

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2998 OF 2005

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|-------------------------------------|-----|-------------|
| Anna @ Mahadu Dadu Patil,           | )   |             |
| Since deceased,                     | )   |             |
| Through his Legal Representatives - | )   |             |
| 1a. Ashok Anna Patil,               | )   |             |
| Age 43 years,                       | )   |             |
| Adult, Occupation- Agriculturist,   | )   |             |
| 1b. Arun Anna Patil,                | )   |             |
| Adult, Occupation Agriculturist,    | )   |             |
| 1c. Uttam Anna Patil,               | )   |             |
| Adult, Occupation Agriculturist,    | )   |             |
| All residing at Village Kochi,      | )   |             |
| Taluka Hatkanangale,                | )   |             |
| District – Kolhapur.                | ).. | Petitioners |

Vs.

|                                        |     |             |
|----------------------------------------|-----|-------------|
| 1. The State of Maharashtra,           | )   |             |
| 2. The Divisional Commissioner,        | )   |             |
| Pune Division,                         | )   |             |
| Pune.                                  | )   |             |
| 3. The Deputy Director of Resettlement | )   |             |
| Department of Revenue and Forest,      | )   |             |
| Government of Maharashtra,             | )   |             |
| Mantralaya, Mumbai – 400 032.          | )   |             |
| 4. The Special Land Acquisition        | )   |             |
| Officer No.14,                         | )   |             |
| Kolhapur, District- Kolhapur.          | ).. | Respondents |

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Shri M.S.Karnik for the Petitioners.

Shri V.S. Gokhale, AGP for the Respondents.

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CORAM : A.S. OKA & A.PBHANGALE, JJ  
DATED : 26TH MARCH 2015

ORAL JUDGMENT ( PER A.S. OKA, J )

. Called out for final hearing. Heard learned counsel appearing for the Petitioners and the learned AGP for the Respondents. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 13<sup>th</sup> June 2003 passed by the Divisional Commissioner, Pune Division, Pune, by which the Application made by the Petitioners for deleting their land from the acquisition was rejected.

2. The acquisition was initiated under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 ( for short “the said Act of 1976”). A Notification under Section 11 of the said Act of 1976 was issued on 2<sup>nd</sup> November 1978. A Notification under Section 4 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”) was issued on 22<sup>nd</sup> September 1983. A declaration under Section 6 of the said Act of 1894 was made on 16<sup>th</sup> January 1986 and an award under Section 11 of the said Act of 1894 was made on 5<sup>th</sup> February 1988. The land bearing Gat No.255 admeasuring 87 Ares situate at village Khochi, Taluka-Hatkalangale, District- Kolhapur, was the subject matter of acquisition.

3. The Petitioners' case for deletion of the land bearing Gat No.255 Part admeasuring 87 Ares was considered by the Divisional Commissioner, Pune. Before the Divisional Commissioner, a reliance was placed on the written document dated 25<sup>th</sup> December 1977 as the evidence of partition by metes and bounds. The Divisional Commissioner by the impugned order held that as the partition document was unregistered and as effect was not given to the partition in the revenue records before the cut off date (2<sup>nd</sup> November 1978), the case of the Petitioners for deletion from acquisition cannot be accepted.

4. The learned counsel appearing for the Petitioners submitted that on perusal of the document dated 25<sup>th</sup> December 1977, it is apparent that it records the factum of partition which was already effected. He submitted that immediately within four days, an Application was made to the Village Talathi for giving effect to the partition in the revenue record. He pointed out that on 30<sup>th</sup> December 1977, the Talathi rejected the Application only on the ground that there was no registered deed of partition.

5. He invited our attention to the provisions of Section 12 of the said Act of 1976. He submitted that what is contemplated by Section 12 of the said Act of 1976 is a partition and there is no requirement that the effect should have been given to the partition

before the cut off date in the revenue record. He pointed out that in the subsequent legislation viz. The Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short “the said Act of 1999), in Section 12 thereof, there is a specific provision which lays down that the unregistered partition cannot be relied upon unless the effect is given to the partition by metes and bound in the revenue record.

