

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1215 OF 2015

Shri Anand Bapu Phadtare & Ors.

... Petitioners

Vs.

The Divisional Commissioner,
Pune Division, Pune & Ors.

... Respondents

Mr.Dilip Bodake for the Petitioners

Mr.Vikas Mali, Assistant Government Pleader, for Respondent Nos.1 to 4

**CORAM: MRS.VASANTI A. NAIK &
MRS.MRIDULA BHATKAR, JJ.**

DATE: 11th MARCH, 2015

PC.:

By this petition, the petitioners challenge the declaration – notification issued by the State Government u/s 6 of the Land Acquisition Act, as also the acquisition proceedings and the award passed therein.

The petitioners claim to be the members of the joint family which owned and possessed the agricultural land admeasuring 3 hectares and 11 ares. Certain members of the petitioners family had filed a suit against Bapu Phadtare for partition and separate possession of the land and the trial Court had decreed the suit in January, 1982. The petitioners claim to have 1/3rd share in the suit land as per the decree. An appeal was filed

against the judgment and decree by the defendants and the same was dismissed by the judgment dated 29.11.1986. A second appeal against the two judgments was admitted by this Court and ultimately the second appeal was also dismissed by the judgment dated 8.1.2008. During the pendency of the first appeal and the second appeal, the effect and operation of the judgment and decree in the suit for partition was stayed, with the result that the petitioners were not granted the land which fell to their share. After the second appeal was dismissed, the petitioners filed a petition seeking the exclusion of their land from acquisition. The Divisional Commissioner dismissed the application of the petitioners. The petitioners filed the writ petition and the matter was remanded to the Divisional Commissioner for a fresh decision. After hearing the petitioners, the competent authority dismissed the application filed by the petitioners. The said decision is challenged in the instant petition.

Mr.Bodake, the learned Counsel for the petitioners, submitted that the Divisional Commissioner was not justified in rejecting the application filed by the petitioners. It is stated that the total holding of the joint family members was 3 hectares and 11 ares and the holding of the petitioners was less than the ceiling limit and hence, the same could not have been acquired under the provisions of the Act. It is stated that some of the part

of the holding belonging to the petitioners was uncultivable and some of it was non-agricultural land and hence, these lands were liable to be excluded while computing the holding. It is stated that these aspects of the matter have not been considered by the Divisional Commissioner while dismissing the application filed by the petitioners. It is stated that the Divisional Commissioner, who heard the matter, did not decide the appeal and the appeal was decided by an officer who did not hear the same.

Mr.Mali, the learned Assistant Government Pleader, appearing for the respondents, supported the order of the Divisional Commissioner and submitted that the Divisional Commissioner had considered the fact of deduction of non-agricultural land while computing the holding. It is stated that the petitioners had not produced any cogent material to show that the land was barren land. It is stated on instructions that Mr.Vikas Deshmukh, who had heard the petitioners had passed the impugned order on 7.10.2014. It is stated that the submission made on behalf of the petitioners that the Divisional Commissioner who heard the matter had not decided the same is incorrect.

On hearing the learned Counsel for the parties, it appears that the prayer made by the petitioners cannot be granted and the acquisition proceedings cannot be set aside. The lands in question were acquired in

the year 1999. At the relevant time, though a decree was passed in favour of the petitioners in regard to the part of land that was acquired, the said judgment and decree was stayed in the first and the second appeal till the second appeal was decided in the year 2008. The authorities, therefore, rightly considered the land to be the land in the ownership of Bapu Phadtare and acquired the same by following the due procedure prescribed by law. After the second appeal was dismissed, the petitioners are challenging the acquisition proceedings of the year 1999 on the ground that they had ownership over a part of the land. The only remedy for the petitioners is to seek their share of compensation from Bapu Phadtare and the petitioners cannot in the year 2008 challenge the acquisition proceedings of the year 1999 on the ground that their land could not have been acquired. It appears on a reading of the judgment of the Divisional Commissioner that the fact that the non-agricultural land was deducted while considering the total holding of Bapu Phadtare is considered. So also, the Divisional Commissioner has recorded a finding of fact that the petitioners did not produce any cogent evidence to show that a part of the land was barren and uncultivable. Two documents are relied on by the learned Counsel for the petitioners to point out that the part of the land is barren. The documents cannot be accepted for the purpose of holding that the land is barren as the report to that effect is made by a private surveyor.

In any case, we do not wish to entertain the writ petition at the behest of the petitioners who claim to be the owners of the part of the acquired land on the basis of a decree that was confirmed in the year 2008 in a second appeal, especially when the land was acquired in the year 1999. Also, we accept the statement made on behalf of the respondents that the Divisional Commissioner who heard the matter has decided the same. Copy of the Roznama annexed to the petition is incomplete and the same cannot be relied on for the purpose of holding that the Divisional Commissioner who decided the matter did not hear the petitioners.

Since there is no merit in any of the submissions made on behalf of the petitioners, the Writ Petition is dismissed with no order as to costs.

(MRIDULA BHATKAR, J.)

(VASANTI A. NAIK, J.)