

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7073 OF 2013

Shri Shamrao Govindrao Shendge and Another. .. Petitioners
Vs
State of Maharashtra and Others. .. Respondents
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Shri S.A. Ghaisas i/by Shri A.M. Joshi for the Petitioners.
Shri V.S. Gokhale,AGP for the Respondents.
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CORAM : A.S. OKA &
VLACHLIYA, JJ
DATED : 23RD SEPTEMBER 2015

PC.

. Heard the learned counsel appearing for the Petitioners and
the learned counsel appearing for the Respondents.

2. The land subject matter of this Petition bearing Gat No.519/1 (Old) (New Gat No.188/1) was originally owned by the predecessor of the Petitioners late Shankar Babu Shendge. The contention of the Petitioners is that in the year 1974, the land admeasuring 2 Hectares and 2 Ares out of the land held by the said Shankar Babu Shendge was acquired for the purposes of the rehabilitation of the project affected persons of “Veer Baji Pasalkar Dam”. A further contention is that another portion of the land admeasuring 46 Ares was acquired for the purposes of constructing the Mutha Canal.

3. The first prayer in this Petition under Article 226 of the Constitution of India is for restoration of possession of an area of 46 Ares. The second prayer is for issuing a writ of mandamus directing the Respondents to pay compensation for the said area. The third prayer is again for payment of compensation for the illegal user of the said land.

4. The letter dated 15th December 2007 (Exhibit “C” to the Petition) addressed to the second Petitioner by the Deputy Chief Engineer shows that at least, as in the year 2007, the second Petitioner was aware that the area admeasuring 46 Ares was used by the Irrigation Department for construction of the Mutha Canal. The subject and the reference set out on first page of the said letter shows that a representation was made by the second Petitioner on 3rd April 2007 for grant of a certificate showing that the land admeasuring 46 Ares has been acquired for new Mutha Canal. The certificate was denied to the Petitioners. Thereafter, no steps were taken by the Petitioners. On 19th January 2010, an application was made by the Petitioners to the Respondents claiming allotment of land admeasuring 46 Ares. It was contended by them that they were entitled to the allotment of land admeasuring 2 Ares by way of compensation. Under the order dated 1st July 2010 passed by this Court in Writ Petition No.4137 of 2010, this Court directed the Respondents to decide the said representation of the

Petitioners. By a communication dated 27th June 2010, the Additional Collector, Pune informed the Petitioners that none of the provisions of the Resettlement Acts of the year 1976, 1986 and 1999 were made applicable for acquisition of the land admeasuring 46 Ares for construction of the Canal.

5. Thus, it appears to us that the land admeasuring 46 Ares was taken over for construction of the Canal prior to the year 2007. The Petitioners have not specified the date or month or the year in which the said land was taken over. There are vague averments made in Clause (F) of the Paragraph 1 of the Petition. The Petitioners' predecessor-in-title never made any grievance regarding the taking over of the area of 46 Ares. The letter dated 15th December 2007 at Exhibit-C to the Petition addressed by the Deputy Executive Engineer, Khadakwasla Irrigation Department, Pune, to the second Petitioner shows that on 3rd April 2007, the second Petitioner applied for a certificate stating that the land admeasuring 46 Ares has been acquired for construction of the Mutha Canal.

6. From 2007 till 2010, no action was taken by the Petitioners. On 19th January 2010, a representation was made by the Petitioners seeking allotment of the land. The said prayer has been rightly rejected by the communication dated 27th June 2012.

7. We must note here that in prayer clause (b), the Petitioners have admitted that the area of 46 Ares is in possession of the State Government for a period of 40 years and more. Thus, the said area has been utilized for Canal at least in the year 1973.

8. It is too late in the day now to make a grievance about the illegal acquisition of the area of 46 Ares. The Petitioners' predecessors never made any such grievance. The Petition suffers from gross delay. In any case, this is not a fit case to allow the Petitioners to invoke discretionary jurisdiction under Article 226 of the Constitution of India. The Petition is accordingly rejected.

(V.L. ACHLIYA, J)

(A.S. OKA, J)

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