

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7264 OF 2016

Shri Jalindar Haribhau Shivale and ors. .. Petitioners

Vs.

The Additional Collector/Deputy
Director of Resettlement (Land), Pune and ors. .. Respondents

Mr.S.A. Sawant, for the Petitioners.

Ms.Nisha Mehra, AGP for Respondents No. 1, 2 & 6 to 9.

Mr.Sandesh D. Patil I/b Mr.Anusha Amin, for Respondents No.
10 & 11.

**CORAM : NARESH H. PATIL, CHIEF JUSTICE &
M.S.KARNIK, J.**

DATE : 10th DECEMBER, 2018

P.C. :

. This Petition filed in the year 2016 is being
adjourned from time to time. The Petitioners pray for the
following reliefs.

a) This Hon'ble Court be pleased to call for the record
and proceedings pertaining to the impugned order
dated 19th May, 2016 bearing No.
ZPA/CHAS/SR/2/2016 passed by the Additional
Collector/Deputy Director of Resettlement (Land), Pune

and be pleased to give appropriate directions to the Respondent No.1 thereby directing the Respondent No.1 to consider the objections raised by the Petitioners by way of letter dated 5th May 2016, 12th May 2016, 20th May 2016 and 24th May 2016 and after giving an opportunity of hearing to the Petitioners ;

b) That this Hon'ble Court be pleased to quash and set aside impugned order dated 19th May 2016 bearing No. ZPA/CHAS/SR/2/2016 passed by the Additional Collector/Deputy Director of Resettlement (Land), Pune;

c) This Hon'ble Court be pleased to pass an order thereby giving appropriate direction to the Respondent No.1 to set aside the impugned order 19th May 2016 in view of the Respondent No. 2's husband has already signed the possible receipt on 1st July 1991 thereby taking compensation on 11th July, 1991 and therefore, once the said acquisition has reached to its finality the impugned order be quashed and set aside ;

d) Pending hearing and final disposal of the Petition this Hon'ble Court be pleased to stay the execution, operation and implementation of the impugned order dated 19th May 2016 bearing No. ZPA/CHAS/SR/2/2016 passed by the Additional

Collector/Deputy Director of Resettlement (Land), Pune and no coercive steps be taken pursuant to the impugned order dated 19th May 2016 passed by the Respondent No.1 pertaining to the land in possession of the Petitioners admeasuring 90 Ares out of Gat No. 1477 of Village Shikrapur, Taluka Shirur, District Pune ;

e) Ad-interim relief in terms of prayer clause (d) may kindly be granted ;

f) Such other relief to which the Petitioner is found entitled may kindly be granted in favour of the Petitioners.

2. In short the Petitioners's submission is that being project affected persons, they were allotted Gat No. 1477 situated at Shikhrapur, Taluka Shirur, District Pune. The Petitioners claim to be in possession since 01/07/1991. It is the Petitioner's case that possession receipt was duly signed by husband of Respondent No.3 herein and now it is not open for the Respondents No. 3 to 5 to raise any objection. Even compensation amount is accepted by Respondent No.3 on 11/07/1991 and therefore the application made by Respondents

No.3 to 5 for the first time in May 2016 to the Re-Settlement Officer for correction to be made in the map is illegal. The Petitioners raised objections for making any correction to the map prepared pursuant to the acquisition of gat No. 1477.

3. By the impugned order dated 19/05/2016, Respondent No.1 - the Additional Collector/ Deputy Director Rehabilitation (Land), Pune in exercise of powers under Section 14(1) of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 directed the Deputy Superintendent of Land Record to correct acquisition sheet (Sampadan sheet) on certain gat numbers which included gat number 1477.

4. The Petitioners apprehend that as a consequence of this correction, the original owners or successive owners are likely to stake a claim to the property which is in their possession. The Petitioners also apprehend dispossession. Learned Counsel for the Petitioners submits that there are several persons who are occupying this property as the same is

allotted under the project affected persons scheme. However, Learned Counsel submits that this Petition is restricted to Petitioners's claim only.

5. Learned AGP appearing for the State has filed reply through Shri Uttam Rajaram Patil, Deputy Collector Rehabilitation, Pune the relevant portion of which reads thus :

“...5. I say that on perusal of the reply affidavit filed by the Respondent Nos. 3 to 5 it is clear that the Additional Commissioner had passed order on 19/06/1990 and therein it was directed to acquire the Gat No. 1477 by changing the directions as per the report of Collector under Sec.5A of Land Acquisition Act. I say that in the said report of the Collector has stated that the land opposite to the highway shall be acquired as the land is cultivable. I further say that the said order dated 19/06/1990 passed by Additional Commissioner is prior to 06/05/18991 (i.e. date of award). Therefore the possession is taken as per law and in compliance of the said order of Additional Commissioner.

6. I say that the petitioner is not eligible for any of the reliefs sought by the Petitioner in this petition and

hence the present petition be dismissed.”

6. We are not satisfied with the way in which the affidavit is filed. It does not disclose necessary details, particulars and explanation in respect of issues raised before us.

7. The contesting parties have raised issues which call for examination of record, consideration of documentary evidence etc.

8. We find it appropriate in the facts of the case that a Senior Officer shall look into this issue and pass appropriate order after hearing the concerned parties. Learned Counsel appearing for Respondents No. 10 & 11 submits that in fact they are in possession of some part of the property.

9. We have perused the entire record and impugned order. We find several questions of fact raised in this Petition which call for examination of (a) documents; (b) revenue entries ; (c) orders passed by the Revenue Authority; (d) exact

location of the property; (e) gat numbers of person occupying such plots; (f) title to the property ; (g) list of subsequent purchasers, any other issue as may be raised at the hearing.

10. We direct the Collector, Pune to call for records, hear all necessary parties and pass a brief reasoned order in respect of issues raised in this Petition by the Petitioners, restricted to Gat No. 1477. The parties undertake to co-operate with the Collector.

11. All contentions on merits are kept open. Till the Collector passes a final order, status-quo as of today in respect of Petitioners's possession of land be maintained.

12. It is made clear that we have not expressed any opinion on merits of the matter.

13. It is expected that the Collector would deal with the issues without being influenced by the impugned order. The

entire exercise be completed within a period of 3 months from the date of receipt of this order.

14. The Writ Petition is disposed of in the above terms.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)