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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2355 OF 2015

Pandurang Vitthal Kumbhar
and others ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.K.V.Patil for the Petitioners
Mr.A.I.Patel, AGP for the respondent Nos.1 to 5.

CORAM : A.S.OKA, &
C.V.BHADANG, JJ.
DATE : JANUARY 11, 2016

P.C.:

1 Heard the learned counsel for the petitioners and the learned AGP for the respondent Nos.1 to 5. Notice for final disposal was issued on 8th April 2015. Paragraphs 2 and 3 of the said order read thus:

"2 We have perused the order dated 12th March 2015. In view of the statement of the learned AGP recorded in the said order, we make it clear that it will be open for the respondents to offer suitable plots to the petitioners. It will be open for the petitioners to consider the said offer without prejudice to their rights and contentions in this Writ Petition.

3 We make it clear that unless respondents

come forward to allot suitable plots to the petitioners within a reasonable time, prayer clause (a) will have to be considered on merits."

2 The order dated 26th November 2015 records that the respondent No.6 is not a necessary party.

3 The petitioners who are claiming to be the project affected persons of the Wang Marathwadi Project applied for allotment of plots for their rehabilitation. Under the order dated 28th April 2014 the Sub Divisional Officer, Karad, (fourth respondent) allotted certain plots to the petitioners. The case made out in the petition on the basis of the mutation entries is that they were placed in possession of the allotted plots. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 12th June 2014 by which the allotment of the plots earlier made to the petitioners has been set aside on the ground that the said plots are likely to be affected by widening of Karad-Malkapur-Dhebewadi Road. This order was made by the Sub Divisional Officer, Karad. It appears tht this order was passed on the basis of the letter dated 12th June 2014 issued by the Assistant Executive Class-I, Special Project, Sub Division, Karad of the Public Works Department. It is urged that the order of cancellation of allotment was passed without giving an opportunity of being heard to the petitioners.

4 There is a reply filed by Shri Kishor Pawar, the Sub Divisional Officer, District Satara. In the said affidavit, the contention regarding breach of principles of natural justice is not dealt with. It is contended in the reply that out of 11 project affected persons whose allotment was cancelled under the impugned order, 6 project affected persons have accepted the alternate plots offered to them and only the present petitioners have not accepted the same. It is contended that on 29th December 2014 in the meeting attended by the petitioners in presence of the District Collector, the present petitioners declined to accept the alternate plots. Therefore, it is contended in the reply that no interference should be made in writ jurisdiction. It is also pointed out in the reply that even the Hon'ble Minister of the Resettlement Department had directed the Authorities to maintain status quo.

5 The submission of the learned counsel for the petitioners is that the entire area of the plots allotted to the petitioners is not required for the road widening and the impugned order is based on an incorrect interpretation of the letter dated 4th June 2014 addressed to the Sub Divisional Officer by the Assistant Executive Assistant Executive Class-I, Special Project, Sub Division, Karad of the Public Works Department. His submission is that the cancellation of allotment of the plots was not necessary especially when there are other plots available abutting the plots allotted to the petitioners which are not affected by the road

widening. His submission is that in any event the impugned order has been passed without giving an opportunity of being heard to the petitioners. The submission of the learned AGP is that the allotment was made to the petitioners by the Collector but the said offer was not accepted by the petitioners. He, therefore, submits that no interference is called for in writ jurisdiction.

6 We have considered the submissions. After accepting the case made out by the petitioners that as the project affected persons they are entitled to allotment of plots, under the order dated 28th April 2014, the plots were allotted to the petitioners by the Sub Divisional Officer. The said order specifically records that there was an approval granted by the Divisional Commissioner, Pune on 19th February 2014. The order also records that in exercise of power conferred by the Collector that the order of allotment was being made by the Sub Divisional Officer in accordance with sub-section (1) of section 16 of the Maharashtra Rehabilitation of the Project Affected Persons Act, 1999.

7 We have perused the impugned order dated 12th June 2014. By the said order, on the basis of the representation made by the Assistant Executive, Class-I of PWD, the order of allotment made earlier to the petitioners has been cancelled. Even in the reply filed by Shri Pawar, the Sub Divisional Officer, it is not the case made out by the respondents that an opportunity of being heard was

granted to the petitioners before passing the impugned order dated 12th June 2014. Valuable right was created in favour of the petitioners by way of allotment of the plots for their rehabilitation. The plots allotted to the petitioners cannot be withdrawn without following the principles of natural justice. The allotment of plots made to the petitioners is sought to be cancelled without giving an opportunity of being heard to them. Such action is in violation of Article 300A of the Constitution of India. Merely because some other plots were offered and that the petitioners declined to accept the said plots will not validate the illegal action of cancellation of the earlier allotment of the plots to the petitioners.

8 Hence, the impugned order dated 12th June 2014 cannot be sustained. Accordingly, the writ petition will have to be allowed in terms of prayer clause (a). Consequently, prayer clauses (b) and (c) will have to be granted. However, this order will not prevent the respondents from initiating appropriate proceedings for cancellation of the order of allotment. Needless to state that no such order shall be passed without giving an adequate opportunity of being heard to the petitioners.

9 Accordingly, we pass the following order:

- (I) Rule is made absolute in terms of prayer clauses (a) to (c);
- (II) We, however, make it clear that this

Judgment and Order will not preclude the respondents from initiating proceedings for cancellation of allotment of plots made to the petitioners;

(III) Needless to state that such action can be taken in accordance with law only after following principles of natural justice;

(IV) Writ petition is disposed of on above terms with no order as to costs.

(C.V.BHADANG,J.)

(A.S.OKA,J.)