

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

WRIT PETITION NO.5237 OF 2014

Vivek Manohar Luthria

.. Petitioner.

Vs.

Branch Officer,

Pavna Dam & Ors.

.. Respondents.

Ms.Deepa Shetty i/b Mr.Jitendra G. Shukla for the Petitioner.

Mr.V.S. Tadke i/b Dhandeo D. Shinde for the Respondent Nos.1 to 3.

Mr.V.P. Malvankar AGP for Respondent Nos.1 to 3.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 18TH FEBRUARY, 2015

P.C.

1. Heard learned counsel appearing for the petitioner, learned counsel appearing for first and third respondents and learned AGP for the second, fourth and fifth respondents.

2. The first challenge in this petition is to the notice at Exhibit-Q which is dated 20th January, 2015. The notice has been issued by the first respondent addressed to the petitioner alleging that the land claimed by the petitioner has been acquired for Pavna Dam and that the petitioner has carried out illegal construction thereon by encroaching upon the same. The petitioner is put to notice that the action of removal of encroachment will have to be taken against the petitioner. The second challenge is to the Mutation Entry No.426. By the said mutation entry, on the basis of the award made under the Land Acquisition Act, 1894 the name of the kabjedars

have been ordered to be deleted from the revenue record and the name of Pavna project is sought to be incorporated. There is a reply filed by Mr.Sahebrao Manik Gaikwad, the Deputy Collector (Land Acquisition) No.19, Pune. In the reply, it is contended that the property claimed by the petitioner, which is described in paragraph 4 of the petition, has been acquired by the State Government under the Land Acquisition Act, 1894 and an award has been made in the year 1966.

3. We have perused the notice dated 20th January, 2014. The notice is not issued by the Revenue Officer under the Maharashtra Land Revenue Code, 1966 (for short "the said Code"). The notice has been issued by the first respondent, who is the Branch Officer of Pavna Dam. The notice does not make a reference to any provision of law. However, the contention of the respondents is that the land described in paragraph 4 of the petition has been acquired and is vesting in the State. The action under section 50 of the said Code can be initiated by the Collector or by any other officer, who is empowered to exercise the powers of the Collector. On the basis of notice dated 20th January, 2014 the action of eviction or removal of encroachment cannot be taken. As far as the challenge to the mutation entry is concerned, if the petitioner claims that he is the owner of property described in paragraph 4, he will have to establish his title by filing an appropriate proceedings before the Civil Court. Apart from this, there is always remedy available under the said Code

for challenging the mutation entry. Accordingly, we dispose of the petition by passing the following order :

- (i) We hold that the action of removal of encroachment cannot be taken on the basis of the impugned notice dated 20th January, 2014. However, it will be open for the Collector or any other officer empowered to exercise powers of the Collector under the said Code to initiate proceedings under section 50 of the said Code for removal of alleged encroachment on the land vesting in the Government;
- (ii) As far as challenge to the mutation entry is concerned, we permit the petitioner to adopt the appropriate proceedings. We make it clear that we had made no adjudication on the question of title claimed by the petitioner and the issue of title will have to be decided in the appropriate proceedings.
- (iii) In the event, any order is passed under sub-section (1) of section 50 of the said Code for removal of encroachment and/or for demolition of the structure against the petitioner, the same shall not be implemented for a period of two weeks from the date on which the order is served upon the petitioner. This limited relief is granted to enable the petitioner to adopt appropriate remedy as provided in sub-section (5) and (6) of section 50 the said Code;
- (iv) The petition is disposed of in the above terms.

(A.K. MENON, J.)

(A.S. OKA, J.)