6. He relied upon a decision of the learned Single Judge of this Court in the case of *Bhalchandra Vishweshwar Deshmukh v. The State of Maharashtra and Others*<sup>1</sup>. He urged that the Commissioner ought to have ascertained whether there was a partition by metes and bounds and the theory of partition could not have been brushed aside only on the ground that there was no registered deed of partition. He, therefore, submitted that there was no application of mind on the part of the Divisional Commissioner, Pune.

7. He relied upon a decision of the Division Bench of this Court in the case of *Shivgonda Balgonda Patil and Others v. The Director of Resettlement and Others*<sup>2</sup>. He urged that in view of the law laid down by the said decision, an unregistered deed of partition cannot be ignored on the ground that it is not registered. He, therefore, submitted that a case for interference is made out.

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1 AIR 1983 Bombay 436

2 AIR 1992 Bombay 72

8. The issue which arises for consideration is whether there was a partition effected by metes and bounds before the cut off date (2<sup>nd</sup> November 1978). If the case of partition is accepted, the holding of the Petitioners will be below the prescribed slab and therefore, the same will have to be deleted from the acquisition.

9. After having perused the provisions of the said Act of 1976 and in particular Section 12 thereof, there is no requirement of law that a partition by metes and bounds to which effect is not given in the revenue records will be kept out of consideration. We must note here that there is a provision to that effect incorporated in the form of Sub-section (4) of Section 12 of the said Act of 1999. However, no such provision is found in the said Act of 1976.

10. As far as the law relating to the partition of Hindu Joint Family is concerned, the same is well settled. If a partition which is already effected by metes and bounds is reduced in writing in the form of a Memorandum, the same does not require registration. We have perused the decision of the Division Bench in the case of *Shivgonda Balgonda Patil and Others*. The said decision does not lay down an absolute proposition of law that while dealing with the acquisition under the provisions of the said Act of 1976, a memorandum of

partition which is unregistered can be relied upon as evidence only if the effect is given to the partition in the revenue record. The Division Bench held that a notional partition is not a partition unless there is evidence of actual physical partition by metes and bounds.

11. We have carefully perused the document at Exhibit-A which is styled as 'Agreement for Partition'. We are proceeding on the assumption that it is not a document by which a partition is effected, but it is merely a recording of the factum of partition which is already effected. In the said document, description of land bearing 13 different Gat numbers and area thereof has been set out which are described as ancestral property. Though the total area of the lands allotted to the shareholders in the partition is mentioned, it is not stated as to which portion of which Gat number has been allotted to the particular member of the family. It is merely stated that three shareholders have their respective share admeasuring 1 Hectare and 29 Ares and one shareholder has a share admeasuring 1 Hectare and 30 Ares. The document does specifically record that there was actual physical partition by metes and bounds. Even the Application made before the Tahsildar does not support the contention that there was an actual partition by metes and bounds. Though by an order dated 30<sup>th</sup> December 1977, the said Application was not entertained, the Petitioners did not challenge the said order.

12. We must note here that apart from the document at Exhibit-A and the Application made to the Tahsildar, there is no other material on record in support of the contention that there was a partition by metes and bounds. Even taking the contents of the said document at Exhibit-A as correct, it is not possible to come to a conclusion that there was an earlier partition by metes and bounds. Though the impugned order may not be happily worded, there is nothing wrong with the ultimate conclusion drawn by the Divisional Commissioner, Pune Division, Pune. We must note here that by the impugned order, it is ordered that the area of 27 Ares out of acquired area of 87 Ares shall be deleted from the acquisition.

13. Hence, no case for interference is made out in writ jurisdiction under Article 226 of the Constitution of India. The Petition is rejected. Rule is discharged. No order as to costs.

14. The learned counsel appearing for the Petitioners prays for continuation of the interim relief granted on 15<sup>th</sup> December 2005. We direct that the interim relief will continue to operate for a period of twelve weeks from today.