

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.477 OF 1992

Smt.Sonabai Baburao Deokate

Petitioner

versus

The Additional Commissioner,
Pune Division, Pune and others

Respondents

Mr.Rahul Kate for Petitioner.

Mr.S.S.Kanetkar for Respondent Nos.6,7 and 11 to 14.

Ms.M.S.Bane, `B' Panel Advocate for Respondent nos.1 to 3.

CORAM : M.S.SONAK, J.

DATE : 14 January 2016

PC :

1. The challenge in this petition is to the communication dated 3 December 1990 issued by the Additional Commissioner, Pune accepting the proposal of Respondent no.4 to change of the orientation of the property acquired from Respondent no.4, with a view to protect his house and the well allegedly existing in the portion of the acquired property.

2. Mr.Kate, learned counsel for the Petitioner, has submitted that the Petitioner is admittedly a Project Affected Person (`PAP') and therefore, under Panchanama dated 7 July 1989, was allotted the suit property which bears land Gat No.669 admeasuring 2 Hectors 2 Ares at Village Malthan,

Taluka Daund, District Pune. Mr.Kate submits that the fact that the possession of the suit property was handed over to the Petitioner is further evident from the possession receipt dated 7 July 1989, which is also placed on record. He submits that the impugned communication virtually constitutes withdrawal from the acquisition in terms of Section 48(1) of the Land Acquisition Act, 1894 ('the said Act') and such withdrawal from acquisition was not at all permissible, once the State Government had already taken over the possession of the suit property and thereafter proceeded to place the Petitioner in possession thereof. He submitted that once the possession of the acquired property is taken by the Government in pursuance of the award under Section 11 of the said Act, such property vests absolutely in the Government and thereafter it is impermissible to exercise power under Section 48(1) of the said Act. In support of this proposition, Mr.Kate relies upon a decision of this Court in case of **Yashwant Bakru Donhe Vs. Additional Commissioner, Pune and others**¹.

3. On the other hand, Mr.Kanetkar, learned counsel for Respondent nos.6,7 and 11 to 14 submits that this is really not the case of exercise of power under Section 48(1) of the said Act. In this case, the State Government has not withdrawn from the acquisition as such, but has merely re-oriented the acquired properties, so that the house structure and the well of

¹ {2011(4)-Mh.L.J.-244}.

Respondent no.4 is protected and at the same time, remaining portion of the acquired property having almost equivalent area is made available to the Petitioner in lieu of the earlier allotment. However, Mr.Kanetkar submits that the possession of the suit property was never taken over from Respondent no.4. He submitted that one of the co-owners (Respondent no.14) of the suit property had in fact instituted a civil suit against the State Government and therein the Civil Court had directed maintenance of status-quo. He also pointed out that the Petitioner had also instituted a civil suit in respect of the suit property, wherein the Trial Court and the First Appellate Court had issued temporary injunction, but the same were stayed by this Court and ultimately the petition instituted by Respondent no.4 was allowed and the interim orders were vacated. He pointed out that ultimately even the suit instituted by the Petitioner has since been dismissed. In these circumstances, he submitted that even assuming that the impugned order relates to exercise of power under Section 48 of the said Act, the same is not vitiated by any legal infirmity, inasmuch as the possession of the suit property was never taken over by the State Government, thereby disabling the State Government from exercising the power under Section 48(1) of the said Act. For all these reasons, Mr.Kanetkar submitted that the petition as instituted, is liable to be dismissed.

4. Ms.Bane, 'B' Panel counsel appearing for Respondent nos.1 to 3 defended the impugned order by submitting that in pursuance of the same, the Petitioner, after offering an opportunity of hearing, was offered the possession of alternate acquired land, which the Petitioner refused to accept. In such circumstances, Ms.Bane submitted that there is no case made out by the Petitioner for grant of any reliefs in this petition.

5. It must be stated at this stage that present writ petition had been dismissed for non prosecution some time in the year 2006. Thereafter, though the petition was restored, there is no record of ad-interim relief granted earlier having been restored.

