

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

WRIT PETITION NO. 8544 OF 2010

Shri Madhavrao Baburao Jadhav & Ors. .. Petitioners
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr.Umesh R. Mankapure a/w. Mr.Vinod Sangvikar for petitioners.

Mr.V.S.Gokhale, AGP for respondent nos.1 to 5.

**CORAM : A.S. OKA,
V.L. ACHLIYA, JJ.**

DATED : 1ST SEPTEMBER, 2015

P.C.

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

2 The challenge in this petition under Article 226 of the Constitution of India is to the acquisition of the land held by the petitioners under a Notification under Sub-section 1 of Section 4 of the Land Acquisition Act, 1894 (for short referred as 'the said Act'), issued on 14.09.2007. Award under Section 11 of the said Act was made on 30.05.2010. In this petition, the petitioner is concerned with the land bearing survey no.1023 situated at Borgaon, Taluka Walwa, District Sangli. The acquisition was for

rehabilitation of the Project Affected persons of Warna Project.

3 The first contention of the learned counsel appearing for the petitioners is that the respondents have committed an error by holding that the agricultural land held by the predecessor of the petitioners on the relevant date was in excess of the applicable slab. The second contention is that before the publication of the notification under Section 11 of the Maharashtra Resettlement of the Project Displaced Persons Act, 1976, there was a partition effected by the ancestors of the petitioners. The submission is that the land of the petitioners could not have been acquired.

4 There is an affidavit in reply filed by Shri Pravin Krushna Salunkhe, the Deputy Collector (Resettlement), Sangli, District Sangli. He has stated that on 13.05.1977, a notification under Section 11 of the Maharashtra Resettlement of Project Displaced persons Act, 1976 was issued in relation to the lands at village Borgaon. It is pointed out that the possession of the acquired land was taken over on 15.06.2010. Mutation entry regarding the possession was made on the same day. It is pointed out that on 29.03.2012, the land subject matter of this petition has been allotted to the project affected persons and that they have been placed in possession on 20.04.2012.

5 After having heard the learned counsel appearing for the petitioners, we find that there is no merit in the petition. On the cut off date, i.e., 13.05.1977, Khata No.655 standing in the name of the predecessor of the petitioners viz. Babu Pandu Jadhav showed that his total holding was of 4 Hectare and 67 Ares. It appears that the said Babu died on 7.03.1977 and thereafter, Khata No. 655 stood jointly in the name of the legal representatives of the said Babu. The slab of 3 Hectare 23 Arcs was applicable and accordingly, the area of 81 Arcs held by the predecessor of the petitioner was acquired.

6 It will be necessary to deal with the contention of the petitioners regarding partition. An objection was raised to the Notice under Section Sub section 1 of Section 4 by the petitioners by sending a reply on 15.11.2007. The said reply itself records that on the demise of said Babu on 7.03.1977, on 22.04.1977, the names of the petitioners have been mutated as the legal representatives of the said Babu. The petitioners have contended that even during the lifetime of the said Babu, the petitioners were residing separately and were cultivating separate portions of lands forming part of the said Khata no.635. It is not even the case made out in the reply that there was a partition effected by metes and bounds during the lifetime of the said Babu on or before 13.05.1977 which was the cut off date.

7 Therefore, we find that holding of the petitioners has been correctly considered on the basis of Khata No.655. An area of 81 Ares has been rightly acquired.

Therefore, no case is made out for interference by this Court in its writ jurisdiction under Article 226 of the Constitution of India.

8 The petition is rejected.

(V.L. ACHLIYA, J.)

(A. S. OKA, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgement/Order.