

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

WRIT PETITION NO. 11846 OF 2015

Mahadev Govind Patil
(Since Deceased through his LRs)

- (a) Baburao Mahadev Patil
- (b) Shamrao Mahadev Patil
- (c) Ishwara Mahadev Patil
(since deceased through LRs)
Janabai Janaba Tippe
- (d) Vishnu Mahadev Patil
(Since Deceased through his LRs)

- (i) Dinkar Vishnu Patil
- (ii) Tanaji Vishnu Patil
- (iii) Dhanaji Vishnu Patil
- (iv) Shivaji Vishnu Patil
- (v) Ambaji Vishnu Patil

All residing at Ardal, Tal Ajara,
District Kolhapur

.. Petitioners.

V/s.

- 1) The Collector, Kolhapur
District, Kolhapur
- 2) Special Land Acquisition Officer
No.12, Kolhapur, having his
office at
Swarajya Bhavan,
Tarabai Park, Kolhapur
- 3) The Comissioner for Revenue,
Pune Division, Pune.

- 4) The State of Maharashtra

.. Respondents

.....
Mr. Pradeep Dattajirao Dalvi, Advocate for the Petitioners.
Mrs. M. P. Thakur, AGP for the Respondents.
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**CORAM : A.S. OKA AND
C.V. BHADANG, JJ.**

DATED : FEBRUARY 2, 2016.

P.C.

Heard the learned counsel appearing for the petitioners and the learned AGP for the respondents. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 28th September, 2015, passed by the learned Additional Commissioner, Pune Division, Pune on an application under Sub-section (1) of Section 48 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894", for short). The prayer made by the petitioners for release of their land from acquisition was rejected by the said order. The notification under Section 11 (1) of the Maharashtra Resettlement of Project Affected Persons Rehabilitation Act, 1989 was issued on 31st July, 2000. The acquisition of the land claimed by the petitioner was made for rehabilitation of the project affected persons of Ambeohol project in Ajara Taluka, District Kolhapur. The slab was notified as 4 acres (1 H 61 R). A Notification under Sub-section (1) of Section 4 of the said Act was

issued on 15th July, 2009. An Award was made on 21st December, 2012. As per the record, the total holding of the petitioners was 9 Hectares 19.8 Ares out of which area of 5 H and 91.1 Ares was in the benefited zone. Area of 3 H 28.7 Ares was outside the benefited zone. Out of the holding, area admeasuring 86 Ares out of Gat no.626 of village Ardal, Taluka Ajara, District Kolhapur and area of 1 Hectare 83 Ares out of Gat no.913 of village Ardal was acquired. By the impugned order dated 28th September, 2015, the application made by the petitioners under Sub-section (1) of Section 48 of the Said Act has been rejected.

2 The first submission of the learned counsel appearing for the petitioners is that under Sub-section (1) of Section 48 of the said Act, as amended by Bombay Act 71 of 1958, apart from the Government, the power to withdraw from acquisition of any land of which possession has not been taken has been conferred on the Commissioner. He submitted that the Additional Commissioner, Pune Division is not the Commissioner within the meaning of Sub-section (1) of Section 48 of the said Act. He submitted that though the application under Sub-section (1) of Section 48 was addressed to the Divisional Commissioner, the same has been heard by the Additional Divisional Commissioner

who had no authority to exercise power under Sub-section (1) of Section 48. He pointed out that the original holder Mahadev Govind Patil (the father of the first petitioner) died on 4th January, 1990. A suit for partition of the holding was filed on 4th November, 1996, which was decreed on 24th January, 2007. His submission is that as per the said decree, the petitioners were held entitled to 1/6th share equivalent to area of 1 H 92 R. His submission is that the share of the petitioners ought to have been excluded from the acquisition. His third submission is based on the letter dated 25th February, 1988 addressed by the Secretary of the Rehabilitation Department of the State Government to the Commissioner, Pune Division (Resettlement Branch), Pune. He submitted that the said letter records that if a suit for partition is filed prior to the publication of the notification under Sub-section (1) of Section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1989, the same will have to be taken into consideration for deleting the land from acquisition, though a decree is passed subsequent to the notification under Sub-section (1) of Section 11. Lastly, he relied upon the unreported judgment of this Court in the case of **Gopal Shivram Ghatage & Ors. Vs. Special Land Acquisition Officer & Ors**¹. His submission is

1 W.P.1059 of 1986, decided on 2nd November, 1992.

that on death of father of the first petitioner, in view of Section 6 of the Hindu Succession Act, 1956, there is a deemed partition which ought to have been taken into consideration as the deemed partition took place much before the notification under Section 11(1).

