

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2006 OF 2014**

Shri. Satvashil Dhairyashil	}	
Shelke	}	Petitioner
versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr. A. V. Anturkar-Senior Advocate with
Mr. Amol Gatne and Mr. Prathamesh
Bhargude for the petitioner.

Mr. P. P. Kakade-AGP for State.

Mr. A. A. Garge for respondent no. 6.

**CORAM :- DR. MANJULA CHELLUR, C.J. &
N.M.JAMDAR, J.**

DATE :- JULY 24, 2017

P.C. :-

1. Heard learned counsel appearing for the petitioner as well as the respondents. The background in which the present petition came to be filed needs to be narrated in short as under:-

The petitioner claims to be the owner of Survey No.279/2A/1 situated at village Lonand, Taluka Khandala, District Satara. It is also not in dispute that a portion of this property came to be acquired in the year 2001 for the purpose of allotting the same to project affected persons. At that point of time, a writ petition came to be filed being Writ Petition No. 3281

of 2010 by Shri. Pushpashil Dhairshil Shelke and Ors, claiming to be the co-sharers of the said property. The said writ petition came to be disposed of by virtue of an order dated 29th April, 2010. The relevance of the same would be discussed in the later paragraphs.

2. According to the petitioner, the possession receipt dated 19th January, 2002 would indicate that what was sought to be given to respondent-project affected person was certain property from Survey No. 279/2 (part). However, the petitioner's property is Survey No. 279/2A/1, which is part of another land. However, the subject matter of allotment to project affected person is about 42 ares. By this averment in the petition, it is seen that there is some dispute with regard to which portion of the property and which part of which survey number was given in possession under the possession receipt dated 19th January, 2002.

3. The petitioner contends that possession of the property was never divested from him and given to Madhukar Tatyaba Gole, the party-respondent. He also challenged the proceedings undertaken by the party-respondent before the Lokayukta by an application dated 5th December, 2012 contending that the Lokayukta did not have jurisdiction to entertain the said application since the inaction complained against the officials

would not attract in terms of sub-section (2) of section 7 of the Maharashtra Lokayukta Act, since the said Resettlement Officer does not fall within the category of definition of “public servant” i.e. section 2K(iii) of the Maharashtra Lokayukta Act. In short, the petitioner is challenging the orders from page 83 onwards till page 91, the proceedings before the Lokayukta.

4. We have gone through the said proceedings. The grievance of the complainant was with regard to possession of Survey No.279/2/2 to the extent of 42 ares. A perusal of papers from page 83 onwards would indicate that the petitioner was never made a party or no notice of any kind was sent to the petitioner by the Lokayukta on the application of the party-respondent. On the other hand, some directions seem to have been issued to the Revenue officials with regard to possession of the property held by the complainant-respondent herein. Ultimately, on 23rd September, 2013, it was opined that the officers, who were present, were heard and they referred to a report dated 21st September, 2013, which seems to be the subsequent inspection report of the property in question and the Lokayukta records that possession of land in Survey No. 279/2/2 to the extent of 42 ares has already been given to the party-respondent herein.

5. Learned senior counsel appearing for the petitioner brought to our notice the above provisions of the Maharashtra Lokayukta Act and we have gone through the same. Apparently, there was a complaint of inaction on the part of the officers of the Revenue, more particularly the Resettlement Officer in not controlling the petitioner from disturbing the complainant's possession of the property. As a matter of fact, if the complainant-project affected person was already put in possession of the property, if someone were to disturb his possession, including the owner of the property, we fail to understand, as to how the Lokayukta can have jurisdiction and decide the issue. Even otherwise, since the directions were issued to the Revenue officials, a report was placed indicating what was the position as on 21st September, 2013.

