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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1536 OF 1999

Sahebrao Gulabrao Dhamale,
since deceased through legal heirs & Ors. ... Petitioners
Vs.
The Special Land Acquisition Officer
No. 1, Panshet befitted area Pune & Ors. ... Respondents

Mr. S. S. Pakale a/w S. M. Katkar for the Petitioners.
Mr. P. G. Sawant, AGP for the Respondents.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : MARCH 7, 2016

ORAL JUDGMENT : [PER : V. M. KANADE, J.]

1. By this petition, which is filed under Article 226 of the Constitution of India, Petitioners are challenging the award passed by the Special Land Acquisition Officer, acquiring the Petitioners' land bearing Gat No. 554 of village Patas, taluka Daund, district Pune. It is submitted by the learned counsel appearing on behalf of the Petitioners that the land was acquired for the rehabilitation of the

displaced persons of Panshet Dam. It is submitted that provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 will apply and under the said Act only 8 acres of a family unit could be acquired. It is submitted that the property in question was partitioned and each brother became owner of one-third share, out of the said land. It is submitted that after the death of Karta of the family, i.e. Gulabrao Dhamale, the property was partitioned and each brother got separate share. It is submitted that 80 Ares land was acquired and the mutation entry to that effect was made vide Mutation Entry No. 1009. It is submitted that the Petitioners have also filed regular civil suit, in which the Civil Court has passed a decree declaring that the acquisition proceedings in respect of 40 Ares land is null and void, and that there was oral partition between the parties.

2. In our view, it is not possible to accept the submissions made by the learned counsel appearing on behalf of the Petitioner. The Full Bench of this Court, in a judgment in the case – ***Ganpat Balwant Pawar & Ors., Petitioners Vs. Special Land Acquisition Officer & Ors., Respondents [1984 Mh.L.J. 752]*** has held that if a notification under Section 4 of the Land Acquisition Act is issued and the

procedure prescribed in the said Act is followed, in that case the provisions of Resettlement Act will not apply to the acquisition proceedings. In paragraph 27 and 28 of the said judgment, it is observed as under :

27. We may now indicate our conclusions in this regard :-

It is not correct to say that after 11th of March 1977 resettlement of persons displaced as a result of any project cannot be done except in accordance with the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976.

The procedure prescribed under the Resettlement Act becomes applicable only when a declaration is made under Section 11(1) of that Act that the provisions of the said Act shall be applicable to a project. Such a declaration will follow only after the formation of the opinion by the State Government that it is necessary or expedient in the public interest to make such a declaration.

When such a notification is not issued or has not been issued, the Government is free to take recourse to the provisions of the Land Acquisition Act, 1894 to resettle the persons who are displaced or will be

displaced as a result of any project.

When there is no notification under Section 11(1) of the Resettlement Act, there is naturally no obligation upon the State Government to resettle persons because the provisions of this Act are not followed and payment of compensation to the affected persons may be enough for the land acquired from them under the provisions of the Land Acquisition Act.

When there is a notification, the obligation is only to follow the procedure for resettling "as many displaced persons as possible". The obligation is relating to the procedure to be followed.

28. The petitioners case that each of them is holding land separately on his own account and in his own name and, therefore, even under the government Resolution of 31st October 1969 no land is liable to be acquired from their holdings is, in our opinion, not well-founded. Annexure 'A' to this petition shows that there is only one single khata (account) of all the petitioners together, though against the name of each petitioner it is mentioned that he is holding one-fourth share in the lands. All the lands together have been mentioned in the same khata. The affidavit filed on

behalf of the State shows that the mentioning of the share of each of the petitioners has been made pursuant to an enquiry held into the heirship of the original account holder. The petitioners themselves are not sure as to how they have come to hold one-fourth share in the lands mentioned in the khata at Annexure 'A'. Paragraph 3 of the petition, for example, mentions that after the death of the father of the first three petitioners, the father of the fourth petitioner being the eldest son became the manager of the joint family of himself and petitioner Nos. 1 to 3. It is mentioned thereafter that there were disputes and difference amongst Petitioner Nos. 1 to 3 and the deceased father of petitioner No. 44 "which resulted in disruption of their joint Hindu family and partition and separate possession of the joint family properties". It has not been asserted, for example, that particular lands or particular shares of each lands have been in separate possession of the petitioners. We have not been able to find from the material which has been placed before us that each of the petitioners is cultivating his land separately or independently. In view of what is mentioned in Annexure 'A' to this petition, it is impossible to agree with Mr. Gole that there has been a partition or disruption of the joint

family and that each of the petitioners should be treated as holding separate share in the property. There is thus no case made out for interference with the acquisition proceedings on the ground that the Government Resolution dated 31st Oct. 1969 is not being implemented properly.”

