

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10470 OF 2014

Narayan Rama Kokare (Since Deceased)	]	
through his heirs & Legal representatives	]	
Pandurang Narayan Kokare & Anr.	]	... Petitioner

Versus

The State of Maharashtra,	]	
through Secretary, Department of Land	]	
Acquisition & Ors.	]	... Respondents

Mr. P. M. Arjunwadkar for Petitioner.
Mr. P. G. Sawant, AGP for State.

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

DATE :- 6 MARCH, 2017

P. C. :-

1. Heard the learned Counsel for petitioner as well as learned AGP for State.

2. The petitioner is before us challenging legality of the notices dated 09/09/2010, 26/09/2011 and 29/09/2011 wherein the State Government directed the entries of the project affected persons in whose favour the land bearing Survey No.459 situate at Ichalkaranji, Taluka Hatkanangale, District Kolhapur admeasuring about 74 Ares of land came to be allotted. According to the

petitioner, the ancestors of the petitioner acquired right, title and interest in respect of this Survey No.459 to an extent of 1/3rd of the land under tenancy rights and the rest of the land came to be purchased by virtue of a Sale Deed on 29/07/2010 in favour of petitioner no.1B Govind Rama Kokare to an extent of 61 Ares.

3. According to the petitioner, there was no challenge made by the petitioner so far as acquisition of land is concerned at the relevant point of time. However, they are fair enough to say that the notices were issued to the predecessor-in-title in 1985. There is no petition for apportionment of compensation under Section 30 of the Land Acquisition Act, 1894 since part of the land, about 13 or 14 Ares, came to predecessors-in-title by virtue of tenancy rights and 61 Ares of land said to have purchased by virtue of a Sale Deed dated 29/07/2010. The fact remains that once the award came to be passed in the year 1987 i.e. 20/10/1987, what remains to be purchased by the petitioner or the purchaser. By virtue of Section 4(1) declaration, there is a ban or obstacle to encumber the land. Then one has to see whether Section 23 of the Indian Contract Act comes into play in order to ascertain whether it was a void sale in the light of Section 23 of the Indian Contract Act.

4. Fact remains as on today, neither compensation is paid nor possession is taken over from the petitioner, according to the petitioner. Are they entitled for release of the land in terms of the new Act of 2013 as well ?

5. In the light of above observations, since the learned Counsel for petitioner, on instructions of the petitioner, seeks to withdraw the writ petition in order to approach the concerned authority for deletion of the land in question from acquisition, we find no objection for such exercise on the part of the petitioner. Therefore, we permit him to withdraw the writ petition reserving opportunity to approach the concerned authority. In case the petitioner approaches the concerned authority, the said authority shall dispose of the matter within eight weeks from the date of filing an application by the petitioner.

6. Writ Petition is accordingly disposed of.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)