IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11635 OF 2012

Kashinath Vishnu Karpe & Ors. ..Petitioners
V/s.
Deputy Collector, Satara & Ors. ..Respondents

Mr. Kayval P. Shah, for the petitioners
Mr. V.S. Gokhale, AGP for respondent no. 1 to 3.

CORAM : ABHAY S. OKA &
C.V. BHADANG, J.J.

DATE : 06TH MAY 2015.

P.C.

1. Heard learned counsel appearing for the petitioners and the learned Assistant Government Pleader for the State.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the acquisition of the lands of the petitioners, more particularly described in paragraph 2(A) of the Writ Petition. The acquisition of lands is for the resettlement of the project affected persons. An Award under section 11 of the Land Acquisition Act (for short 'the said Act') was made on 31st July 2010. The challenge to the acquisition is on the ground that the holding of the petitioners was less than the prescribed slab on the relevant

date. The stand taken by the State Government, based on the possession panchnama, is that the possession of the acquired lands was taken over in accordance with Section 16 of the said Act. Copies of the possession panchnama have been annexed to the affidavit in reply filed by the State Government. There is a rejoinder filed by the petitioners contending that the possession of the acquired lands was never taken over under the provisions of the said Act. There is more than one affidavit filed by Shri. Shanker Bhagwan Bhosale, Deputy Collector (Land Acquisition) No. 4, Satara. Notice of possession served to the petitioners is not placed on record. In both the affidavits, it is not stated as who has signed the possession panchnama.

3. If, according to the case of the petitioners, the possession of the acquired lands was not taken over in accordance with Section 16 of the said Act, the petitioners could have approached the Divisional Commissioner by making an application under Sub- Section (1) of Section 48 of the said Act on the ground that their holding was less than the prescribed slab.

4. Therefore, we deem it appropriate to relegate the petitioners to a remedy under Sub-Section (1) of Section 48. The

power under the provisions of Sub-Section (1) of Section 48 can be exercised by the Divisional Commissioner only if the possession of the acquired land is not taken over in accordance with the said Act. In the present case, there is a serious dispute whether the possession of the acquired lands was taken under the provisions of the said Act. While relegating the petitioners to the said remedy, the issue as regards the possession is kept open. The Divisional Commissioner will have to make an adjudication on the question whether the possession of the acquired lands has been taken in accordance with the provisions of the said Act. The Divisional Commissioner can deal with the application on merits only if he comes to the conclusion that the possession has not been taken over in accordance with the provisions of the said Act.

5. We accordingly dispose of the petition by passing the following order.

: ORDER :

i. We direct the petitioners or their authorized representative to remain present before the Divisional Commissioner, Pune on 22nd May 2015 at 11.00 a.m. The petitioners shall present an application under Sub-Section (1) of Section 48 of the said Act along with an authenticated copy of this

order in the office of the Divisional Commissioner, Pune on that day;

ii. The Divisional Commissioner shall decide the said application in the light of the observations made in this judgment and order within a period of four months from 22nd May 2015;

iii. As observed earlier, the issue whether the possession of the acquired lands has not been taken over under the provisions of the said Act is expressly kept open to be decided by the Divisional Commissioner;

iv. Till the disposal of the application by the Divisional Commissioner, status-quo as of today as regards the possession of the acquired lands shall be maintained. The said order shall continue to operate till the communication of the order passed by the Divisional Commissioner to the petitioners or any one of them. If the order of the Divisional Commissioner be adverse to the petitioners, the said order shall continue to operate for the period of four weeks from the date on which the order is communicated to the petitioners or any one of them;

v. We make it clear that on the failure of the petitioners to submit an application on 22nd May 2015, the limited protection granted as above shall not operate;

vi. All contentions on merits are kept open;

vii. Petition is disposed of accordingly.

Viii. All concerned to act on a copy of this order duly authenticated by the registry of this Court.

[C.V. BHADANG, J.] **[ABHAY S. OKA, J.]**