

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

WRIT PETITION NO.2126 OF 2014

1.Suresh Nagappa Batakadali & Anr. ...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.:

. Heard the learned counsel for the petitioners.

2. The challenge in this petition is to the order dated 31/1/2014 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. The contention of the learned counsel for the petitioners is that as per the certificate dated 7/12/2005 (Exh. 'A') issued by the Sub-Divisional Engineer, the lands bearing Gat Nos.252 1475 and 1406 as stated in the said certificate are not covered by the benefitted zone. While dealing with the certificate, in the impugned order, the Divisional Commissioner has recorded a finding that after the certificate was sent for verification, it was found that the certificate was erroneous. The submission is that the petitioners should have been provided a copy of the report of verification of the certificate so that the petitioners could have dealt with the same.

4. We have heard the learned AGP for the respondents.

5. Perusal of the impugned order shows that the certificate dated 7/12/2005 Exh. 'A' has been brushed aside only on the ground that on the re-verification by the Additional Collector, the certificate was found to be erroneous. In fact the petitioners ought to have been heard on this aspect after making available to the petitioners a true copy of the report of the Additional Collector about the re-verification of the certificate. Only on the basis of the re-verification by the Additional collector, the contentions raised by the petitioners have been rejected. Therefore, the entire issue will have to be reconsidered by the Divisional Commissioner.

6. We, therefore pass the following order:

ORDER

i) The impugned order dated 31/1/2014 in is quashed and set aside. Rehb/Appeal/SR/86/2013 is remanded to the Divisional Commissioner, Pune;

ii) We direct the petitioners to appear before the Divisional Commissioner, Pune on 12/10/2015 at 11.00 a.m. The petitioners shall produce an authenticated copy of this order before the Divisional Commissioner;

iii) On that day, the Divisional Commissioner shall make available to the petitioners the document referred in paragraph 5 of the conclusions part of the impugned order. The said document is about the verification of the certificate relied upon by the petitioners made by the Additional Collector, Kolhapur. After giving an opportunity of being heard to the petitioners

especially on the aforesaid document, the Divisional Commissioner shall pass a fresh order on the Application under section 48(1) of the Land Acquisition Act, 1894 or before 31/12/2015;

iv) The order passed by the Divisional Commissioner shall be communicated to the petitioners. Till the date of the communication of the said order, ad-interim relief granted by this Court on 26/2/2015 will continue to operate. If the order be adverse to the petitioners, the same shall not be implemented for a period of 4 weeks from the date of service of the order upon the petitioners;

v) All contentions of the parties on merits are kept open;

vi) The petition is disposed of in the above terms.

7. The parties to act on the authenticated copy of this order.

(V. L. ACHLIYA, J.)

(A. S. OKA, J.)

C E R T I F I C A T E

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