

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

WRIT PETITION NO.6101 OF 2016

Shankar B. Chalekar & Ors.

... Petitioners

Vs

The State of Maharashtra
& Ors.

... Respondents

...

Mr. Y.B.Lengare for the Petitioner.

Mr. N.C.Walimbe, AGP for the Respondent Nos.1 to 4.

Mr. Anish Khandepar for R.Nos.5 and 7.

CORAM : A.A.SAYED &

SANDEEP K. SHINDE JJ.

DATE : OCTOBER 16, 2018

P.C. :

The Petitioners are affected persons within the meaning of Section 2(2) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (hereinafter called “the **said Act**”), for the Gunjavani Dam Project. They were allotted lands Gat No.708, 704 admeasuring 14 Ares situated at Mouje Kamthadi Taluka: Bhore, District: Pune in March, 2008 (hereinafter called as “the **said lands**”). Respondent Nos.5 to 16 (hereinafter referred to as the **said Respondents**) were the owners of the said lands in the benefited

zone. Somewhere in June, 2010, possession was handed over of the said lands to the Petitioners and corresponding mutation entry was recorded in the revenue records. The Petitioners' grievance is that the said Respondents/original owners time and again attempted to obstruct and infact, obstructed their possession and by all possible means restrained the Petitioners from cultivating the said land. It appears that the said Respondents/original owners, had applied for relief under Section 48(1) of the Land Acquisition Act, 1894 in Writ Petition No.4728 of 2009, however, it was not entertained and the Petition was dismissed on 26.7.2010, having found possession of the said land was handed over to the Petitioners herein (Respondent Nos.6 to 11 therein).

2 It is the Petitioners' case that the said Respondents/original owners attempted and in fact, obstructed possession of the Petitioners of the said lands and also adopted every possible means at their disposal, to restrain the Petitioners from cultivating it. The Petitioners brought this fact to the notice of the authorities and as

such, in exercise of powers under Section 21 of the said Act, the Rehabilitation Officer vide order dated 15.12.2010 imposed a fine @ Rs.1,000/- per day on the said Respondents/original owners for the period May, 2010 till November, 2010. Thereafter, further penalties imposed resulted into a charge over their other lands to the extent of Rs.13,15,000/-. The Petitioners would contend that the said Respondents/original owners, however, continued to obstruct their possession of the said lands and in these circumstances, the Petitioners herein had filed proceedings under Section 5 of the Mamlatdar Court Act, 1906. The Tehsildar vide order dated 12.10.2011 restrained the said Respondents/original owners from obstructing and disturbing Petitioners' possession of the said lands and further directed that in case the said Respondents continued to obstruct, they may be prosecuted for committing offence under Section 188 of the Indian Penal Code.

3 The Petitioners would contend that the said Respondents/original owners, however, persisted with the same acts

and, therefore, the authorities under the said Act not only confirmed the order dated 15.12.2010 passed under Section 21 of the said Act but imposed fine for the further period from December, 2010 till October, 2012. It appears from the order dated 15.4.2013 of the Deputy Director (Rehabilitation) that the said Respondents had encroached over the said lands. It also appears from the said order that said Respondents/original owners herein have filed a civil suit no.2261 of 2011 in the Civil Court at Pune and the implementation of the order dated 15.4.2013 is made subject to the outcome in the said suit.

4 It is contended that from the aforesaid proceedings, it is abundantly clear that the said Respondent Nos.5 to 16/original owners in defiance of the orders passed by the Authorities /quasi-judicial authorities continued to obstruct and restrain the Petitioners from cultivating the said land. It is informed across the bar that the Petitioners have also filed Writ Petition No.10393 of 2018 inter-alia contending that the possession of their lands having not been taken in view of the provisions of Section 24 of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, acquisition proceedings needs to be started *de-novo*. This claim is also asserted in Reply filed by them.

5 It is submitted that in the circumstances, as stated hereinabove, the Petitioners are left with no remedy but to file this Writ Petition seeking various reliefs.

6 Heard the learned Counsel for the Petitioners and the learned counsel for Respondent Nos.5 to 16 and the learned AGP for the Respondent-State.

7 We have perused the order dated 26.7.2010 passed in Writ Petition No.4728 of 2009 filed by the original owners/said Respondents wherein directions were sought against the Additional Commissioner to decide their application filed under Section 48(1) of the Land Acquisition Act, 1894. The Division Bench of this Court in paragraph 2 has recorded a finding that possession of

the said land has already been taken away from the Petitioners therein (the said Respondents/original owners) and the possession receipt is executed in favour of the Petitioners herein. This finding clearly establishes the fact that the possession of the said land was handed over to the Petitioners and the plea of the said Respondents /original owners under Section 48(1) of the Land Acquisition Act, 1984 was not entertained. This fact was further fortified by the orders passed under Section 21 of the said Act as well as orders passed under Section 5 of the Mamlatdar Court Act, 1906. In the circumstances, the said Respondents/original owners (i.e. Respondent Nos.5 to 16) are clearly guilty of committing breach of the orders passed by various authorities under the said Act including quasi-judicial authorities under the Mamlatdar Court Act, 1906.

8 We have perused the affidavit-in-reply filed by the Respondent Nos.5 to 16 wherein they have asserted their possession in the said land and pleaded for *de-novo* acquisition proceedings in view of the provisions of Section 24 of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013.

9 Upon taking survey of various circumstances brought on record and the orders passed from time to time, we hold that Respondent Nos.5 to 16 have no right to interfere with and/or obstruct possession of the Petitioners of the said lands. In the circumstances, we direct Respondent No.2 to implement the order dated 15.4.2013 passed under Section 21 of the said Act and recover the fine amount from Respondent Nos.5 to 16 in accordance with law. We further clarify the suit proceedings pending in the Civil Court being Civil Suit No.2261 of 2011 would not be an impediment for implementation of the order dated 15.4.2013 passed by the Additional Collector, Rehabilitation Pune.

10 Thus, considering the totality of facts and having regard to the fact that Petitioners are in lawful possession of the said lands, they are entitled to protect their possession and prevent Respondent

Nos.5 to 16 from disturbing their possession by taking recourse to remedy including that of suit and the provisions of Section 24 of the said Act would not bar them from filing the suit to protect their possession of the said land.

11 The Petition is disposed of in the aforesaid terms with no order as to costs.

(SANDEEP K. SHINDE, J.)

(A.A.SAYED, J.)