

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO.12883 OF 2015**

Baban Shankar Mandhare (JFM).] ... Petitioner

Versus

State of Maharashtra & Ors.] ... Respondents

Mr. Gaurav Potnis i/b Mrs. Pallavi H. Potnis for Petitioner.
Ms. S. S. Bhende, AGP for State.

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

DATE :- JANUARY 17, 2017

P. C. :-

1. The petitioner, an agriculturist, was the owner of the land bearing Gat No.529 totally admeasuring H 2 - 32 Ares of Village - Vadhu-Budruk, Taluka - Shirur, District - Pune. Out of this land, 0.80 Ares was acquired by the State Government for resettlement of project affected persons of Chaskaman Irrigation Project. For this acquisition, a notification under Section 4 of The Land Acquisition Act, 1894 ('the Act') was published on 10 November 1987 and finally an Award was declared on 10 August 1988. The petitioner has stated that under the project a canal was to run through his field and the remaining land would have come under the benefited zone or the command zone of

the canal, to be allotted to the beneficiaries of the Chaskaman Project. The petitioner has stated that the land was acquired about 30 years back and the canal was also dug about 30 years back but till date, no water runs through the canal and no water has ever reached the petitioner's land in the last 30 years, not even on trial basis. The petitioner's case is that the land though allotted to the persons of the affected zone, they were unable to cultivate the land as no water has reached the land and therefore, the allottees did not turn up to cultivate the acquired land ever since the land was allotted to them. The petitioner states that the present situation is that the land today is neglected and barren and though allotted to the project affected persons, they are not ready to enter this land because of the non-availability of water. The petitioner, therefore, contends that his acquired land of 0.80 Ares be returned to him, so that he will be able to cultivate his land by digging a well or by taking loan, some other source of water can be made available on his land for which the petitioner is willing to return the compensation which he had got from the authorities as per the Award. In these circumstances, the petitioner has prayed for a writ of mandamus directing the respondents to return the petitioner's land of 0.80 Ares which is acquired for the benefited zone.

2. Having heard the learned Counsel for petitioner and having perused the averments made in the petition, it is contended that the acquisition proceedings were completed qua the petitioner's land under an Award dated 10 August 1988 passed under Section 11

of the Act. Further, the petitioner himself has averred that the possession of land was taken 30 years back. Thus, the consequence is that the land stood vested in the State Government. If this be the case, then we cannot understand as to what legal right is available to the petitioner to assert such prayers.

3. The only provision under which the land can be withdrawn from acquisition is Section 48 of the Act. Section 48 provides that except in case provided for under Section 36, the Government shall be at liberty to withdraw from the acquisition of any land 'of which possession has not been taken'. In the present case, as noted above, possession has admittedly been taken and thus, the prayers of the petitioner that the Government should withdraw from the acquisition, would be prayers contrary to what Section 48 would provide and thus certainly cannot be entertained. A perusal of the ground, as made in the petition, also does not indicate that the petitioner is asserting any other legal right. In the absence of any legal right available to the petitioner to support the prayers, we are unable to entertain the present petition. The Writ Petition is devoid of merits and is accordingly rejected.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)