

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

WRIT PETITION NO.2127 OF 2014

1.Shivanand Shrikant Ghugare and Ors. ...Petitioners.
V/s.
The Collector, Kolhapur & Ors. ...Respondents.

Mr. Uday Bhagwanrao Nighot for the Petitioners.
Mr. V. S. Gokhale, AGP for Respondent Nos.1 to 5.

**CORAM : A.S.OKA &
VL. ACHLIYA,JJ.**

DATE : 8th SEPTEMBER, 2015

P.C.:

1. Heard the learned counsel for the petitioners and AGP for the respondents.

2. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 31/1/2015 passed by the Divisional Commissioner on an application made by the petitioners under section 48(1) of the Land Acquisition Act, 1984. By the said order, the application has been rejected.

3. In the present case, the relevant date in accordance with section 11(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 is 31/7/2000 and the slab has been fixed as 1 H 61 R. In the impugned order, a finding has been recorded that the holding of the original holder Shrikant on the relevant date was 2 H, 16.4 R and therefore, as per the second schedule to the Maharashtra Project Affected Persons Rehabilitation Act, 1999 an area of 40 R has been acquired.

4. The objections raised by the petitioners before the Divisional Commissioner have been noted at pages 64-65. Exclusion of certain area was urged on account of its sale as well as on the ground that a part of the land was covered by a well. It is contended that the area of the well has not been excluded. It is contended that on the basis of Deed of Partition dated 17/7/2002, an entry of partition has been made in the Revenue Records on 19/9/2002.

5. As far as the partition Deed is concerned, the same has been executed after the cut off date of 31/7/2000 therefore, the same is rightly kept out of consideration.

5. As regards the other objection that if the area sold by the petitioners is excluded, the holding of the petitioners will be below the prescribed slab of 1 H and 61R, it is held that area of 6 acres which was proved to be sold has to be excluded from the holding. At this stage, the learned counsel for the petitioners submits that a part of the holding is occupied by a well. The Divisional Commissioner has held that there is no entry of the well in the cultivation column of 7-12 extract. Thus, even accepting the case of the petitioner of the exclusion of lands specified in paragraph Nos.2,3,4(pages 64 and 65) of the impugned judgment as correct, it will make no difference to the final outcome as the holding will not be reduced to an area less than the prescribed slab even after excluding the said land. Hence no case is made out for interference. There is no merit in the petition and the same is accordingly, rejected.

(V. L. ACHLIYA, J.)

(A. S. OKA, J.)

CERTIFICATE

“ Certified to be true and correct copy of the original signed Judgment/Order.”