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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4871 OF 2012

Balu P. Wagaskar & Ors.

.. Petitioners.

Versus

District Rehabilitation Officer, & Ors.

.. Respondents.

Ms. Ashvini A. Takalkar, for the Petitioners.

Mr. V.S. Gokhale, AGP, for the Respondents no. 1 to 3.

**CORAM : A.S. Oka, &
A.P. Bhangale, JJ.**

DATE : 17th April 2015

P.C. :

Heard learned counsel appearing for the Petitioners. The Petitioners are claiming to be the owners of land bearing Gat No. 74 at village Phulgaon, Taluka Haveli, District Pune. A notification under sub-section 1 of Section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 was issued on 10th May 1994. Thereafter, on 17th April 1998, the said land was notified under Section 4 of the Land Acquisition Act, 1894 for acquisition for the purpose of rehabilitation of the Project Affected Persons of Bhama Aaskhed Project. An Award was made on 29th September, 2001.

2. The area of 80 Ares out of Gat No. 74 was notified for acquisition. The contention of the Petitioners is that there was a partition effected which has been upheld by the decree passed by the Civil Court on 8th October, 1997. The contention of the Petitioners is that if the partition is taken into consideration, the holding of the Petitioners will be less than prescribed slab

of 8 Acres. An Application was made by the Petitioners before the Divisional Commissioner for release of the said land from reservation by the exercise of power under sub-section 1 of Section 48 of the Land Acquisition Act, 1894. By the order impugned in this Writ Petition dated 29th March 2012, the said application has been rejected.

3. The learned counsel for the Petitioners invited our attention to consent decree passed in R.C.S. No. 119 of 1992. Her submission is that the consent decree reveals that before the cut off date there was a partition by metes and bounds. She relied upon the letter dated 23rd June 1998 issued by District Settlement Officer, Pune, in which a permission was granted to partition of the land in question. She would, therefore, urge that the partition ought to have been accepted by the Divisional Commissioner. Her submission is that if the partition is taken into consideration, the holding of the Petitioners will be below the prescribed slab and, hence, the said land will have to be deleted from the acquisition.

4. We have given careful consideration to the submissions. The cut off date is 30th June 1989. Heavy reliance is placed on the decree passed in R.C.S. No. 119 of 1992. The said suit was filed by the present Petitioners. In the said suit, on 8th October 1997, a consent decree was passed. The consent decree refers to the partition effected between the parties to the suit. However, there is no statement in the consent decree to the effect that the partition by metes and bounds was actually effected before the cut off date.

5. Moreover, the decree in the suit is not a decree on merits, but it is a consent decree to which the Authorities of the State are not parties. It is not the case of the Petitioners that effect was given in the revenue records to the alleged partition. Reliance is placed on letter dated 23rd July 1998 of the

District Settlement Officer, Pune. We find that the District Settlement Officer had no jurisdiction to record any finding regarding the existence of partition by metes and bounds. Said letter does not record that the partition was effected prior to the cut off date. Therefore, the said letter is of no relevance at all. There was no other evidence produced by the Petitioners to show that partition by metes and bounds was effected before the cut off date.

6. In the impugned order, the Divisional Commissioner has rightly observed that there was no evidence produced to show that the partition was effected before the cut off date. Therefore, we find no error in the impugned order.

7. At this stage, the learned counsel appearing for the Petitioners states that the Krishna Valley Corporation has moved the State Government for the cancellation of acquisition. It is obvious that if such application has been made by the Krishna Valley Corporation, notwithstanding this order, the said application will be considered by the State Government in accordance with law.

8. Subject to what is stated above, the Petition is rejected.

(A.P. Bhangale, J.)

(A.S. Oka, J.)