IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

rpa

WRIT PETITION NO.4615 OF 2002

Kisan Namdeo Auti
(Since deceased through his LR's)
1A. Ramdas Kisan Auti & Ors. .. Petitioners
Vs.
The Sub-Divisional Officer,
Junnar Sub-Division, Khed, Pune & Ors. .. Respondents

….

Mr.K.B.. Sonwalkar, Advocate for the Petitioners.
Mr.V.S. Gokhale, AGP for Respondent Nos.1 to 4.

….

CORAM : A.S. OKA &
A.P. BHANGALE, JJ.

DATED : MARCH 25, 2015.

ORAL JUDGMENT (Per A.S. OKA, J.) :

Heard learned counsel appearing for the petitioners. By this petition under Article 226 of the constitution of India, the petitioners have taken an exception to the Acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act of 1894', for short).

2 The petitioners are concerned with agricultural land bearing Gat no.222/1 at village Belhe, Taluka Junnar, District – Pune. The area of the said land shown in the name of the petitioners in the

revenue records is 5 H 14R. The acquisition was for the resettlement of the project affected persons. A notification under Sub-section (1) of Section 11 of the Resettlement Act was published on 7th February, 1989.

3 The notification under Sub-section (1) of Section 4 of the said Act of 1894, dated 3rd May, 1999 was published in Government Gazette dated 18th March, 1999. Thereafter, an inquiry under Section 5A of the said Act of 1894 was made. A declaration under Section 6 was made and in fact notices under Sub-sections (3) and (4) of Section 9 of the said Act of 1894 were served to the petitioners. The petitioner made a representation dated 16th September, 2000 to the Sub-divisional Officer Junner contending that a partition by metes and bounds was effected in the year 1968 to which Namdeo Auti, Kisan Namdeo Auti and Shankar Namdeo Auti were parties. An application was made under Section 85 of the Maharashtra Land Revenue Act, 1966 to the Tahasildar on 25th March, 1992. It is pointed out in the said application made to the Sub-Divisional Officer that in view of the partition by metes and bounds before the cut off date, the share of the petitioners will not exceed the prescribed slab of 8 Acres. The said application was considered by the Additional Divisional Commissioner, Pune Division. By order dated

23rd July, 2001, the said application was rejected on the ground that effect has not been given in the revenue records to the alleged partition, and therefore, the total holding of the petitioners taken as 5 Hectare and 14 R on the cut off date was proper.

4 The first petitioner is Kisan Namdeo Auti who died during the pendency of the petition and his legal representatives have been brought on record. The petitioner Nos.5 to 9 are legal representatives of the said Nivrutti Auti.

5 The learned counsel appearing for the petitioners invited our attention to a memorandum of partition dated 30th August, 1978 and the application made by the parties to the memorandum to the Tahasildar for giving effect to the partition in the revenue record. He pointed out that by a communication dated 8th March, 1983, the Tahsildar declined to act upon the said application by observing that the said land of the petitioner is not covered by the benefitted zone of Kukadi Project. He pointed out that the memorandum of partition records in the partition effected earlier in the year 1986 by metes and bounds. He submitted that the land was subsequently notified not for the Kukadi project, but for another project by the name Pimpalgaon Joga Project. He pointed out that as far as the said project is

concerned, notification under Sub-section (1) of Section 11 under the Resettlement Act was published on 7th February, 1989. He, therefore, submitted that the partition was effected prior to the said cut off date and, therefore, holding of the petitioners on the cut off date was less than the prescribed slab of 8 Acres.

6 We have carefully considered the submissions. Even according to the case of the petitioners, the partition was an oral partition effected in the year 1968. The petitioner is relying upon the memorandum of the said oral partition effected in the year 1968. The memorandum is dated 30th August, 1978. An application was made to the Tahasildar on 25th March, 1982 for giving effect to the partition effected in the year 1968 in the revenue records. We have carefully perused the copy of the said application which is annexed at Exhibit-B. Surprisingly, in the said application made on 25th March, 1982 there is not even a reference to the alleged memorandum dated 30th August, 1978. It is true that the Tahsildar acting upon the said application issued notices. Ultimately, by communication dated 8th March, 1983, Tahsildar observed that the request made by the applicants cannot be accepted, as there was no direction issued by the State Government as yet for granting permission for giving effect to such transactions.

7 It is true that notification under Sub-section (1) of Section 11 of the Resettlement Act in relation to Pimpalgaon Joga Project was published on 7th February, 1989. To save the land from acquisition, it was incumbent upon the petitioners to establish that before the said cut off date, there was already a partition by metes and bounds by which the share of the petitioners was separated which was less than the prescribed slab.

8 As stated earlier, by a specific communication dated 8th March, 1983, the application made by Nivrutti, Kisan and Shankar was not entertained by the Tahasildar. The said order was never challenged by the petitioner. The petitioner, thereafter, never applied again for making an entry of the alleged partition in the revenue records. As stated earlier, in the application dated 25th March, 1983, there is not even a reference to the memorandum dated 30th August, 1978.

9 Apart from the memorandum and the application made to the Tahsildar, there is no other evidence to show that there was a partition by metes and bounds prior to the cut off date which is 7th February, 1989.

10 As the factum of partition by metes and bounds was not established by the petitioners, the Additional Divisional Commissioner was justified in holding that the holding of the petitioners exceeded the prescribed slab of 8 Acres as in terms of the revenue records, their holding was of 5 H and 14 R.

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

(A.P. BHANGALE, J.) **(A.S. OKA, J.)**