

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4740 OF 2015

Shri Ramchandra Bhairu Navghane. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Vishwanath Talkute for the petitioner.

PP.Kakade, AGP for the State.

**CORAM : DR.MANJULA CHELLUR, C.J.
AND G.S.KULKARNI , J.**

DATE : 16th March 2017.

PC. :

Heard learned counsel for the petitioner and learned AGP appearing for the respondents. We have gone through the affidavit-in-reply of Shri Sanjay Dattatraya Asawle, Deputy Collector (Rehabilitation), Satara filed on behalf of the State. The admitted facts are as under:

2. The land of the petitioner came to be acquired for Dhoni Irrigation Project in the year 1972. However, some portion of land by way of alternate land came to be given to the petitioner after four

decades in the year 2010. According to the petitioner, he is entitled to 44 Ares of land. However, he was given 9 Ares of land at one place and 10 Ares of land bearing Gat No.333/2 (the disputed land) at another place. The problem of the petitioner does not come to an end with this allotment made in the year 2010. In 2015, the allotment of land bearing Gat No.333/2 admeasuring 10 Ares came to be cancelled on the ground that the land in question when allotted to the petitioner was not available at the disposal of District Rehabilitation Officer for allotment to the project affected persons. The fact remains that after allotment of land in the year 2010, the land came to be in possession of the petitioner and the petitioner continues to be in possession thereof. The said fact is not at all denied in the affidavit-in-reply filed by the Deputy Collector. The background under which the allotment of land came to be cancelled could be ascertained from Exhs.F and G at pages-22 and 23 of the petition. The letter at Exh.F is addressed to one Shri Ashok Sampat Kamble, the owner of the land bearing Gat No.333/2. As indicated in the affidavit-in-reply, Mr.Ashok Kamble submitted a representation on 23rd September 2013 to the District Collector contending that the land was not utilized for the purpose for which it was acquired or other reason. At that point of time, while considering the representation of Mr.Kamble, the respondent authorities seem to have realized that the land when came to be allotted to the present petitioner in 2010 was not kept at the Disposal of the District

Rehabilitation Officer by the Special Land Acquisition Officer, therefore the respondents proceeded to cancel the allotment.

3. What we notice is, while considering the representation of Mr.Kamble, the allotment made to the petitioner came to be cancelled. However, the representation of Mr.Kamble was also rejected on the ground that once the land vested in the State in terms of section 16 of the Land Acquisition Act, 1894, the question of giving back the land would not arise except in due process of law subject to certain conditions. However, such due process of law could be only under section 48 of the said Act or lapse of the land acquisition proceeding for any legal deficit.

4. None of these deficits are forthcoming in the reply-affidavit filed on behalf of the State. There is no automatic handing over of possession of the land to the owner, if the purpose for which the land was acquired was not made use of. Therefore, having regard to the facts of the case, the Land Acquisition Officer is still entitled to make use of the land for other public purpose but the land cannot go back to the owner by operation of law.

5. In that view of the matter, since the land is already put in possession of the petitioner right from 2010, in the absence of no one else having a legal claim on this land except the deficit of technicality

said land was not kept at the disposal of District Rehabilitation Officer by the Special Land Acquisition Officer, we are of the opinion that there is need for reconsideration of the allotment in favour of the petitioner in accordance with law. Such decision has to be taken by the respondent authorities within a period of six weeks from today. We once again make it clear that the petitioner is already in possession and cultivating the said land for last seven years. This fact cannot be overlooked by the authorities while considering the possibility of re-allotment of the land in favour of the petitioner. While considering the possibility of re-allotment of the land in favour of the petitioner, if the authorities hold against the interest of the petitioner, the possession of the land cannot be disturbed for a period of eight weeks from the date of communication of such order to the petitioner.

6. With the aforesaid observations and directions, the writ petition is disposed of.

(G.S.KULKARNI, J.)

CHIEF JUSTICE