

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

rpa

WRIT PETITION NO.5453 OF 1998

Suresh Jijaba Yadav

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

....

Mr.Dilip Bodake, Advocate for the Petitioner.

Mr.V.S.Gokhale, AGP for the Respondent Nos.1 to 4.

....

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

DATED : APRIL 10, 2015.

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

This petition was on final hearing board. Submissions were made on earlier date. The challenge in this writ petition under Article 226 of the Constitution of India is to the proceedings of acquisition of the land bearing Gat No.836 at Village Saspade, Taluka Satara, District - Satara. The petitioner is claiming an area of 45 R out of Gat No.836 (hereinafter referred to as "the said land", for short). The reply discloses that on 13th October, 2000, an Award under Section 11 of the Land Acquisition Act 1894(hereinafter referred to as 'the said Act of 1894', for short) was made in respect of the said land along with several other lands. It is pointed out that

possession of the acquired land was taken over on 19th May, 1998. The learned AGP on instructions states that as far as the said land is concerned, the same has not been allotted to any project affected person.

2 In support of the aforesaid statement, the learned AGP has placed on record a compilation which is taken on record and marked “Y” for identification. In the letter dated 7th April, 2015, addressed to the learned Government Pleader by the Deputy Collector (Rehabilitation) Satara, it is stated that the said land has not been allotted to any person.

3 The notification under Section 11 of the Resettlement Act was issued on 12th March, 1984. One of the main contentions raised by the learned counsel appearing for the petitioner is that in the sanctioned Consolidation Scheme, the area of the Gat No.836 was shown as 3 Hectare and 32 R. He pointed out that it was an arithmetical mistake which has been corrected and the correct area of the Gat No.836 is shown as 2 Hectare and 83 R. Alongwith an additional affidavit of the petitioner dated 11th June, 2010, the petitioner has placed on record a photocopy of the certified copy of the extract of Form 8A. Along with another additional affidavit dated 21st February, 2014, the petitioner has produced mutation entry no.1220 certified on 23rd February, 1999 which records that

the Consolidation Scheme was corrected in exercise of powers under Section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The submission of the learned counsel appearing for the petitioner is that the modified area of Gat No.836 is 2 Hectare 32 R (5 Acres 29 Gunthas). He submitted that if the correct area would have been taken into consideration, it was below the prescribed slab.

4 The petition is opposed by the learned AGP. He urged that in accordance with law, holding of the petitioner on the date of the notification under Section 11 of the Resettlement Act has been taken into consideration. He pointed out that on the relevant date, the area of Gat No.836 was shown as 3 Hectare 28 R and, therefore, the said area has been taken into consideration.

5 We have carefully considered the submissions. It cannot be disputed that if the holding of the petitioner of the land bearing Gat No.836 was taken as 2 Hectare 32 R, the said land could not have been acquired as per the prescribed slab. We have perused the additional affidavit dated 21st February, 2014 filed by the petitioner to which a mutation entry no.1220 certified on 23rd February, 1999 has been annexed. The mutation entry records that as per the original sanctioned Consolidation Scheme, the area of Gat No.836 was shown as 3 Hectare 32 R (5 Acres 29 Ganthas). The mutation

entry records that by order dated 30th December, 1998 passed by the Deputy Director of Land Records, the power under Section 31A of the said Act of 1947 has been exercised and the area in Hectare and Ares has been corrected as 2 Hectare 32 R. From the mutation entry no.2210, it is crystal clear that the area of Gat No.836 in the sanctioned Consolidation Scheme was 5 Acres 29 Gunthas and, therefore, the same could not have been shown as 3 Hectare 32 R. Only an arithmetical mistake has been corrected by correcting the area as 2 Hectare 32 R. Therefore, even going by the original Consolidation Scheme, on 23rd March, 1984 which is the cut off date, the holding of the petitioner was 5 Acres 29 Guntha. Therefore, the said land could not have been acquired. It is obvious that all this has happened due to purely an accidental error or an arithmetical error while converting the area in Acres and Gunthas into Hectare and Are. Therefore, the acquisition proceedings initiated in respect of the said land will have to be quashed and set aside.

6 As stated earlier, the said land has not been allotted to anyone.

7 Hence, we dispose of the petition by passing the following order:

:: O R D E R ::

(i) The acquisition proceedings initiated in respect of the land bearing Gat No.836 at village Saspade, Taluka - Satara, District - Satara which culminated into the Award dated 13th October, 2000 which was passed during the pendency of this petition are hereby quashed and set aside only to the extent of the said land admeasuring 45 Ares bearing Gat No.836 of village Saspade. The acquisition proceedings and the Award dated 13th October, 2000 and all consequential actions taken on the basis of the said Award shall continue to be legal and valid in relation to all other acquired lands;

(ii) As the Award dated 13th October, 2000 has been quashed and set aside as far as land bearing Gat No.836 is concerned, the possession of the said land shall be restored to the petitioner within a period of four months from today;

(iii) We accept the statement made by the learned counsel appearing for the petitioner on instructions

that the petitioner has not accepted the compensation payable as per the said Award;

(iv) Rule is made absolute on the above terms with no order as to costs.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)