

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10397 OF 2017

Shri Chanappa B. Yesare

..Petitioner

Vs.

Collector, Kolhapur and Others

..Respondents

Mr. Uday B. Nighot, for the Petitioner.

Mr. V.S. Gokhale, “B” Panel Counsel, for Respondent Nos.1 to 5.

CORAM:-K. K. TATED & B. P. COLABAWALLA,JJ.
DATE :- APRIL 12, 2018.

P. C.:

Heard. By this Petition under Article 226 and 227 of the Constitution of India the Petitioner is challenging the order dated 23rd August, 2016 passed by the Divisional / Additional Commissioner, Pune Division, Pune rejecting the Petitioner's application under Section 48 (1) of the Land Acquisition Act, 1894 (for short “the said Act”) filed by the Petitioner for deleting acquisition of 21 R land from Gat No.156 (part) situated at village Lingnur K Nul, Tal. Gadhingalaj, Dist. Kolhapur.

2 Mr. Nighot, the learned counsel for the Petitioner submits that the total land of the Petitioner is 1H and 91.08 R. Out of this land, 14.5 R are barren land (*pad land*). Thus, total holding of the land for acquisition comes to 1.78 R. He further submits that as per Government Resolution dated 28th October, 1987, the Government has fixed a slab of 4 Acres. Therefore, at the most the Government can acquire only 17R land from holding of the Petitioner. He further submits that in view of the Government Resolution dated 28th October, 1987 the Government cannot acquire the land less than 20 guntas. Therefore acquisition made by the Government itself is bad in law. He further submits that these facts are not considered by the Additional Commissioner, Pune Division, Pune at the time of passing the impugned order dated 23rd August, 2016.

3 On the other hand, the learned AGP Mr. Gokhale appearing on behalf of the State filed their affidavit in reply dated 5th February, 2018. He submits that in the present proceeding the Award was passed by the Special Land Acquisition Officer dated 27th September, 2012. Thereafter, they issued notice under Section 12 (2) and Under Section 16 of the said Act for payment of compensation. Pursuant to the said notice, the Petitioner accepted payment on 13th August, 2013 in the sum of Rs.1,43,451/-. He relies on the receipt to that effect which is at

Exhibit-A on page no.87 of the affidavit in reply filed by the Respondent. The learned AGP further submits that the possession of land was taken by them on 13th August, 2013. He submits that in view of Section 48 (1) of the said Act if the acquisition is completed, there is no question of withdrawing the land from acquisition. Therefore, there is no substance in the Writ Petition. The same is required to be dismissed.

4 It is to be noted that the Collector has passed the Award dated 27th September, 2012 and made payment on 13th August, 2013. On the same day the possession was taken by them without any protest. Hence acquisition was completed by the Respondent before deciding the Petitioner's application under Section 48 (1) of the said Act. Once the acquisition is completed, there is no question of entertaining the Petitioner's application under Section 48 (1) of the said Act.

5 In view of these facts, we do not find any substance in the Writ Petition. Same stands rejected.

(B. P. COLABAWALLA, J.)

(K. K. TATED, J.)