

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.714/2016

Smt. Sonabai Jagannath Sarode (Deceased)
Through Legal Heirs

... Petitioners

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Balasaheb R. Deshmukh for the Petitioners
Mrs. Madhubala Kajale, "B" Panel Counsel for Respondent Nos.1 and 2.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : APRIL 23, 2018

PC. :

1 Heard. By this petition under Article 226 of the Constitution of India, the Petitioner challenges the order dated 27.07.2015 passed by the Additional Commissioner, Pune Division, Pune rejecting their Application u/s.48(1) of the Land Acquisition Act, 1894 (said Act) for releasing the land admeasuring 3 Acre 30 Ares situated at Village Fursungi, Tq. Haveli, Dist. Pune bearing Old Sy.No.174/21 New Gut No.215/21.

2 In the present proceedings, as per the contentions of the Respondent State of Maharashtra, they issued Notification u/s.4 of the said Act on 22.06.1961 for acquiring land from Gut No.174/21 (old) 215/21 (new) admeasuring 5 Acre and 10 Gunthas owned by one

Mr.Bapu Rama Mahar for construction of new Mutha Right Canal. Thereafter a declaration was made u/s.6 of the said Act on 20.12.1962 and published in the Government Gazette. After following due process of law the Special Land Acquisition Officer has declared the Award dated 15.03.1965 and served notice u/s.12(2) of the said Act on owner Bapu Rama Mahar. On 22.07.1965 by making panchanama possession of the land in question was taken from the owner and same was handed over to the beneficiary i.e. Executive Engineer, Khadakwasla Irrigation Department.

3 In the present proceedings, initially the Petitioner had made Application dated 25.08.2008 before the Divisional Commissioner, Pune for correcting 7/12 extract with following prayer.

“By pleased to release the land bearing Old Survey No.174/21 situated at Fursungi, Tq. Haveli, Dist. Pune which wrongly shown as acquired by the Land Acquisition Officer Pune on the reasons mentioned hereinabove and be pleased to give effect of order in 7/12 extract of Petitioners.”

4 The Petitioner also filed affidavit in support of his Application on 11.05.2010 before the Commissioner, Pune with a prayer to release/withdraw the acquisition of the said land belonging to the Petitioner. The Petitioner's Application dated 26.08.2008 made u/s.48(1) of the said Act was decided by the Additional Commissioner, Pune Division, Pune and directed the Special Land Acquisition Officer to make a detailed enquiry whether the Petitioner is entitled to release his land from the acquisition and submit a report to that effect. Report was submitted on 14.07.2010. Same was challenged by the Petitioner before this court by way of Writ Petition No.1476/2014 and also made

Civil Application No.1315/2014 which was partly allowed by this court directing the Authority to decide the Petitioner's Application u/s.48(1) of the said Act. Operative part of the said order reads thus:

“(i) We clarify that by the impugned order dated 14th July, 2010, the application made by the Petitioners under subsection (1) of Section 48 of the said Act has not been finally disposed of and the same is pending on the file of the Additional Commissioner, Pune Division;

(ii) If the Special Land Acquisition Officer has not yet submitted the report in terms of order dated 14th July, 2010, he shall submit the report within a period of two months from today. A copy of the said report shall be made available to the Petitioners. The Petitioners can raise appropriate objections to the report which may be submitted by the Special Land Acquisition Officer;

(iii) Within a period of two months from the date on which the report is received by the Additional Commissioner, Pune Division, he shall pass final order on the application made by the Petitioners under subsection (1) of Section 48 of the said Act;

(iv) We make it clear that we have kept open all the contentions raised by the Petitioners including the contentions based on Repeal of the said Act and applicability of the new Land Acquisition Act;

(v) We direct the Petitioners to produce an authenticated copy of this order in the office of the Additional Commissioner, Pune Division on or before 30th April, 2015 to enable the Additional Commissioner to issue consequential directions;

(vi) The Petition is disposed of on above terms;

(vii) All concerned to act upon an authenticated copy of this order;

(viii) Civil Application does not survive and the same is disposed of.”

