

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

WRIT PETITION NO.5701 OF 2015

Dattatraya Nathu Borge and Ors

..Petitioners.

Vs

State of Maharashtra and Ors.

.. Respondents

Mr. R.S.Apte, Senior Advocate with Mr.S.S.Oka, Advocate for Petitioners.

Mr.S.D.Rayrikar, A.G.P for Respondents no.1 and 2.

Mr.Harindar Toor a/w S.B.Pawar, Swati Sawant i/b S.K.Legal Associates, Advocates for Respondents no. 3 and 4.

**CORAM : R.G.KETKAR,J.
DATE : 02/05/2017**

PC:

1. Heard Mr.R.S.Apte, learned senior counsel for the petitioners, Mr.S.D.Rayrikar, learned A.G.P for respondents no.1 and 2 and Mr.Harindar Toor, learned counsel for respondents no.3 and 4 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 15.5.2015 passed by the Additional Commissioner, Pune Division, Pune in Appeal/ASR/11/2015. By that order, the Addl.Commissioner dismissed the Appeal preferred by the petitioners under Section 48 of the Land Acquisition Act, 1894 (for short,'Act') for withdrawing from acquisition the land of the petitioners on the ground that possession was not taken. The Addl.Commissioner had dismissed the Appeal, principally, on the

ground that possession was taken and consequently dismissed the Appeal. Respondents no.3 and 4 have also filed affidavit dated 5.3.2016 placing on record the fact of taking over possession.

3. Mr.Apte, after arguing the petition for quite some time, seeks permission to withdraw the petition with liberty to adopt appropriate proceedings challenging the acquisition. He states that petitioner no.3 is present in the Court. He has tendered photocopy of his Pan Card which is taken on record and marked 'X' for identification.

4. Mr. Toor submits that in case the Court is inclined to grant liberty to the petitioners to challenge acquisition, all contentions of the third and fourth respondents including on the ground of limitation as also maintainability may be kept open.

5. In view thereof, on the motion made by Mr. Apte, Petition is allowed to be withdrawn with liberty to challenge acquisition proceedings by adopting appropriate proceedings. Grant of liberty shall not be construed as an expression of merits either way. All contentions of the third and fourth respondents including ground of limitation and maintainability of proposed proceedings are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)