6. Again, we were taken through the earlier judgment of this court in Writ Petition No. 3281 of 2010. On perusal of this judgment, it is seen that the present petitioner, who was also petitioner no. 8 in that writ petition along with others, approached this court contending that since possession of the property was not yet taken over, a writ of mandamus must be issued against the Revenue officials to consider the application of the petitioners therein for withdrawal from acquisition

proceedings as far as his land is concerned. From paragraph 3 to 7, Their Lordships have discussed about the factual situation as well as the material placed before this court i.e. the documents referred to. Paragraphs 3 to 7 read as under:-

“3 The fact that the Petitioners are still in possession has been disputed by the Respondents. The original record of the District Resettlement Officer, Satara has been produced before us, which shows that the possession of the land in question was taken as back as on 16th December 2001 and thereafter the land has been allotted to the private Respondent and handed over to him on 19th January 2002.

4 The counsel for the Petitioners, however, relies on the documents on Page 83 and Page 75. The document on page 83 is an order passed by the Resettlement Officer allotting the land bearing Gut Nos. 240/3 and 279/2 to the private Respondent. The document on page No.75 is a Mutation Entry which not only refers to the said two plots but also other plots. Relying on the said Mutation Entry it is contended that the private Respondent has been allotted more than one plots which was not his entitlement. Even if this contention were to be accepted, the question which has been brought before us and the relief claimed by the Petitioners to the effect that the acquisition proceedings in respect of the land in question be ordered to be withdrawn cannot be answered in favour of the Petitioners.

5 Our attention was also invited to the stay order passed by the Additional Commissioner, Pune Division, Pune dated 2nd January 2007 passed on the application filed by the Petitioners dated 6th October 2006. The said order is obviously passed without verifying the record of the District Resettlement Officer and is an ad-interim order on the application filed by the Petitioners. This order will be of no avail to the Petitioners to contend that they have not lost possession as noted in the Panchanama and other documents which are available in the original record produced before us.

6 As observed earlier, the Respondents have placed before us the record which indicates that the possession of the disputed land has already been taken over by the authorities and subsequently handed over to the private

Respondent. In that sense, the Petitioners have lost the possession of the said land in law.

7 The Petitioners, however, dispute the factum of possession. That being a disputed question of fact cannot be answered in the present writ petition. The present writ petition would proceed on the basis of the documentary evidence produced by the Respondents which belies the claim of the Petitioners.”

7. The above paragraphs clearly indicate that as on the date of the disposal of the writ petition, it was brought to the notice of the court that the petitioners were divested of their possession of the land by the Revenue officials or the Land Acquisition Officer by 16th December, 2001 and the land has been allotted to the present party-respondent on 19th January, 2002. They also referred to mutation entries of two plots. They also referred to the other order dated 21st January, 2007 on the application dated 6th October, 2006. However, the same was not considered and it was opined that the said order was without verifying the record of the District Resettlement Officer.

8. The present writ petition is filed challenging the directions or opinion expressed by the Lokayukta. We are of the opinion that the factual situation, which needs to be decided after a full-fledged trial, ought not to have been looked into by the Lokayukta, especially in the light of the earlier judgment of this court in Writ Petition No. 3281 of 2010 dated 29th April, 2010.

However, even if the officers were to report, since directions were issued by the Lokayukta, there is nothing which can be considered as a direction to be implemented by the Lokayukta. On the other hand, the Lokayukta records that since already possession is handed over, nothing is to be done in the matter. In that view of the matter, the parties are put back to the original position.

9. Learned counsel appearing for the party-respondent was fair enough to admit that the complainant approached the Lokayukta since the Revenue authorities were not able to obstruct the petitioner from disturbing peaceful possession of the land held by him. However, there is a categorical stand on the part of the petitioner that he is still in possession of the entire property. We are of the opinion, as already stated above, that the Lokayukta could not have gone into the said issue and since he has not expressed any opinion, we need not intervene with the impugned orders. Even otherwise, if the respondent-project affected person is being disturbed so far as the alleged possession of the land held by him, neither this court, nor the Revenue officers, nor the Lokayukta can assist him. He has to approach the Civil Court, since the petitioner claims that he is in possession of the property. Similarly, if there is no proper identification of

the property in terms of the Maharashtra Land Revenue Code, 1966, the party aggrieved must seek assistance of the Survey and Land Record Officer to fix the boundaries.

10. With the aforesaid observations without giving any positive direction or opining on merits of the case, we dispose of the writ petition.

(N. M. JAMDAR, J.)

(CHIEF JUSTICE)