

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

WRIT PETITION NO. 4843 OF 2014

Pandit Shripad Kulkarni ... Petitioner
V/s.
The State of Maharashtra
through the Secretary, Revenue Dept. & Ors. ... Respondents

Mr. Vinayak R. Kumbhar i/b Mr. N.V. Bandiwadekar for the Petitioner.
Mr. R.S. Pawar, A.G.P. for the Respondent Nos.1 to 4- State.

CORAM : R.M. BORDE AND V.L. ACHLIYA, JJ.
DATE : 18th JANUARY 2019.

ORAL JUDGMENT : (Per : R.M. BORDE, J.)

1 Heard. Rule. With consent of the parties the Petition is taken up for final hearing at the admission stage.

2 The Petitioner is objecting to order passed by the Divisional Commissioner, Pune Division, Pune in the proceedings initiated by the Petitioner under Section 48 of the Land Acquisition Act, 1894 for deletion of area from acquisition. An area to the extent of 80R belonging to the Petitioner is proposed to be acquired for resettlement of project affected persons. The Petitioner contends that the land holding, which are

required to be computed is below the prescribed limit of 1H. 61R. and as such no area from the land holding of the Petitioner is liable to be acquired. The Commissioner has relied upon the report tendered by the Additional Collector, Kolhapur. It is recorded in the report that the holding which has been allotted to the share of the Petitioner, is to the extent of 2H 55.5R. Out of the aforesaid total holding, an area to the extent of 84R is utilized for Pazar Talav, whereas an area to the extent of 1H .5R is an uncultivable area. The aforesaid area of 1H .5R as well as 84R utilized for Pazar Talav is liable to be deducted from the total land holding of the Petitioner and the area that remains with the Petitioner merely 90.5R is less than the prescribed land holding of 1H and 61R. It is, thus, reported that any area out of the land holding of the Petitioner is not liable to be acquired. The Divisional Commissioner while dealing with the issue has considered the total land holding of the Petitioner to be 2.92R and has proceeded to permit deduction of only 1H .5R. After deduction of aforesaid area, it is presumed by the Divisional Commissioner that the land holding remains with the Petitioner is to the extent of 1H 91.5R and as such an area to the extent of 30.5R is liable to be acquired. It appears that the Divisional Commissioner has not taken into consideration the area

occupied by the Pazar Talav, which is liable to be deducted from the total holding of the Petitioner. This aspect is considered in report by the Additional Collector and as such no further area out of the holding of the Petitioner is liable to be acquired.

3 In this view of the matter the decision rendered by the Divisional Commissioner is liable to be quashed and set aside and same is accordingly quashed. It is declared that no agricultural land out of the total land holding belonging to the Petitioner is liable to be acquired.

4 Rule is accordingly made absolute. There shall be no order as to costs.

(V.L. ACHLIYA, J.)

(R.M. BORDE, J.)