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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6485 OF 2011**

Shri Kondiba Shivram Date and Anr.	... Petitioners
Vs.	
The District Collector, Pune and Ors.	... Respondents

Mr. T.D. Deshmukh for the Petitioners.
Ms. Aparna D. Vhatkar, AGP for the Respondent Nos. 1 to 6.
Mr. Prabhakar M. Jadhav for the Respondent No.7.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 21st APRIL, 2017

ORAL JUDGMENT (Per A.S. Oka)

1 This Petition was on final hearing board. When the Petition was called out for final hearing, time was granted to the respondents to take instructions. Today, the learned counsel appearing for the seventh respondent has tendered a reply. The learned AGP has not received any instructions. Rule was issued on 14th November, 2011.

2 According to the case of the petitioners their lands situated at village Kahu, Taluka Khed, District Pune totally admeasuring 4 Hectares and 69 Ares were acquired by the State Government for Chaskaman Irrigation Project. The petitioners are relying upon an order of allotment dated 24th November, 1997 issued by the Deputy Director

of Rehabilitation and District Collector. By the said order, lands bearing Gat No.1431 admeasuring 1 Hectare 20 Ares and Gat No.2009 admeasuring 1 Hectare 20 Ares situated at village Shikrapur, Taluka Shirur, Distict Pune were allotted to the petitioners and their father. According to the case of the petitioners, out of the said two lands, they were placed in possession of the land bearing Gat No.1431 admeasuring 1 Hectare 20 Ares and the possession of the land bearing Gat No.2009 was not handed over.

3 The seventh respondent made an application dated 22nd May, 2008 to the Divisional Commissioner, Pune. The seventh respondent claimed that he was the owner of the land bearing Gat No.1431. The application was made by him to the Divisional Commissioner for releasing the said land from acquisition. By the impugned order dated 13th June, 2011 the Divisional Commissioner passed an order of releasing the land bearing Gat No.1431 admeasuring 1 Hectare 20 Ares at village Shikrapur from acquisition. The allotment of the said land to the petitioners was cancelled and he directed that an action be immediately taken for allotment of some other land to the petitioners.

4 One of the main challenges in this Petition under Article

226 to the impugned order is on the ground that the petitioners were never given an opportunity of contesting the application made by the seventh respondent and that the impugned order was passed without giving an opportunity of being heard to the seventh respondent. The State Government has not filed affidavit in reply though the Petition was admitted on 14th November, 2011. By the order passed on that day, while issuing Rule, the operation of the impugned order was stayed by way of interim relief.

5 By the order dated 5th April, 2017 the State Government was called upon to make a statement whether an opportunity of being heard was granted to the petitioners. The learned AGP states that she has not received any instructions.

6 There is a reply filed by the seventh respondent. In the said reply, it is not the case made out that the petitioners were heard. We have carefully perused the impugned order. The impugned order is passed on the application made by the seventh respondent for release of the said land from acquisition. There is no reference in the impugned order to any notice issued by the petitioners. The impugned order does not record that an opportunity of being heard was granted to the petitioners. As noted earlier, by the impugned order, the allotment made to the petitioners has been cancelled.

7 Therefore, the averments made in the Petition regarding failure of the Divisional Commissioner to give an opportunity of being heard to the petitioners will have to be accepted.

8 The submissions made by the learned counsel appearing for the seventh respondent are on merits of the application made by him on 22nd May, 2008. The said application was made more than 10 years after the said land bearing Gat No.1431 was allotted to the petitioners. Therefore, the application made by the seventh respondent could not have been decided without giving an opportunity of being heard to the petitioners as there rights were likely to be affected. Therefore, it is not necessary for us to deal with the contentions raised on merits by the seventh respondent.

9 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 13th June, 2011 is hereby quashed and set aside and application dated 22nd May, 2008 made by the seventh respondent is remanded to the Divisional Commissioner, Pune;

- (ii) We direct the Divisional Commissioner, Pune to provide a copy of the application dated 22nd May, 2008 to the petitioners within a period of two weeks from the date on which an authenticated copy of this order is produced in the office of the Divisional Commissioner, Pune;
- (iii) It will be open for the petitioners to file a reply to the said application within a period of one month from the date on which a copy of the application is provided to them;
- (iv) We direct the Divisional Commissioner to pass an appropriate order on the application made by the seventh respondent on 22nd May, 2008 as expeditiously as possible and in any event within a period of six months from today;
- (v) We make it clear that contentions of the petitioners and the seventh respondent on merits of the application dated 22nd May, 2008 are expressly kept open;
- (vi) Rule is made partly absolute on above terms;
- (vii) All concerned to act upon an authenticated copy of this judgment and order;

(viii) It will be open for the parties to file documents before
the Divisional Commissioner.

(A.K. MENON, J)

(A.S. OKA, J)