3 We have carefully considered the submissions. By Bombay Act of 17 of 1958, after the word "Government" the words "or the Commissioner" were added in Sub-section (1) of Section 48 of the said Act. Thus, even the Commissioner was conferred with the authority of withdrawing any land from the acquisition.

4 Under Section 5 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the said Code", for short) it is provided that the Chief Controlling Authority in all matters connected to the land revenue in his division shall vest in Commissioner subject to superintendence of the Government. Section 6 of the said Code is material which reads thus:

"6. Revenue Officers in division

The State Government shall appoint a

Commissioner for each division; and may appoint in a division an Additional Commissioner and so many Assistant Commissioners as may be expedient, to assist the Commissioner:

Provided that, nothing in this Section shall preclude the appointment of the same officer as Commissioner for two or more divisions."

There is a power conferred on the State to appoint a Commissioner for each division and also to appoint an Additional Commissioner for a division. This is apart from the power to appoint Assistant Commissioners to assist the Commissioner. Thus, the Additional Commissioner appointed in a division is also a Commissioner. There is another provision which is material. The said provision is Sub-section (2) of Section 13 which reads thus:

"13. Powers and duties of Revenue Officers

- 1)
- 2) *The revenue officers aforesaid shall also, subject to the control and the general or special orders of the State Government, exercise such powers and discharge such duties and functions, as the State Government may by an order in writing confer or impose on*

them for the purpose only of carrying out the provisions of any law for the time being in force, and so far as is consistent therewith."

Hence, the Additional Commissioner can exercise all the powers of the Commissioner. The submission made by the learned counsel appearing for the petitioners proceeds on the wrong premise that an Additional Commissioner is not a Commissioner. A Commissioner appointed in a division in addition to the Commissioner already appointed is designated as an Additional Commissioner. Therefore, for all intents and purposes, the Additional Commissioner is a Commissioner who is empowered to exercise the powers of Commissioner. Therefore, the Additional Commissioner could have exercised the powers under Sub-section (1) of Section 48 of the said Act.

5 As stated in the impugned order, the original holder i.e. the first petitioner's father died on 4th January, 1990. The suit for partition was filed on 4th November, 1996 which was pending on the cut-off date i.e. 31st July, 2000 when the notification under Sub-section (1) of Section 11 of the said Act of 1989 was issued. The decree was passed in the year 2007. Even assuming that the

decree was executed or implemented immediately, the share of the petitioners got separated long after 31st July, 2000. The total holding was not partitioned by metes and bounds on the cut-off date. Therefore, the Additional Commissioner has rightly kept the suit out of the consideration as mere filing of the suit does not amount to partition by metes and bounds. As far as reliance placed on letter dated 13th February, 1988 is concerned, it is merely an opinion recorded by the Secretary of the Rehabilitation Department of the State Government in a letter addressed by him to the Commissioner, Pune Division, Pune. It is not a Government Resolution or a Government decision. Therefore, the said opinion does not have a binding effect of a Government decision or a government resolution and, therefore, the Additional Commissioner was justified in stating what is stated in the said letter.

6 We have perused the judgment of the Division Bench in the case of ***Gopal Shivram Ghatage & Ors (Supra)***. We must note here that Section 6 of the Hindu Succession Act, 1956 provides for notional partition for the purpose of computation of shares. Notional partition is not a partition by metes and bounds. Moreover, in the facts of the case, the Division Bench relied upon

the mutation entry by observing that the said mutation entry leaves no manner of doubt that the partition had taken place and that holding of each of the petitioners before the Division Bench was less than 8 acres. Thus, after finding that there was a partition effected by metes and bounds that the Division Bench interfered. The said decision is of no assistance to the petitioners.

7 Hence, we find no merit in this petition and the same is, accordingly, rejected.

8 At this stage, the learned counsel appearing for the petitioners seeks extension of the ad-interim order dated 1st December, 2015. The said request is opposed by the learned AGP. We direct that the ad-interim relief will continue to operate for a period of two months from today.

(C. V. BHADANG, J.)

(A.S. OKA, J.)