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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 3630 OF 2016**

Shri Pundalik Hariba Powar  
and Others

.... Petitioners.

V/s

The Collector, Kolhapur  
and Others

..... Respondents.

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Mr. Uday B. Nighot for the Petitioners.  
Mr. V.M. Mali, AGP for the State.  
Mr. Tanaji Mhatugade for Respondent No.6.

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**CORAM: V. M. KANADE &  
M.S. KARNIK, JJ.**

**DATE: 5<sup>th</sup> April, 2016**

**P.C.:- (Per V.M. Kanade, J.)**

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking an appropriate writ, order and direction for setting aside the order dated 09/03/2016 passed by Respondent No.4 in Stay Application dated 04/04/2012 in Rehabilitation /Appeal /SR / 105/2015 and they are also seeking stay to their possession over the said land admeasuring 1 Hectare 21 Ares out of Gat No.852 situated at Village Ghosarwad, Taluka Shirole, District – Kolhapur.

2. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

3. Petitioners' land admeasuring 1 Hectare 21 Ares was acquired by the State Government for the purpose of resettlement of persons affected by Dudhganga Project. The Special Land Acquisition Officer passed an Award sometime on 25/03/1998 after issuance of Notification under Sections 4 and 6 of the Land Acquisition Act, 1894. It is an admitted position that the Petitioners did not challenge the award which was passed by the Respondents. Petitioners filed an application before the Divisional Commissioner under Section 48 of the Land Acquisition Act.

4. It is submitted by the learned Counsel for the Petitioners that Respondent – District Resettlement Officer had allotted land of the Petitioners to Respondent No.6. He submitted that an application for stay was filed by the Applicants/Petitioners before the Divisional Commissioner. However, their application was rejected. He submitted that enquiry under section 5A was not made by the Special Land Acquisition Officer and therefore the Award was liable to be set aside. Secondly, he submitted that Petitioners' appeal under Section 48 of the Land Acquisition Act is pending and during pendency of the appeal, Respondents may be restrained from handing over possession of the Petitioners' land to Respondent No.6. Thirdly, he submitted that the Petitioners are still in possession of the said land and are

cultivating the land which can be seen from the revenue records.

5. Lastly, the learned Counsel for the Petitioners submitted that the grandfather of Petitioner Nos. 1 and 2 and great grandfather of Petitioner No.2A and the father of Petitioner No.3 were owners of the agricultural land admeasuring 6 Hectares and 47 Ares. He submitted that the said land was partitioned between the two sons and intimation to that effect was given to the Revenue Authorities. He submitted that both the brothers were cultivating the land separately and, as such, the total holding of land which was calculated on the basis of revenue entries was incorrect. He therefore submitted that the Petitioners' land could not have been acquired since there was partition between the two brothers and the total holding of land of both the brothers was less than 8 acres.

6. It is not possible to accept the submissions made by the learned Counsel for the Petitioners. It is an admitted position that the Petitioners did not challenge the Award which was passed on 25/03/1998. There is no provision of statutory appeal under Section 48 of the Land Acquisition Act. Apart from that, possession of the land was already taken after the Award was passed and notice under Section 12(2) was given on 28/03/2012. It is a well settled position in law that after possession of the land is taken by the Government, the land vests in the Government and the application under section 48 therefore is not maintainable.

6. Moreover, the said land has already been allotted to Respondent No.6 who is a project affected person. Application therefore filed under Section 48 itself is not maintainable since the possession of the Petitioners' land has already been taken. It has to be noted that the acquisition proceedings were initiated under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976. The said Act envisages that on the date on which the Notification under Section 11 of the said Act is issued, provisions of Section 12 of the said Act would apply and there is a bar and prohibition imposed by the statute for partition of the land thereafter.

7. The Apex Court in *State of Maharashtra vs. Annapurnabai & Ors.*<sup>1</sup> has held that after issuance of Notification if Karta of the family dies, his sons cannot claim benefit by virtue of notional partition under section 6 of the Hindu Succession Act. The same view is followed by Division Bench of this Court in *Shivgonda Balgonda Patil & Ors vs. The Director of Resettlement and Ors*<sup>2</sup>

8. There is, therefore, no substance in the said submission that the land was partitioned and the family unit had to be calculated on the basis of partition between the two brothers.

9. The Maharashtra Resettlement of Project Displaced Persons Act,

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1 AIR 1985 SC 1403

2 AIR 1992 Bombay 72

1976 was passed in order to ensure that those agriculturists who lost their entire land in irrigation project were entitled to get part of the land from the benefited zone. It is obvious that the Petitioners have illegally continued to remain in possession of the said land after an Award was passed in 1998 and have not allowed Respondent No.6 to take possession of the part of his land which was acquired under the provisions of the said Act. There is sufficient material on record to indicate that possession of land was already taken and panchanama to that effect was made by the authorities.

10. Petition is therefore dismissed.

(M.S. KARNIK, J. )

(V.M. KANADE, J.)