

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5377 OF 2004**

**Hirabai Pargonda Patil**  
**Since deceased by her legal heirs**  
**Smt. Parvati Shivram Patil & Ors.**

**... Petitioners**

**V/s.**

**The State of Maharashtra & ors.**

**... Respondents**

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Mr. T.S. Ingale for the Petitioner.

Mr. A.A. Alaspurkar, AGP for the Respondent Nos. 1 to 4.

**CORAM : A.S.OKA &**

**SMT. VIBHA KANKANWADI, JJ.**

**DATE : 14th JULY, 2017**

**:ORAL JUDGMENT (PER A.S.OKA, J):**

. Heard learned Counsel appearing for the Petitioners and the learned AGP for the State. The challenge is to the proceedings under the Land Acquisition Act, 1894 (for short 'the said Act') initiated by virtue of a notification dated 19<sup>th</sup> August 2000 under Sub-Section 1 of Section 4 of the said Act. A declaration under Section 6 of the said Act was published on 08<sup>th</sup> January 2003. In this petition, we are concerned with the land bearing Gat No. 46 admeasuring 1H 48 Are situated at villge Kavathesar, Taluka Shirol, District Kolhapur.

2 On the basis of individual notice issued under Section 4 of the said Act, the objections were submitted by the Petitioners. It is pointed out that the proceedings were initiated under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 (the said Act of 1976). A notification under Section

11 of the said Act of 1976 was issued on 02<sup>nd</sup> November 1978. The contention raised in the objections filed by the Petitioner was that before 02<sup>nd</sup> November 1978 there were three separate holdings in the names of the Petitioners (Hirabai, Basgonda and Tukaram). A reliance is placed on a Mutation Entry effected on vardi dated 20<sup>th</sup> September 1972 given by the first Petitioner. It is contended that effect is given to the said vardi by making Mutation Entry No. 2693. The contention raised in the objection raised under Section 5A was that holdings of three Petitioners will have to be separately considered.

3 We may note here that in this petition, on 28<sup>th</sup> July 2004, ad-interim order of status quo was passed. On 22<sup>nd</sup> September 2004, Rule was issued and interim relief was granted in terms of prayer clauses (c) and (d) of stay of further acquisition proceedings based on the aforesaid notifications under Section 4 and declaration under section 6. Subsequently, the petition was amended on the footing that notwithstanding the grant of interim relief, an Award was made on 19<sup>th</sup> January 2005. As far as this aspect is concerned, alongwith additional affidavit of Swati Deshmukh Patil, Special Land Acquisition Officer No.12, Kolhapur, a copy of the award is placed on record which shows that land bearing Gat No. 46 has been excluded from the said Award.

4 The submission of the learned Counsel appearing for the Petitioners is that separate holdings of the three Petitioners were less than the prescribed slab of 8 Acres on the relevant date and therefore, the acquisition is bad in law. He is relying upon the Mutation Entry No. 2693 based on vardi dated 20<sup>th</sup> September 1972 by contending that the said vardi was on the basis of a partition. He also invited our attention to the separate Khate Utaras of the petitioners which are on page numbers 24 to 26. He also relied upon 7/12 extract of the land bearing Gat

No. 46, a copy of which on page 27. He would therefore, submit that the acquisition is illegal. The learned AGP supported the impugned notifications and submitted that there is no evidence of partition before cut-off date of 02<sup>nd</sup> November 1978 as admittedly, the entire land stood in the name of the first Petitioner Hirabai.

6 We have given careful consideration to the submissions. We have perused the Mutation Entry No. 2693 and subsequent Mutation Entry No. 229 which was certified on 31<sup>st</sup> October 1977. The said Mutation Entry was made for giving effect to the consolidation scheme. The said Mutation Entry No. 229 refers to the earlier Mutation Entry No. 2693. The Mutation Entry No. 2693 seems to have been effected on vardi dated 20<sup>th</sup> September 1972 submitted by the first Petitioner. It records that names of the second and third Petitioners were added based on actual possession.

7 In the reply filed to the petition, this aspect of holding is not specifically dealt with. The extract of Khate Utaras show that the three Petitioners had three separate Khatas (accounts).

8 As regards the holding, factual inquiry will be necessary on the issue, whether there was a partition effected as contended by the Petitioners before the cut-off date. This issue can be determined only after making factual inquiry and perusal of the record. In fact, in paragraph 12 of the petition, there are averments made by the Petitioners that a detailed representation was made to the Divisional Commissioner for releasing the land claimed by the Petitioners from acquisition. Admittedly, an award has not been made in respect of the subject land and possession thereof has not been taken over. Therefore, it will be appropriate that

parties are relegated to the Divisional Commissioner, Pune.

9 Hence, we dispose of the Writ Petition by passing the following order:-

**ORDER**

- i) We direct the Petitioners or their authorised representatives to remain present before the Divisional Commissioner of Pune on 31<sup>st</sup> August 2017 at 11.00 a.m. The Petitioners or their authorised representatives shall produce a copy of this petition alongwith the copies of affidavits on record. They shall also produce an authenticated copy of the judgment and order;
- ii) The Divisional Commissioner or the Additional Divisional Commissioner, as the case may be, shall treat this petition as an application under Sub-Section 1 of Section 48 of the Land Acquisition Act, 1894 and make adjudication thereon, after hearing the parties;
- iii) Appropriate order shall be passed by the Divisional Commissioner or Additional Divisional Commissioner as the case may be, within a period of six months from the date fixed for appearance;
- iv) Till the date of communication of the order passed as aforesaid, the interim relief which is operating till today, will continue to operate. In the event, the Divisional Commissioner or Additional Divisional Commissioner, as the case may be, declines to release the land from acquisition, interim relief will continue to operate for a period of six weeks from the date on which order of the Divisional Commissioner or Additional Divisional Commissioner is communicated to the Petitioners;

- v) All contentions on merit are kept open.
- vi) Rule is made partly absolute in above terms with no order as to costs.

**(SMT. VIBHA KANKANWADI, J.)**

**(A.S.OKA, J.)**