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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1709 OF 2018

Dyanoba Ramkrishan Kale ...Petitioner.
vs
The State of Maharashtra & Ors. ...Respondents

.....

Mr Samir Kumbhakoni for the Petitioner.
Mrs Madhubala Kajale "B" panel counsel for Respondent Nos.1 to 3.

.....

Dhanappa Irappa Koshti
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CORAM : **K.K.TATED, &**
B.P.COLABAWALLA, JJ.
JULY 23, 2018.

P.C. :

Heard learned counsel for parties.

2 By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is seeking directions against the respondents for entering the petitioner's name in the 7x12 extract and handing over vacant and peaceful possession of land bearing Gat.No. 45/2 situated at Kawathe, Taluka :- North Solapur, District :- Solapur admeasuring 2 Hector 3 Are.

3 Learned counsel for the Petitioner submits that without completing acquisition proceedings, the respondents state allotted the said land to the third party. Hence, he has filed the suit, which was dismissed by the Civil Court for want of jurisdiction. Hence, he has preferred the present Writ Petition.

4 In the present proceedings, the respondent – state filed an affidavit-in-reply dated 25th April, 2018 duly affirmed by Mr Pravin Krishna Salunke, Deputy Collector, Land Acquisition No.7 (Mohol), Solapur.

5 Learned AGP submits that in the present proceedings the notification under Section 6 of the Land Acquisition Act, 1894 ("Said Act") was published on 9th March, 1972. She submits that the Special Land Acquisition Officer passed an award under Section 11 of the Said Act on 15th January, 1976. In support of her contention, learned AGP relies on para 2 of the affidavit-in-reply dated 25th April, 2018 which reads thus:

> "At the outset, I say that the land bearing out of Gat.No.45 having an area admeasuring 2 H. 03 R. situated at village Kawathe, Taluka North Solapur, District Solapur has been acquired for rehabilitation of Ujani Dam Project Affected Persons in the year 1976, herein after referred to as the (acquired land). The said work is for the welfare of public at large. The commissioning of the said work is, therefore, of utmost public importance. I say that in the present matter the notification under Section 6 of Land Acquisition Act, 1894 was published on 09.03.1972. In the said notification instead of Gat. No. 45 (area 1 H. 62 R.) it is shown as Gat.No.46. I say that award under Section 11 of Land Acquisition Act, 1894 was passed on 15.01.1976. I crave leave to refer to and rely upon the available photocopy of the said award as and when called upon. I say that after passing award on 15.01.1976 the original land owner of Gat.No.45 Shri.

Ramkrushna Babu Kale has accepted compensation of Rs.12,256/- for acquisition of an area admeasuring 2 H 03 R. I say that the M.E.No.753 which is certified on 07.11.1992 shows that the name of Land Development Bank was entered on 7/12 extract as a land holder and the same name was deleted vide M.E.No.753 and the name of Ramkrushna Babu Kale entered as a land holder vide M.E.No. 753. Hereto annexed and marked as Exhibit-A is the copy of M.E.No. 753. I say that it is found that the name of State Government has not been entered on said acquired land after acquisition, therefore, detailed enquiry has been conducted by office of District Rehabilitation Office, Solapur. I say that during the enquiry the father of Petitioner in his statement admitted on 14.03.2006 the said acquired land has already been acquired by State Government and he has accepted compensation of the said acquired land for rehabilitation of PAP of Ujani Dam. Hereto annexed and marked as Exhibit-B is the copy of statement of father of Petitioner dated 14.03.2006. I say that the record of this office shows that the Special Land Acquisition Officer Ujani Project No.1 Mohol has issued letter to the Accountant General Bombay on 10.06.1976 in respect of submission of Detail Contingency Bill under Head 259 along with list of land holders who have accepted the compensation amount and the list of un-disbursed amount. I say that in the said list the name of father of petitioner is mentioned at sr.no.410 who has accepted the compensation amount. Hereto annexed and marked as Exhibit-C is the copy of letter dated 10.06.1976 of Special Land Acquisition Officer Ujani Project No.1 Mohol. This material fact has been deliberately suppressed by the Petitioner from this Hon'ble High Court. I say that after acquisition of the said acquired land the Respondent Authorities thereafter have already allotted the said land to the project affected persons vide order dated 06.11.2006. Hereto annexed and marked as Exhibit-D is the copy of order

