

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5867 OF 2013

Shri Dada Babu Dhanawade,
since deceased through his
legal heir Shamrao D. Dhanawade .. Petitioner
vs.
Deputy Director of Rehabilitation
(Land) and Collector, Kolhapur & Ors. .. Respondents

Mr. P. D. Dalvi for Petitioner.
Ms M. S. Bane – 'B' Panel - AGP for Respondents.

CORAM : M. S. SONAK, J.
DATE: 11 MARCH 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition impugns order dated 4 May 2013 made by the Additional Collector, Kolhapur under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (said Act) cancelling allotment order dated 22 June 2012, by which certain properties came to be allotted to the petitioner, who is admittedly a project affected person.

3] The allotment order dated 22 June 2012 is in the prescribed format. Upon careful consideration of the entries therein, it transpires that since the petitioner had allegedly not paid towards

occupancy price of the land, 65% of the amount of compensation which he had received for his land which was acquired from him in the affected zone or of the likely cost of the land to be granted to him under section (1) of Section 16 of the said Act, whichever is less, at a time of payment of such compensation, the petitioner was called upon to pay sum of Rs.19,033/- towards such occupancy price.

4] By possession certificates dated 2 August 2012 and 8 August 2012, the possession of the allotted lands was handed over to the petitioner. Thereafter, on 5 March 2013, notice was issued to the petitioner by the Additional Collector (Rehabilitation) to clarify whether the petitioner has paid 65% of the compensation amount and if so to produce necessary proof in that regard. The petitioner, submitted response on 19 March 2013, pointing out that he has paid the sum of Rs.19,033/- as reflected in the allotment order dated 22 June 2012 and in support thereof, the petitioner also annexed challan evidencing that such payment was made on 4 March 2013.

5] The Additional Collector however, has made the impugned order dated 4 May 2013 observing that there is no evidence with regard to payment of 65% of the amount of compensation and

cancelling the allotment order dated 22 June 2012. Hence, the present petition.

6] Heard Mr. Dalvi, the learned counsel for the petitioner and Ms. Bane, the learned AGP for the respondents. Upon perusing the records, including in particular the documents annexed to the affidavit in reply filed by and on behalf of the respondent nos. 1 to 4, it transpires that the petitioner was paid total compensation of Rs.19,625.38 at the stage when his property came to be acquired for setting up some project. Thereafter, vide allotment order dated 22 June 2012, the respondents allotted property to the petitioner by way of rehabilitation. The allotment order dated 22 June 2012, makes reference to amount of Rs.19,033/-. Admittedly, on the date when the allotment order dated 22 June 2012 was issued, the petitioner had not paid any amount to the State towards rehabilitation.

7] Thereafter, in the month of August 2012 even the possession of the allotted lands was handed over to the petitioner. The petitioner has paid the amount reflected in the allotment order dated 22 June 2012 on 4 March 2013, which is clear from the challan produced by the petitioner on record. The affidavit in reply does not dispute that such amount was paid by the petitioner on 4 March

2013. However, the contention of the learned AGP is that such payment is way beyond the period prescribed under Section 16(2) (b) of the said Act and therefore the petitioner has forfeited his right to obtain allotment under the provisions of Section 16(1) of the said Act.

8] As noted earlier, in the present case, allotment has already been made by the State under Section 16(1) of the said Act. The impugned order does not therefore forfeit such right of allotment, but proceeds to cancel the allotment already made. Such cancellation is on the basis that the petitioner has not produced any evidence with regard to payment of 65% of the compensation. The material on record, including in particular, challan dated 4 March 2013 does not support such a conclusion. Accordingly, the impugned order shall have to be set aside. In so far as the contention of the learned AGP is concerned, the same cannot be accepted in the light of the decision of this Court in the case of *Ram Shankar Deshmukh & Ors. vs. State of Maharashtra & Ors.*¹, wherein the Division Bench of this Court has observed thus :

“4. The statutory provisions are very clear and therefore limitation stipulated in sub-section (2) of section 16 of the Act will begin to run only after the Collector serves a notice upon the land losers as provided in section 16(2)(a). The learned AGP sought to contend that 65% amount is

1 Writ Petition No. 8385 of 2010 and connected matters, decided on 2.5.2011.

required to be deposited at the time when the land loser received compensation as provided under clause (b) of section 16(2). It is not possible to accept the above contention for the simple reason that the land loser will come to know about the entitlement to get alternate land only when he receives the notice in that behalf from the Collector as specifically provided under clause (a) of sub-section (2). Hence, it has to be held that for a land loser to forfeit his right to get alternate land under the provisions of the above Act, mere non deposit of 65% of the compensation at the time of receiving the compensation is not sufficient unless the land loser was given the notice under section 16(2)(a) by the Collector in the first place. In view of the above discussion, the petitions are allowed."

9] Further, in the case of *State of Maharashtra & Ors. vs. Shanta ram B. Natale (deceased) Lahu Shantaram Nawale & Ors.*², another Division Bench of this Court following the decision in the case of *Ram Shankar Deshmukh* (supra) has held that for a land loser who forfeit his right to get alternate land, mere non deposit of 65% of the compensation at the time of receiving the amount is not sufficient unless, in the first place, a notice was issued under Section 16(2)(a) of the said Act.

10] For the aforesaid reasons and in the facts and circumstances of the present case, therefore, the impugned order dated 4 May

² 2013(6) Mh. L.J. 527

2013 is required to be set aside and is hereby set aside. Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka