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

WRIT PETITION NO. 2471 OF 1999

Shankar Yashwant Nalawade & Ors ...Petitioners
Versus
Collector of Satara & Ors ...Respondents

Mr. A.Y. Sakhare, Senior Advocate with Mr. H.S. Venegavkar
for the Petitioners.
Mr. A.I. Patel, AGP, for Respondents / State.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 8th September 2017

ORAL JUDGMENT (Per A.S. Oka, J.)

1. Heard learned senior counsel appearing for the Petitioner and learned AGP for the State Government. The challenge in this Petition under Article 226 of the Constitution of India is to the legality and validity of the acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894 (for short "**the said Act**") read with the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1989 (for short "**the said Act of 1989**").

2. With a view to appreciate the submissions canvassed across the bar, a brief reference to the facts of the case is necessary. In this Petition under Article 226 of the Constitution of India, we are concerned with the lands which are described in paragraph 2 of the Petition. A notification under Section 4 (1) of the said Act was issued on 11th June 1997, which was duly published in accordance with provisions of the said Act 1894. A declaration dated 27th August 1998 was issued under Section 6, which was duly published in accordance with law. An Award under Section 11 was made on 31st July 1999. The award discloses that a notification under sub-section (1) of Section 13 of the said Act 1989 was published on 1st December 1998. The acquisition was for rehabilitation of the project affected persons of Urmadi Project in District Satara.

3. It appears that the present Petitioners filed an application before the Divisional Commissioner, Pune which was styled as Appeal No. 199 of 1999 in which the prayer in substance was releasing their lands from acquisition. The case made out in the said Appeal was that Yashwant Vithoba

Nalawade had two brothers by the name Khashaba and Baburao. It is pointed out that there was a partition effected on 6th May 1968 to which Yashwant Baburao and Laxman (son of late Khashaba) were parties. It is the case made out that the memorandum of the said partition effected was reduced into writing on a stamp paper of Rs.1.50. It is further stated that mutation entry No. 1390 was effected on 13th December 1976, which was certified on 1st February 1977 for giving effect to the partition. The contention raised in the said Appeal is that if factum of partition which was effected much before the notification under Section 4 of the said Act, 1894 was issued is taken into consideration, the lands separately held by the Petitioners could not have been acquired.

4. The Additional Divisional Commissioner during the pendency of this Petition rejected the said application / Appeal by an order dated 11th April 2000. It is a short order holding that Mutation Entry No. 1390 has been effected for recording the percentage of shares (“**Aanewari**”) and cannot be taken as the evidence of partition. The Additional Divisional Commissioner passed the said order relying upon

the judgment and order dated 6th December 2015 passed by a Division Bench of this Court in Writ Petition No. 374 of 1987 (***Narasgonda Bapgonda Patil & Ors. Vs. Special Land Acquisition Officer & Ors.***)

5. We may note here that the said order of the Additional Divisional Commissioner has been challenged in this Petition by carrying out amendment to this Petition.

6. The learned senior counsel appearing for the Petitioners submitted that the mutation entry in question is effected not for recording the shares of the Petitioners, but the mutation entry has been effected for the purposes of recording separate possession of the Petitioners on the basis of their shares allotted to them in the partition which took place on 6th May 1968. He has also tendered on record the copies of the "Khatе Uтарas" maintained in Form No. 8 A by submitting that the said Khatе Uтарas show that the separate khatas / accounts were created as a result of the partition in the names of Yashwant, Baburao and Laxman. He submitted that if the partition is taken into account, perhaps the holdings

of the three branches of the said three persons on the relevant date will be less than the slabs mentioned in part 2 of the said Act of 1989 read with clause (c) of sub-section (1) of Section 13.

7. The learned AGP reiterated the correctness of the findings recorded by Additional Divisional Commissioner and submitted that the mutation entry no. 1390 is made only for recording the respective shares of the parties and there was no other evidence available of partition allegedly effected on 6th May 1968. He submitted that no interference is called for in writ jurisdiction.

8. We have given careful consideration the submissions. The contentions based on partition allegedly effected between Yashwant, Baburao and Laxman was specifically raised by the Petitioners in the application made under sub-section (1) of Section 48 of the said Act. The first six Petitioners are legal representatives of Yashwant. The Petitioners Nos. 7 to 12 are the legal representatives of Khashaba and the Petitioners Nos. 13 to 19 are the legal

representatives of Baburao. Yashwant died on 24th October 1993. Khashaba and Baburao died in the year 1958 and 1990 respectively. Perusal of the impugned order dated 11th April 2000 passed by the Additional Divisional Commissioner, Pune shows that it is a cryptic order. It rejects the application made by the Petitioners on the ground that mutation entry No. 1390 is effected only for recording Aanewari / shares. Reliance was placed on the judgment and order dated 6th December 1995 in Writ Petition No. 374 of 1987. We had called for file of the said disposed of Writ Petition. In paragraph 3 of the said judgment and order, the Division Bench in the facts of the case observed that there was no evidence to show partition by metes and bounds and mere indication of shares or Aanewari in revenue records does not establish partition.

9. Turning to the facts of the present case, the memorandum of partition which purports to reduce into writing the oral partition effected on 6th May 1968 was relied upon before the Additional Divisional Commissioner in the Appeal / Application filed by the Petitioners. The genuineness

of this document has not been disbelieved by the Additional Divisional Commissioner. Even in the Affidavit in Reply of Shri Satish Vasant Dhumal, Deputy Collector / District Rehabilitation Officer, Satara, there is no specific denial of the execution of the said document which was executed on stamp paper of Rs.1.50 on 6th May 1968. We have perused the said document. The first paragraph of the said document refers to the names of Yashwant, Baburao and Laxman. The second paragraph records that Yashwant and Baburao along with their nephew Laxman have come together and have effected partition of the said lands by metes and bounds. It records that in the said lands as well as in the other property, the three persons will have five anna and four paise share. Thus, the said document records the factum of partition which took place on 6th May 1968. It specifically refers to the fact that the partition was effected by metes and bounds.

10. Mutation Entry No. 1390 which was certified on 1st February 1977 is in respect of several lands all of which are not the subject matter of the partition effected on 6th May 1968. The memorandum of partition itself records that except

for the lands which were partitioned by metes and bounds, in other lands, the three branches will have share of five anna and four paise each. Mutation Entry No. 1390 specifically records that Yashwant, Laxman and Baburao were in exclusive possession of the separate portions of the property.

11. Yesterday, a compilation is tendered across the Bar which is marked as “**C-1**”. The documents containing compilation show that Khata (Account) No. 432 bears names of Yashwant, Laxman and Baburao. The document show that subsequently there was three khatas created in place of one Khata.

12. Therefore, in our view, in the present case, as the execution of the memorandum of oral partition is not seriously disputed which records partition by metes and bounds, a reference in the mutation entry to aanewari / shares is obviously to certain other lands which were not subjected to partition. There are three separate khatas created in the

names of Yashwant, Laxman and Baburao.

13. Therefore, the order dated 11th April 2000 passed by the Additional Divisional Commissioner, Pune cannot be sustained at all. In the light of the findings recorded above, by remanding the matter to Additional Divisional Commissioner, Pune, we propose to direct the Additional Divisional Commissioner, Pune to decide, whether the said land or any portion can be acquired considering the prescribed slabs by taking the holdings of Yashwant, Baburao and Khashaba as separate holdings. Needless to add that the issue whether the partition effected on 6th May 1968 stands concluded in the light of findings recorded earlier.

14. Accordingly, we dispose of this Petition by passing following order :-

- (a) The impugned order dated 11th April 2000 passed by Additional Divisional Commissioner, Pune is hereby quashed and set aside.
- (b) The Resettlement Appeal of 199 of 1999 which is in fact an application under sub-section (1) of

Section 48 of the Land Acquisition Act, 1894 is restored to the file. We direct the Petitioners to remain present in the office of the Additional Divisional Commissioner, Pune on 1st November 2017 at 11.00 a.m. for fixing the schedule of hearing;

- (c) The Additional Divisional Commissioner, Pune shall decide the prayer of the Petitioners for release of their lands from the acquisition in exercise of the powers under sub-section (1) of Section 48 of the said Act in the light of the findings recorded in this judgment;
- (d) We may clarify here that nothing is placed on record to show that possession of the acquired lands was taken over in accordance with Section 16 of the said Act;
- (e) Final order shall be passed by the Additional Divisional Commissioner, Pune as expeditiously and possible and in any event before the end of this year;

- (f) The ad-interim relief which was operative in this Petition shall continue to operate till date on which order passed by the Additional Divisional Commissioner, Pune is communicated to the Petitioners or to one of them. If the said order be adverse to the Petitioners, the ad interim order will continue to operate for a period of six weeks from the date on which the order is communicated to the Petitioners or one of them;
- (g) Rule is partly absolute in the above said terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)