5 Thereafter the Petitioner made Application dated 09.07.2015

before the Additional Divisional Commissioner, Pune Division for carrying out appropriate amendment in his Application u/s.48(1) of the said Act. The Respondent No.1 Additional Commissioner, Pune Division, after hearing both sides rejected the Petitioner's Application u/s.48(1) of the said Act by order dated 27.07.2015. Same is challenged by the Petitioner in this court under Article 226 of the Constitution of India.

6 It is to be noted that the original owner of the land was one Mr.Bapu Rama Mahar. His name also appears in the 7/12 extracts which are placed on record by the Petitioner at page No.28 to 35 i.e. Exhibit-A collectively. Bare reading of the petition shows that the Petitioner has failed to prove his relationship with the owner of the land Bapu Rama Mahar. Nowhere, it is disclosed in the petition that, as how the Petitioner is related Bapu Rama Mahar. Only at the time of oral arguments, the learned counsel for the Petitioner submitted that Bapu Rama Mahar was his forefather. Except an oral statement made by the learned counsel for the Petitioner, nothing is on record. Therefore, the question arises as to on what basis the Petitioner can make Application u/s.48(1) of the said Act for releasing the land from acquisition which was acquired in the year 1965, from earlier owner Bapu Rama Mahar.

7 Apart from that, section 48(1) of the said Act specifically states that if the possession is not taken then only, an Application can be maintainable under the said Act. Section 48(1) of the said Act reads thus:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed :

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.”

8 In the case in hand, it is specifically stated by the Dy. Collector (Land Acquisition) No.19 Pune in his Affidavit in reply dated 09.08.2017 that possession was taken from them on 22.07.1965 by making panchanama and handed over to the beneficiary i.e. Executive Engineer, Khadakwasla Irrigation Department. Once the possession is taken, there is no question of withdrawal u/s.48(1) of the said Act.

9 Even in the present proceedings, for the first time, the Petitioner has made an Application u/s.48(1) of the said Act in the year 2008 i.e. after more than 43 years. There is no explanation in the petition as to why there was delay and laches on the part of the Petitioner to take appropriate steps u/s.48(1) of the said Act. On this ground also the Petition is liable to be dismissed with costs.

10 The learned counsel for the Petitioner submits that in the present proceedings the Respondent No.1 Additional Commissioner, Pune Division, Pune has failed and neglected to consider all the documents placed before him at the time of deciding the Application u/s.48(1) of the said Act. He submits that admittedly, the Petitioner is in possession of the suit premises for last several years. He further submits that neither the Respondent paid the compensation of the acquired land nor issued any notice u/s.12(2) of the said Act. He

submits that though the Petitioner has placed on record several documents and also relied on the report submitted by the officers concerned, the learned Additional Commissioner has failed and neglected to consider the same at the time of deciding the Application u/s.48(1) of the said Act and passed the impugned order. Hence, same is liable to be set aside allowing the Petitioner's Application u/s.48(1) of the said Act. He further submits that before this court as well as before the Authority the Respondent has failed and neglected to show, whether they have made any payment to the Petitioner towards acquisition of the land. He further submits that though paper possession is with the Respondent, in fact, the Petitioner is in possession of the suit premises and he is cultivating the same. Therefore, the impugned order dated 27.07.2015 passed by the Additional Commissioner, Pune is required to be set aside, allowing the Petitioner's Application u/s.48(1) of the said Act. He further submits that if the petition is not allowed irreparable loss will be caused to them.

11 On the other hand the learned AGP has vehemently opposed the Writ Petition. He submits that the Writ Petition is frivolous. He submits that as per the revenue record, the suit property belongs to one Mr.Bapu Rama Mahar, whom they issued notice and acquired the land after following due process of law. He submits that the Petitioner has failed and neglected to place on record any documentary evidence to show that they are related to Bapu Rama Mahar. Therefore, the Petition as it is filed by the Petitioner is not maintainable including the Application made by them u/s.48(1) of the said Act before the

Additional Commissioner, Pune Division.