dated 06.11.2006. I say that thereafter the concerned project affected person has sold out the allotted land to third person after obtaining permission from office of Respondents vide order dated 26.12.2008. Hereto annexed and marked as Exhibit-E is the copy of order of Respondents dated 26.12.2008. I say that petitioner has filed R.C.S. No. 126/2010 in respect of the land in question before Hon'ble C.J.S.D. Solapur against the State of Maharashtra and District Collector and Deputy Director of Rehabilitation which was finally dismissed with costs vide order dated 10.4.2017. I say that in order dated 10.04.2017 the Hon'ble Court has specifically observed in paragraph no.13 of the said order that "*according to me the plaintiff's ownership over suit property will lost automatically once the acquisition proceedings is completed during the lifetime of his father. The same will vest with the State. Further so far as possession of the suit property is concerned I am of the opinion that, that cannot be legally continued by the plaintiff. Admittedly there is no government order or resolution to the effect that the plaintiff is allowed to cultivate and enjoy the suit property. No doubt still some revenue record is there which shows plaintiff's possession till the year 1992 over the suit property but the same is not going to help the plaintiff because of the said reasons.*"

6 Learned AGP further submits that in the present proceedings the original owner of the land, Ramkrishna Balu Kale himself admitted in his statement dated 14th March, 2006 that the land from Gat.No.45/2 admeasuring 2 H. 01 R. was acquired by the State and also paid the compensation of Rs.12,256/-. English translation of the same reads thus:

"Statement" Dt.14.3.2006.

I Ramkrishna Balu Kale, Resident of Kawathe,Tal. North Solapur.

On asking I say that, the land situated at Kawathe, which is owned by me bearing Gat. No. 45/2 admeasuring 2 Hector 01 Are was acquired for project affected persons of Ujani Dam in the year 1972. I had received the price of said land as per Government rate. I am not having any kind of complaint in respect of said land. Regarding said land, I had not filed any kind of litigation in any Court or Revenue Department. The above mentioned land is acquired for the project affected persons of Ujani Dam. However, till date the said land is standing in my name, therefore, I am suffering family problems like partition cannot be effected. It is, therefore, prayed that, my name from the 7x12 extract of above land may be deleted and the name of the Government be entered. Hence this statement. Extract of scheme is enclosed herewith.

Sd/-Ramkrishna Balu Kale"

7 Learned AGP submits that from the statement dated 14th March, 2006 of original owner shows that acquisition was completed and compensation was paid. Therefore, there is no question of transferring the said land in the name of the Petitioner who claims to be the legal heir of original owner Ramkrishna Balu Kale.

8 It is to be noted that in the present petition under Articles 226 and 227 of the Constitution of India, the respondent state cannot be asked to enter the name of the petitioner by considering the alienation of the suit property in favour of third party. In the present proceedings, the petitioner has not joined third party as respondents. Hence, the petition is

also liable to be dismissed for non-joinder of necessary parties.

9 Reading of the affidavit-in-reply filed by the respondent state dated 25th April, 2018 and particularly paragraph 2 shows that the respondent state by following due process of law completed the acquisition proceedings and passed the award dated 15th January, 1976. Though the copy of the award is not on record, the statement of original owner dated 14th March, 2006, as referred to in above, clearly shows that the land was acquired by the state and compensation was paid to the owner.

10 During the course of argument, learned counsel for the petitioner disputed the signature of the original owner on the statement dated 14th March, 2006. That issue cannot be disputed under Article 226 of the Constitution of India. On all these grounds, Writ Petition stands rejected. No order as to costs.

(B.P.COLABAWALLA, J.) **(K.K.TATED, J.)**