

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13913 OF 2016

Adinath Balu Mule and Others. ..Petitioners.
Versus
State of Maharashtra & Others. ..Respondents.

Mr. Umesh H. Pawar for the Petitioner.
Mrs. M. P. Thakur, AGP for the Respondent-State.

Coram : RANJIT MORE &
PRAKASH D. NAIK, JJ.
Date : **February 16, 2018.**

P. C. :

1. Heard Mr. Pawar, the learned Counsel for the Petitioner and Mrs. Thakur, the learned AGP for the Respondent-State. The petition is filed for following reliefs :

“(b) By a suitable writ, order or direction, this Honourable Court be pleased to hold and declare that the Land Acquisition Proceedings No. LAQ/SR/267 extended to the Petitioner's agricultural land bearing Survey No. 1825/1B+2A having new Gat No. 147/1B+2A/2 of area 51 Ares situated at Ashta, Taluka Walwa, District Sangli is deemed to have become withdrawn.

(c) By a suitable writ, order or direction, this Honourable Court be pleased to further directed to the Respondents to acquire petitioner's agricultural land bearing old Survey No. 1143/1B/2 having new Gat No. 1130/1B+2B/2 in lieu of agricultural land bearing Survey No. 1825/1B+2A having new Gat No. 147/1B+2A/2, both situated at Ashta, Taluka – Walwa, District – Sangli, if they desire so;

(d) By a suitable writ, order or direction, this Honourable Court be pleased to quash and set aside the impugned land acquisition award dated 27-9-1988 passed by the Respondent No. 5 the Spl. Land Acquisition Officer

No.9 in respect of the so-called acquired land bearing Survey No. 1825/1B+2A having new Gat No. 147/1B+2A/2, situated at village Ashta, Taluka – Walwa, District – Sangli and accordingly, be pleased to direct the Respondents to correct the revenue records of the aforesaid land by deleting the name of Respondent No. 5 and restore the names of the Petitioners in the records of rights (7x12 extracts) of the aforesaid land;”

2. There is no dispute that by passing an award dated 27th September 1988, the land admeasuring about 51-acre from Gat No. 1825/1B/2A (New Gat No.147/1B/2A/1) situated at Ashta is acquired from the Petitioner for resettlement of persons affected by Warna dam project. Besides, the Petitioner has accepted the compensation for the acquisition of said land. The possession of the land was taken by executing *Kabjepawati* on 10th May 1989. For the first time in the year 2003, the Petitioner approached the Divisional Commissioner for the relief under section 48(2) of the Land Acquisition Act, 1894. As a matter of fact, such application was not maintainable since possession of the subject land was already taken. In this application, the Petitioner purportedly offered to give alternate land. The said proposal was accepted by the Commissioner by his order dated 18th August 2004. However, the said proposal is accepted subject to conditions that the alternate land which the Petitioner has offered should be cultivable land and the quality of the alternate land must be similar to the land under acquisition.

3. The grievance of the Petitioner that the order of the Divisional Commissioner is not being implemented and therefore he has approached this Court seeking directions to the Respondents to accept the alternate land proposed by the Petitioner instead of land under acquisition.

4. The petition was placed for admission on 2nd February 2018. On that day, after hearing both sides we directed the District Resettlement Officer, Sangli to verify whether the land offered by the Petitioner by way of alternative land is cultivable and free from encumbrances and file a report to that effect on the next date of hearing. Today, the District Resettlement Officer is present along with her report. The report is given on the basis of inspection carried out by Tahsildar, Walwa. The report shows that the alternate land which the Petitioner is offering instead of the land under acquisition is salian land [क्षारपड] and the same is not cultivable. The report further shows that the Petitioner has taken loans from number of financial institutions and alternate land which is proposed to be given is mortgaged with the financial institutions.

5. In the light of above, we are not inclined to entertain

this writ petition. However, relying upon the certificate of the Taluka Agriculture Officer, the learned Counsel for the Petitioner contended that the land which the Petitioner is proposing to give is cultivable land. We have gone through the said certificate. The total area of the said land is 1-hectare 26-ares. The report, however, reveals that it is not क्षारपड land. However, in the bracket the area of the land is given only 49-ares. That apart, under this report even the land under acquisition is also shown to be क्षारपड, i.e., uncultivable. If that be so, we fail to understand as to why the Petitioner wants to retain क्षारपड land, which is already acquired. In any case, there are two contradictory reports in addition to the fact that alternate land proposed to be given, is mortgaged to financial institutions. We, therefore, cannot accept the Petitioner's proposal in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India. The petition is devoid of any merit and the same is, therefore, dismissed.

[PRAKASH D. NAIK, J.]

[RANJIT MORE, J.]