3. The Division Bench of this Court in a case – ***Shivgonda Balgonda Patil & Ors., Petitioners Vs. The Director of Resettlement and Ors., Respondents [AIR 1992 Bombay 72]*** has held in paragraph 19 as under:

“19. ... It is well settled that on the death of a male Hindu who is a co-parcener in a joint family there is no automatic partition of his share in the joint family properties amongst his male heirs. But if the deceased has left him surviving a female heir as specified in S. 6, a notional partition is deemed to have taken place in the joint family property at the time of the death of the deceased for the purpose of ascertaining the share of the deceased in the joint family properties which comes to the share of the female heirs. In the case of *State of Maharashtra v. Narayan Rao Sham Rao Deshmukh reported* : [AIR 1985 SC 716], the Supreme Court considered this question in the context of Maharashtra

Agricultural Lands (Ceiling on Holdings) Act, 1961. It held that in the case of a joint family consisting of karta, son, wife and mother, on the death of the karta the surviving members continued to remain joint. Hence all members together are entitled to one ceiling unit. ...”

4. In the present case, admittedly, the land was acquired, Section 4 notification was issued under the Land Acquisition Act, inquiry under Section 5 was held and hearing was given to the original Petitioner, and award was passed thereafter in 1978 in respect of the land on 15.9.1978, in respect of land admeasuring 80 Ares i.e. 2 acres from Gat No. 554 of village Patas, taluka Daund, district Pune. The provisions of the Resettlement Act, therefore, are not applicable in this case. Even otherwise contention of the Petitioners that there was an oral partition, and therefore 40 Ares land could not be acquired, also is without any substance. The Apex Court has held that oral partition in such cases cannot be relied upon. The Apex Court in the case of – ***State of Maharashtra, Appellant Vs. Annapurnabai & Ors., Respondents [AIR 1985 Supreme Court 1403]*** has observed in paragraph 4 as under:

“4. The question arising in this appeal is no longer res

integra. It is concluded in favour of the State by the decision of this Court in Bhikoba Shankar Vs. Mohan Lal (1982) 3 SCR 218 : (AIR 1982 SC 865). It was held by this Court that in that case the liability surrender surplus land does not in any way come to an end by reason of the death of the holder before the actual extent of surplus land is determined and notified under S. 21 of the Act. S. 21 of the Act no doubt states that the title of the holder of the surplus land would become vested in the State Govt. only on such land being taken possession of after a declaration regarding the surplus land is published in Official Gazette. But the liability to surrender the surplus land relates back to the appointed day in case of those who held land in excess of the ceiling on the appointed day. Therefore, even if the holder dies before declaration of any part of his land as surplus land, the surplus land is liable to be determined with reference to his holding on the appointed date and it is not open to the heirs and legal representatives of the holder to contend that they have inherited the land belonging to the holder and that the surplus land should be determined on the footing that each of them is an independent tenure holder in his or her own right. The High Court was therefore, clearly in error in taking the view that the respondents being the heirs and legal

representatives of Abhimanji should have been treated as independent tenure holders and the ceiling should have been fixed on that basis.”

5. Lastly, it is well settled that a civil court has no jurisdiction to give a declaration that the award passed by the Special Land Acquisition Officer is null and void, and for challenging the award a writ petition under Article 226 of the Constitution has to be filed in the High Court. The decree passed by the Civil Court therefore is null and void, and therefore is of no assistance to the Petitioner. Viewed from any angle therefore, there is no merit in the submission of the learned counsel for the Petitioner. Writ petition is, therefore, dismissed, and rule is accordingly discharged.

Sd/-
[B. P. COLABAWALLA, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath