

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3261 OF 2015

Mr. Maruti Jagannath Mane & Ors.] ... Petitioners

Versus

The Special Land Acquisition & Resettlement]
Officer, Sangli & Ors.] ... Respondents

Mr. Avinash Patil for Petitioners.
Mrs. M. P. Thakur, AGP for State.

CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.
DATE :- 26 APRIL 2017

P. C. :-

1. Heard both the sides.
2. Petitioners are before this Court contending that there is no application of mind while passing orders under Section 48 (1) of the Land Acquisition Act, 1894 (for short, '1894 Act') since at the time of 4 (1) notification which occurred in the year 1999, already mutation changes were effected indicating the division of property in the family of the petitioners under a registered partition deed dated 22/09/1997. According to the petitioners, on account of petitioner

no.2 residing separately from his father and *inter se* dispute, a registered partition deed came to be effected on 22/09/1997 at Khanapur Sub-Registrar office. Apparently, the ancestral property i.e. land measuring 10 Acres 10 Ares bearing Gat No.1104 situated at Village - Mahuli, Taluka - Khanapur, District - Sangli by applying the slab in terms of Section 11 of the Maharashtra Resettlement of Project Affected Persons Act, 1986 (for short, '1986 Act'). An individual can hold up to 8 Acres of land. Therefore in the present case, 2 Acres of land in the above Gat number was declared as excess land. According to the petitioners, same could not have been done if only the registered partition deed and the consequential mutation entries were taken into consideration. The restrictions under Section 11 of the 1986 Act came to be implemented with effect from 14/10/1997. By that time, registered partition was already in existence. Mutation changes came to be effected in the year 1998 which is also not in dispute. On 19/04/1998, the petitioners, after receiving the notice from the Resettlement Officer, raised their objections that there was already a partition among the family members much prior to 14/10/1997. If the objection raised by them was taken into consideration, according to the petitioners, not even single Are of land could be acquired since there would not be any excess land in terms of the slab under Section 11 of the 1986 Act. The petitioners seem to have made representations i.e. 05/05/1998 and 06/05/1998 and 11/02/1999 which clearly indicate the fact of registered partition in the family. In spite of this, totally ignoring the same, on 06/11/1999, again a notice under Section 9 (3) of the Land Acquisition Act calling

for objections of owners and farmers came to be issued. Based on these facts, since possession of the land still remains with the petitioners, they approached the concerned authority under Section 48 (1) of the Land Acquisition Act contending that their land must be deleted from acquisition since Section 11 slab could not have been applied without taking into consideration the partition in the family. The said application came to be rejected in terms of order dated 30/03/2013. Aggrieved by the same, Writ Petition No.5270 of 2013 came to be filed wherein this Court observed at paragraph nos.3, 4, 5 and 6 as under :

“3. *An application was made by the Petitioners under sub-Section 1 of Section 48 of the Land Acquisition Act, 1894 (for short “Said Act”). On 11th May, 2000, order was passed by the Additional Commissioner, Pune Division, Pune on the said application directing the Deputy Director, Rehabilitation (Land) Sangli to hold an inquiry on the question whether there was a registered partition before the relevant date and to examine whether the Petitioners are covered by the prescribed slab. In the order he has recorded that if land under acquisition is already taken over and the same has been already allotted to the project affected persons, the acquisition shall stand confirmed. On the basis of the said order, it appears that Additional Collector submitted a report to the Divisional Commissioner and by an order dated 30th March, 2013, the Divisional Commissioner came to the conclusion that partition has been effected on 22nd September, 1997 but effect was given to the same in 7-12 extract after the cut off date i.e. 14th October, 1997. Therefore, by the said communication, the application under Section 48(1) has been rejected.*

4. *Perusal of the order dated 11th May, 2000 passed by the Additional Commissioner shows that he himself did not make any inquiry regarding the validity and legality of the partition claimed by the Petitioners. He left the matter of the inquiry to the Deputy Director of resettlement (Land), Sangli. The impugned communication dated 30th March, 2013 shows that after perusal of the report submitted by the Additional Collector, Sangli he came to the conclusion that the partition has been effected after the relevant date.*

5. *The application made by the Petitioner has not been rejected on the ground that the possession has been taken over in accordance with Section 16 of the said Act but the same has been rejected on merits.*

6. *Perusal of both the orders shows that neither Additional Collector nor the Additional Divisional Commissioner have made any adjudication on the issue of legality and validity of the partition pleaded by the Petitioners. The case of the Petitioner is that the partition was effected by a registered document on 22nd September, 1997 and the cut off date was 14th October, 1997. Without conducting any inquiry, on the basis of the report of the Additional Collector, the case of the Petitioners could not have been rejected by the Additional Commissioner. Moreover if the Additional Commissioner was relying upon the report of the Additional Collector, a copy of the report ought to have been supplied to the Petitioners and that the Petitioners ought to have been heard on the said report.”*

and directed the respondent - authorities to reconsider the matter.

3. It is relevant to mention that opinion was formed by earlier Bench that on 11/05/2000, the order passed by the Additional Commissioner indicated that there was no inquiry whatsoever with regard to the validity and legality of the partition claimed by the petitioners. Instead, considering the same, by applying his mind to the facts of the case, he allowed the matter to be inquired into by the Deputy Director of Resettlement (Land), Sangli. After perusal of the report submitted by the Additional Collector, Sangli, he came to the conclusion that the partition has been effected after the relevant date. We fail to understand how the Additional Commissioner could have shirked his responsibility to make an inquiry into the fact of partition. On perusal of impugned order, the Bench came to the conclusion as observed at paragraph 6 of the judgment.

4. In spite of the said direction in the earlier matter, on 31/07/2014, again, without application of mind and the observations made in the earlier Writ petition, the impugned order is passed. The impugned order at page 44 passed by the Divisional Commissioner, Pune Division, Pune, does not make reference to the registered partition deed and its effect, so also the observations of the Division Bench in the earlier Writ Petition. Except recording the fact that after 14/10/1997, in the year 1998, the fact of registered partition deed came to the notice of the authorities. Even if the slab was fixed on 14/10/1997 without having the knowledge of registered partition deed, once the parties were informed of the registered partition deed and if there is no observation of documents being created for the purpose of avoiding the consequences of Section 11, we fail to understand when the petitioners kept on reminding the authorities to delete the land from the acquisition because of non-application of slab in terms of Section 11, how the respondent - authorities could have proceeded to pass the orders as referred above.

5. In spite of these observations, again, the impugned order is passed which clearly indicate non-application of mind with regard to the fact of registered partition much prior to imposition of restrictions on 14/10/1999 in terms of Section 11, registered partition being on 22/09/1997 had come into effect.

6. It is quite possible the parties would take some time to address the authorities for effecting mutation changes and even the

procedure to effect mutation changes would take considerable time. However, after service of notice under Section 9 (3) even much prior to the fact of registered partition in the family of the petitioners was brought to the notice of the authorities and in spite of earlier direction of this Court, the authorities keep on placing reliance on the report of Additional Collector that the land has been allotted to the third party and therefore possession is taken. This is without verifying whether the physical possession is taken over or not. This report of the Additional Collector was referred to in the earlier round of litigation and what was observed in the earlier order of 2013 with regard to the report is quite contrary with regard to the observations made in the impugned order. As a matter of fact, by virtue of order dated 27/11/2013, there is clear observation that if possession of the acquired land was not yet taken, the same shall not be taken over till the disposal of the application by the Additional Commissioner, Pune, and the petitioner categorically contends that they are in possession of the land.

7. The report of the Additional Collector dated 29/11/2012 is with regard to allotment of land to third parties and possession being taken, has not reached finality since in the earlier round of litigation, the Division Bench directed the Additional Commissioner, Pune to make available a true copy of the report and to hear the petitioners on the said report and further directed not to take possession of the property if it is not yet taken. We find in the impugned order no reference is made to any of these observations. It

is nothing but non-compliance of directions given by the Division Bench to decide on the issue of partition as well as possession of the property. If such non-compliance has resulted in the present impugned order *per se*, it becomes an illegal order without application of mind which indicates arbitrary exercise of power. Under these circumstances, we are of the opinion the petition deserves to be allowed but it is to be allowed with costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be paid by Mr. Prabhakar Deshmukh, Divisional Commissioner, Pune, who passed the impugned order. The said costs shall not be paid from the treasury of the Government. It is to be borne by the Divisional Commissioner personally. Accordingly, the impugned order is set aside.

8. Respondents - authorities are directed to consider the application filed by the petitioners under Section 48 (1) of the Land Acquisition Act, 1894 within eight weeks, in the light of the observations made by us in the present order and also with reference to the observations made in the earlier round of litigation.

9. In the meantime, possession shall not be disturbed so far as the petitioners are concerned, till the disposal of 48 (1) application.

10. Writ Petition is disposed of in the above terms.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)