

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

WRIT PETITION NO. 10781 OF 2013

Sharad Gorakhnath Kamble & Ors.

...Petitioners.

vs

The State of Maharashtra & Ors.

...Respondents

.....
 Mr A.S.Khandeparkar, Sr.Advocate i/b Khandeparkar & Associates for the
 Petitioners.

Mr N.P.Deshpande for Respondent No.3.

Mr R.S.Pawar, AGP for Respondent Nos.1 & 4.

...
**CORAM : A.A. SAYED &
 S.C.GUPTA, JJ.**

DATED : 10 SEPTEMBER 2018**P.C.:**

Heard learned counsel for the Petitioners, learned AGP for the
 State and the learned Counsel for Respondent No.3.

2. This Petition challenges the acquisition of land under the Maharashtra Housing & Area Development Authority Act, 1976 (the "Act"). The Petitioners' case is that under section 41 of the Act, before issuing Notification for acquisition, the State Government is required to publish a notice in the official gazette and serve the same in the prescribed manner on the owners or other persons, who in the opinion of the Government may be interested in such lands, to show cause why the lands should not be acquired, and the State Government can pass an order and issue a Notification only thereafter. It is the grievance of the Petitioners that in the

present case, though a Notification under section 41 of the Act was published by the State Government, no notice before publication of such Notification was given to the Petitioners who were owners of the property to show cause against its acquisition. The Petitioners rely on revenue records, such as 7/12 extracts in respect of subject property, to show their title to the subject property.

3. Respondent No.4 has filed its Reply to the Petition. It has been pointed out in its Reply that a notice within the meaning of the proviso to section 41(1) of the Act was issued on 12 May 2008. It has been pointed out that the notice was duly served on the land owners. This notice was never challenged throughout these long years. It has been submitted that even the final Notification issued by the State on 13 March 2012 in respect of acquisition of the property was not challenged by anyone. It is submitted that a notice of possession was issued to the land owners on 21 May 2013 and the possession of the lands referred to in the Notification under sub-section (1) of section 41 of the Act was taken by the State and handed over to Respondent No.4 and that the lands accordingly vest in the State.

4. In his Affidavit dated 27 August 2018, the Executive Engineer, MHADA (Respondent No.3), has relied upon the report of the Talathi, Pimpri Waghere, in respect of service effected on land owners. The sample

notices together with service register have been produced with the Affidavit. The Talathi in his report has referred to about 292 noticees in respect of the land acquired by the State for MHADA and produced a panchanama. The service register produced with the Affidavit shows that the owners of the particular plots with which we are concerned in the present Petition, namely, plots bearing survey No.309/7/1, survey No.309/8 and survey No.309/9/1, were duly served. Several owners have been mentioned in respect of each individual plot, some of whom have acknowledged having received the pre-acquisition notice. As far as Petitioner No.1 is concerned, there is a record of service on land owners in respect of his plot, namely, plot bearing survey No.309/7/1. As far as Petitioner No.2 is concerned, the revenue record produced with the Petition, namely the relevant 7/12 extract concerning the land, does not show the name of Petitioner No.2. A further revenue record is produced showing his name as part of his rejoinder filed in the Petition. The revenue record in respect of survey no.309/8 (7/12 extract) annexed to the Petition and the record produced with the rejoinder do not match. The extract produced with the rejoinder and the explanation submitted in respect thereof do not inspire any confidence. In any event, even as regards the plot bearing survey No.309/8, some of the land owners have received the pre-acquisition notice. So also, as far as the third plot, namely, plot bearing survey No.309/9/1 claimed by Petitioner No.3 is concerned, the service

register shows the receipt of notice in respect of this plot by some of the land owners. The relevant rules of service, contained in Maharashtra Housing & Area Development (Land Acquisition) (Service of Notice) Rules, 1979, require a pre-acquisition notice to be delivered, where the noticee is not found or is avoiding the service, by leaving an authentic copy of the notice with any adult member of the family of the noticee or affixing such copy to some conspicuous part of the premises in which he is known to have resided or carried on business or some conspicuous part of the land to be acquired. In the present case, the notices have been received by other co-owners, who are family members of the Petitioners.

5. In the face of the record of the case, some of which has been particularly referred to above, this Court is not inclined to go into individual facts of receipt of notices by particular land owners. Besides, as indicated by the Respondents in their respective replies, after issuance of the Notification under sub-section (1) of section 41 of the Act, with effect from which the lands vest in the State, the possession of the lands has also been taken by the State and handed over to Respondent No.4. The land has already been put to use for the public purpose. No interference is warranted at this stage on the facts alleged by the Petitioners.

6. There is, accordingly, no merit in the Petition. The Petition is dismissed. No order as to costs.

7. At this stage, on the request of learned Counsel for the Petitioners, the interim relief operating in the matter is extended by a further period of six weeks.

(S.C.GUPTE,J.)

(A.A.SAYED, J.)