12 The learned AGP submits that they filed their Affidavit in reply dated 29.08.2017 duly affirmed by Snehal Ravindra Barge, Dy. Collector (Land Acquisition) No.19, Pune, who states that the possession was taken by them after following due process of law. He mainly relies on paragraph 3 of the said affidavit, which reads thus:

“3. I say that the land in question is Gat No.174/21 (old) and 215/21 (new) admeasuring 3 Acre 30 Ares situated at Mouje Phursungi, Taluka Haveli, Dist. Pune. One Mr. Bapu Rama Mahar was the original owner of the said land and the said land was acquired for construction of New Mutha Right Canal and following steps under the Land Acquisition Act, 1894 were taken in respect of the said land.

Sr. No.	Date	Events
1	22/06/1961	Preliminary notification under section 4 was published in Government Gazette
2		Notice under Section 4(1) was served on the original owner and objections under Section 5A were heard.
3	20/12/1962	Declaration under Section 6 was published in Government Gazette
4	15/03/1965	Final Award was declared
5	March, 1965	Notice under Section 12(2) was served on the original owner
6	22/07/1965	By making panchanama, possession of land in question was taken from original owner and the same was handed over to the beneficiary i.e. Executive Engineer, Khadkwasla Irrigation Department.

13 The learned AGP submits that the Application u/s.48(1) of the said Act is not maintainable since the possession was taken over by the

acquiring body. In the present proceedings the possession was taken over by them on 21.07.1965 after conducting panchnama. Therefore, there is no question of entertaining the present petition including the Application made by the Petitioner u/s.48(1) of the said Act.

14 The learned AGP submits that the acquisition proceedings was completed by them in the year 1965 by taking possession. The Petitioner, for the first time, made an Application u/s.48(1) in the year 2008 i.e. after more than 43 years. There is no explanation as to why there was delay and laches on their part. On this ground, the Petition is not maintainable and same be dismissed with costs.

15 Heard both sides at length. It is to be noted that in the present proceedings the Petitioner has failed and neglected to place on record any documentary evidence and/or made any statement as to how they are related to the original owner Mr. Bapu Rama Mahar, in whose favour the award was passed by the Special Land Acquisition Officer on 15.03.1965. On this ground only the petition is liable to be dismissed with costs.

16 Not only that though the acquisition proceedings was completed in the year 1965 after passing the Award as well as taking possession of the suit land, the Petitioner made an Application u/s.48(1) of the said Act for the first time in the year 2008 i.e. after more than 43 years. There is no explanation for the said delay and laches on the part of the Petitioner, in the present petition. Hence, on this ground also, the Petition as well as the Application u/s.48(1) of the said Act is liable to be dismissed with costs.

17 Bare reading of the order dated 27.07.2015 passed by the learned Additional Commissioner shows that he has considered each and every document placed on record by the Petitioner. Paragraph No.1 to 7(e) of the impugned order clearly show that he has considered the report submitted by the concerned Authority, at the time of deciding the Petitioner's Application u/s.48(1) of the said Act.

18 Hence, we do not find any reason to interfere with the well reasoned order, under Article 226 and 227 of the Constitution of India.

A The Writ Petition stands rejected with costs of Rs.15,000/-.

B Costs to be deposited by the Petitioner in the Registry of this court within eight weeks from today.

C If cost is deposited within stipulated time as stated hereinabove, the Registry is directed to remit the same to the Kirtikar Law Library, High Court, Appellate Side, Mumbai.

D If cost is not deposited within stipulated time as stated hereinabove, office is directed to issue letter to the concerned Collector, Pune to recover the same from the Petitioner as land revenue under the Maharashtra Land Revenue Code, 1966 and deposit the same in the Registry of this court.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)