

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1210 OF 2016

Devilal Champalal Rathi and anr

-vs-

State of Maharashtra, through its Secretary, Department of Irrigation, Mantralaya, Mumbai-32
and ors

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.P.N. Shende, counsel for the petitioners.
Mr.N.R. Patil, AGP for the R-1 to 4.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : MARCH 18, 2016.

By this writ petition, the petitioners seek a direction to the respondent Nos.3-the Deputy Collector, Buldhana and the respondent No.4-the Executive Engineer, Irrigation Department, Buldhana to forthwith cancel the acquisition of the land of the petitioners and to return the acquired land.

Admittedly, the land of the petitioners was acquired for the purpose of construction of the canal in the year 1981-82. The petitioners have received the compensation towards the acquisition of the land. The canal was constructed on the said land for providing water to the agricultural fields. It is the case of the petitioners that the canal has become dry and as there is no water in the canal, the purpose for which the land was acquired, is frustrated and the land should be returned to the petitioners. Also, it is stated that there are some encroachments on the canal

constructed by the Government and those encroachments need to be removed.

The prayer made by the petitioners for setting aside the acquisition proceedings and returning the land to the petitioners is liable to be rejected in view of the judgments reported in **1997(2) SCC 627 (C. Padma and others ...vs... Dy. Secretary to the Govt. of T.N. and others)**, **(1997)5 SCC 432 (State of Kerala and others ...vs... M. Bhaskaran Pillai and another)**, **2002(4) Mh.L.J. 181 (Vishnu s/o Namdeo Kumar and others ...vs... State of Maharashtra and others)**. After the land is acquired, the same vests in the State Government and the owners of the land are not entitled to seek back the land only because it is not used for the purpose for which it is acquired. The present case is worse than that. In this case, admittedly, the canal was constructed and the canal was used for supplying the water to the villagers. Merely because there is less or no water in the canal, the petitioners cannot seek the return of the land, moreso, when admittedly, the petitioners have received the compensation towards the acquisition of the same.

The second prayer made by the petitioners also cannot be granted. Whether there are encroachments on the canal or whether some persons are mis-utilizing the land meant for the canal, are not the issues that could be decided in exercise of the writ jurisdiction specially when the respondents have disputed that there are encroachments. It would be for the State Government to consider removing the encroachers on their land, if at all they are any.

Since the relief sought by the petitioners cannot

be granted in view of the settled position of law, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE

!! BRW !!