be that as it may, from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales-Tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others,- is that a statute is to be expounded "according to the intent of them that made it". "The will of 'the legislature is the supreme law of the land, and demands perfect obedience".(1) "Judicial power is never exercised" said Marshall C. J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law".

16. If the legislature willfully omits to incorporate something of an 'analogous law in a subsequent statute, or even if there is a casus omissus in a

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statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon the preserves of Legislatures, 'The primary function of a court of law being jus dicere and not jus dare.'

He further placed reliance on the decision in the case of **Ekta Shakti Foundation** *supra* wherein the Hon'ble Apex Court observed that, "the policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court

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cannot interfere even if a second view is possible from that of the Government.”

21. There is no dispute regarding the settled legal position which is reiterated in both decisions *supra* i.e. **The Commissioner of Sales Tax, U.P, Lucknow** and **Ekta Shakti Foundation.**

22. It is settled law that legal provisions would prevail over Government Resolutions.

23. A short question involved in this petition is, whether the petitioner is entitled to receive compensation for the loss caused to his Pomegranate tress by wild birds like Parrots. A protected bird is defined under the provisions of the Wild Life Act under the Scheme of compensation framed by the Government in the interest of affected farmers/horticulturists. Therefore, it would be necessary to examine Government Resolution dated 2.7.2010. The said Government Resolution deals with loss of crops caused by such wild animals as wild Boar, Deer, Blue Bull, Indian Bison, Elephant, and Monkey

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provides compensation in a graded manner subject to ceiling of Rs.15,000/-. It also deals with issue regarding compensation payable on account of loss to fruit bearing trees caused by only two kinds of wild animals namely wild Elephant and Indian Bison.

24. Admittedly, birds like parrots are not covered under the said Government Resolution and subsequent Government Resolutions also.

25. Thus, as far as the petitioner concerned, his case is not covered under the said Government Resolution. The said Government Resolution provides for compensation for loss of other fruit bearing trees which would include Pomegranate trees @ Rs.200/- per tree.

26. It is the contention of the State that the petitioner case would not be covered even by Schedule-II as compensation provided thereunder is payable only when loss is caused only by two kinds of animals namely Wild Elephant and Indian Bison. It does not allow payment of compensation

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when fruit bearing trees are damaged by other wild animals or birds including parrots.

27. Government Resolution dated 2.7.2010, while allowing payment of compensation for damage to crops by various animals, does not take care of wild birds also who are also capable of destroying crops. Thus, the Government Resolution does not take care of compensation in such type of cases especially for loss of fruit bearing trees caused by the wild birds. There is no dispute that birds like Parrots are covered under the definition of Wild Animals as inclusion of Parrots is in Schedule-II. It is evident from the spot panchanama that loss is caused to the crops by birds like Parrots.

28. In the above circumstances, first and the foremost aspect requires to be taken into consideration is, the object of Scheme of Compensation formulated under the said Government Resolutions as seen from the introductory part. Introductory part of the said Government Resolutions shows

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that with an intention to compensate farmers, the said Government Resolutions are issued. The introduction of Government Resolution dated 2.7.2010 clearly states that compensation being paid to affected farmers to loss suffered by them from crop-raiding wild animals being inadequate and there being need for taking comprehensive decision for payment of compensation for the damage caused to standing crops, fruit bearing trees, human life, and live stock. The said Government Resolution formulating comprehensive scheme of compensation is being issued.

29. This aspect is also considered by this court in the case of **Vimal Haribhau Naik vs. State of Maharashtra, thr.its Additional Principal Secretary (Forest) and ors, reported in 2015 SCC OnLine Bom 2025** wherein it is observed as under:

“.....it would be necessary to examine the Government Resolution dated 02/7/2010. The resolution is in two parts. The first part deals with loss of crops caused by such wild animals as wild boar, deer, blue-bull, Indian bison, monkey

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and wild elephant and provides for compensation in a graded manner subject to ceiling of Rs. 15,000/-. However, in case of loss to sugarcane crop, compensation has been fixed to be @ Rs. 400/- per metric tonne of the crop damaged. Second part relates to compensation payable on account of loss to fruit bearing trees caused by only two kinds of wild animals namely; wild elephant and Indian bison. This part does not contemplate payment of compensation for loss of fruit bearing trees occasioned through attack of blue-bulls. So far as the petitioner is concerned, her case would not fall in first part of the resolution dated 02/7/2010 as the loss suffered by her is not to the crops but to fruit bearing trees i.e. orange trees. Though second part of this resolution provides for compensation for loss of other fruit bearing trees which would include orange trees at the rate of Rs. 200/- per tree, petitioner's case would not be covered even by the second part as compensation provided thereunder is payable only when the loss is caused by only two kinds of wild animals, i.e wild elephants and Indian bison. It does not allow payment of

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compensation when fruit bearing trees are damaged by other wild animals including blue bulls.”

30. Thus, in the said decision, this court has considered the intention behind the said Government Resolution. The object of the scheme of compensation formulated under this Resolution can be seen from the introductory part which makes good the loss to the standing crops and the fruit bearing trees suffered by the farmers on account of raiding of crops and trees by the wild animals. When such an object has been expounded, it makes no sense to consider loss caused by only a few species of wild animals and ignore the loss caused by other species of wild animals for the purpose of payment of compensation to the affected persons. After all, birds like Parrots specified in Schedule-II of the Wild Life Act are protected animals.

31. Thus, definition of the Wild Animal Act covers birds like Parrots also. Merely because the Government Resolution does not include birds like Parrots in the said Government

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Resolution would not be sufficient to deprive the petitioner from getting compensation. There is no rationale in saying that only the damage caused by few species would entitle the farmers to get compensation. Therefore, submission of learned Government Pleader, that the Government Resolution does not include the birds like Parrots in the said Government Resolution and, therefore, the petitioner is not entitled to get compensation, is not sustainable. After all, it is an Administrative Circular.

32. The Hon'ble Apex Court in the case of **Chairman and Managing Director, FCI and ors vs. Jagdish Balaram Bahira and ors, reported in AIR 2017 SC 3271** has observed that, "administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. No government resolution or circular can override constitutional or statutory norms."

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33. The Wild Life Act being Legislative Act would prevail over any Government Resolutions. A Government Resolution may be beneficent in nature.

34. It is well settled that a persons, who is entitled for compensation, in the light of the statutory provisions, cannot be deprived from getting compensation merely because some species are not included in the Government Resolution.

35. As observed by this court, in the case of **Vimal Haribhau Naik** *supra*, such classification by the Government Resolution, would bear no reasonable relation with the object sought to be achieved by the said Government Resolution.

36. It cannot be accepted that to allow payment of compensation to one category and disallow to other category. It would be breach of equality principle and violation of Article 14 of the Constitution.

37. Under Section 39 of the Wild Life Act, wild animals specified therein are declared to be property of the State and

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there is no dispute about the fact that Parrots are one of them. Thus, the law expects every citizen to be protector of the wild animals and, therefore, it cannot be expected that they should suffer loss occasioned by them because of wild animals. Otherwise, the very purpose of giving protection to the wild animals would be frustrated and the affected persons may resort to their own defences for protecting their crops and fruit bearing trees, which may entail some harm to the wild animals and resultantly to the nature. Therefore, the said Government Resolutions require to be read along with relevant provisions.

38. In the light of the facts and circumstances of the present case, the petitioner has made out a case for grant of compensation payable to him and he would be entitled to receive compensation in terms of Part-B of Government Resolution dated 2.7.2010 and rate of compensation would be of the category (other fruit bearing trees).

39. It is not in dispute that 800 Pomegranate trees of the petitioner were planted and out of that loss is caused to the

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extent of 50-55% risk. The spot panchanama also shows that some of trees were having fruits and, therefore, considering average, the petitioner would be entitled to receive compensation for 200 Pomegranate trees @ Rs.200/- per tree.

40. In the circumstances, we are inclined to allow this petition as per order below:

ORDER

(1) The writ petition is **allowed**.

(2) It is declared that the petitioner is entitled to receive compensation for damages caused to Pomegranate trees in terms of Part-II of the Government Resolution dated 2.7.2010 @ Rs.200/- per tree for 200 trees.

Rule is made absolute in the above terms.

JUDGE

JUDGE