

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12839 OF 2017

Bhausahab Rajaram Gulavani

...

....Petitioner

V/S

The Divisional Commissioner, Pune & Ors.

....Respondents

...

Mr. Y.B. Lengare a/w Mr. Jotiram R. Jadhav i/b Mr. Suman Lengare for the
Petitioner.

Mr. R.S. Pawar, AGP for Respondent Nos.1 to 5.

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**CORAM : A.A. SAYED &
PRAKASH D. NAIK, JJ.**

DATE : 26 JULY 2019.

ORDER:

1 The subject matter of the Petition is Gat No.815 admeasuring 99 Ares at Village Talsande, Taluka Hatkanangale, District Kolhapur. The substantial prayers in the Petition are prayer clauses (b) and (c) which read as follows:

“(b) That this Hon’ble Court be pleased to hold and declare that the Petitioner’s land bearing Gat No.815/1 old (new Gat Nos.815/1B) admeasuring 99 Are are not included in the Award No.LQN/TALSANDE/SR/11/83 of village Talsande, Tal. Hatkanangale, District Kolhapur and the same is not acquired subsequently as the holding of the Petitioner is below the slab as per the letter cum order dated 13.11.2002 passed by the Respondent No.1.

(c) That this Hon’ble Court by way of appropriate writ, order or direction be pleased to quash and set aside the

impugned allotment order dated 13.09.1994 passed by the Respondent No.2 in respect of Gat No.815/1B admeasuring 57 Are and Gat No.815/1B admeasuring 42 Are at village Talasande, Taluka Hatkanangale, District Kolhapur to the Respondent Nos.6 and 7 respectively."

2 In so far as the prayer clause (a) is concerned, we see no impediment in allowing the same since in the Affidavit-in-Reply on behalf of the State Government it is admitted in para 3 that the said land admeasuring 0.99 Ares was not included in the Award. We accordingly allow prayer clause (a) of the Petition except to the extent of the bracketed portion starting "and the same is not acquired subsequently as the holding of the Petitioner is below the slab as per the letter cum order dated 13.11.2002 passed by the Respondent No.1."

3 So far is prayer clause (b) is concerned, in the Affidavit-in-Reply of the State Government it is admitted that the land admeasuring 0.99 Are 'is' to be acquired. In the Additional Affidavit-in-Reply on behalf of the State Government it is stated that the Respondent No.5- SLAO was directed to acquire the land and this fact is reflected in the Award itself. Thus, if the land In question was never acquired, there was no question of the

Respondents allotting the said land to the Respondent Nos.6 and 7, who have chosen not to appear before this Court despite having been served. It also noticed that the Petitioner had also filed a suit against the State Government as well as Respondent Nos.6 and 7, which suit was decreed and the Respondents were restrained from causing obstruction to the possession of the said land of the Petitioner. We are informed by the learned counsel for the Petitioner that no Appeal has been filed by the Respondent Nos.6 and 7 against the decree protecting the Petitioner's possession of the said land. In the circumstances, the clause (b) of the Petition will also be have to be allowed and is accordingly allowed.

4 In light of the above discussion, the Petition is allowed in terms of prayer clauses (b) and (c).

(PRAKASH D. NAIK, J.)

(A.A. SAYED, J.)

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