6. Rival contentions now fall for determination.

7. If the impugned order is perused, it cannot be said that the same is relatable to the exercise of power under Section 48 of the said Act. It is evident that considerable tracts of land had been acquired by the State Government. Before any formal allotment could be made in favour of the Petitioner, the Respondent no.4 had already petitioned the State Government for re-orientation while making allotment so that the structure and the well of Respondent no.4 is protected. The impugned order merely permits re-orientation, with a view to protect the

structure and the well of Respondent no.4, but at the same time, ensures that the Petitioner who is admittedly a PAP, is not left in a lurch. Accordingly, notwithstanding the impugned order, the portion of the acquired property not covered by the house and the well of Respondent no.4, was in fact offered to the Petitioner. This was after issuance of notice to the Petitioner. The Petitioner's children did appear at the site but declined to accept the alternate portion on the ground that they would revert after instructions from the Petitioner. Ultimately, since they did not revert, the State Government has retained this alternate acquired land to itself. Mr.Kanetkar has made a reference to yet another possession receipt dated 12 November 1991, which substantially bears out this position. Mr.Kanetkar has also made a reference to the revenue records which indicate that till date, the name of the Government continues in respect of the said alternate property which was offered to the Petitioner.

8. Even if it is to be assumed that the impugned communication relates to exercise of power under Section 48(1) of the said Act, from the material on record, it is not clear whether the possession of the suit property was actually taken over by the State Government, so as to disable it from exercising the power under Section 48 of the said Act. There was a civil suit instituted by Respondent no.14 in which status-quo order had already been granted. The Petitioner had claimed possession

in pursuance of the Panchanama and possession receipt and on the said basis even instituted a civil suit, which has since been dismissed. During pendency of said civil suit, though orders of interim relief had been obtained by the Petitioner, the same were really not effective since the same were initially stayed by the First Appellate Court and thereafter by this Court. Ultimately, the interim orders were vacated by this court and now finally even the suit has been dismissed. Therefore, it cannot be said that the exercise of power under Section 48 of the said Act was without jurisdiction, assuming that this is indeed a case of exercise of power under Section 48 of the said Act. In view of such factual situation, the decision in the case of Yashwant Bakru Donhe Vs. Additional Commissioner, Pune and others (supra) will offer no assistance to the case of the Petitioner.

9. Mr.Kate, however, has submitted that the alternate property offered to the Petitioner is non-irrigated land and, therefore, would hardly constitute re-orientation. Mr.Kanetkar counters this position by stating that the Petitioner has several other lands in the same village and that the Petitioner was in fact ineligible to receive any lands towards rehabilitation, as in all probabilities, the holdings of the Petitioner exceeded the ceiling limits. Mr.Kanetkar also submits that even the Defendant's land is irrigated.

10. At this stage, it is not possible to enter into this controversy. Although the impugned order does not warrant any interference, the Petitioner cannot be left in a lurch. As such, the Petitioner will be at liberty to accept the alternate acquired land, which was offered to the Petitioner in terms of the communication dated 11 February 1991 and the possession receipt dated 12 November 1991.

11. In case the Petitioner, by means of representation to be made within three months from today, expresses her willingness to accept the said alternate acquired property offered in the year 1991 in lieu of her acquired land, the State Government shall allot the same to the Petitioner in terms of the communication dated 11 February 1991 and the possession receipt dated 12 November 1991 within a period of three months from the date of receipt of representation.

12. Although no directions are being issued to the State Government, the State Government is also at liberty to consider whether any other alternate and equivalent property can be allotted to the Petitioner in view of the contention of the Petitioner that the alternate acquired property which was offered to her in the year 1991, was not an irrigated land. It is, however, made clear that no directions are being issued in this regard.

13. The challenge to the impugned communication is rejected. However, the Petitioner is granted liberty to opt for and avail the alternate acquired property as aforesaid and directions are issued to the State Government in the aforesaid regard.

14. Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

(M.S.SONAK, J.)

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