

lands from Gunjawani Project Rehabilitation which are already acquired for Veer Dharan Project in the 7/12th entry of their respective lands and further directing Petitioner No.1's land being Gat No.295 should be excluded from Acquisition;

3 Considering the limited controversy involved in the Petition it is not necessary to discuss the fact of the case in detail. The Petitioners herein preferred applications under Section 48(1) of Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') seeking release of their respective lands from acquisition. By the order dated 27.06.2006, the application filed by Petitioner No.2 and six other persons seeking released/withdrawal from acquisition of their land admeasuring 0.80 H.R. of Mouje Dhangawadi, Tal. Bhore, District Pune, for resettlement of project affected persons from Gunjawani Irrigation Project came to be allowed by Respondent No.2. Similarly by order dated 30.07.2006 passed in the matter of Petitioner No.3 and others, the land admeasuring 2 H. 0 R. of Village Dhangawadi, Tal. Bhore, District Pune, the application seeking released/withdrawal of said land from acquisition of such project came to be allowed by Respondent No.2. The Petitioner No.1 also made application before Respondent No.2 seeking similar reliefs in respect of land admeasuring 0.20 R. of Village Dhangawadi, Tal. Bhore, District Pune,

which is claimed to be pending with Respondent No.2. While dealing with application moved by Petitioner Nos.2 and 3, the Respondent No.2 has accepted their contention that in view of order/directions contained in letter dated 21.07.1997 issued by Ministry of Revenue and Forest, State of Maharashtra, the Petitioner Nos.2 and 3 are entitled to claim exclusion of their lands for Rehabilitation of project affected persons from Gunjwani Irrigation Project, as their lands were earlier acquired for Veer Irrigation Project. Accordingly the said orders came to be passed to release the lands of Petitioner Nos.2 and 3 from acquisition. But while passing the orders of release of lands from acquisition, the Respondent No.2 passed order to impose restrictions u/s.12 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, (hereinafter referred to as 'the Act of 1986') in anticipation of likelihood of change in Government decision dated 21.07.1997. In view of proposal moved by Divisional Commissioner, Pune, to State Government to modify the Government decision dated 21.07.1997, the Respondent No.2 directed that restriction imposed from sale, transfer, alienation of lands excluded from acquisition shall continue to remain in force till the Government takes a final decision in the matter. After the orders passed in the year 2006, the Petitioners repeatedly

requested the concern authority to exclude their lands from acquisition and delete the entries recorded in 7/12 extracts of said lands. The Tahsildar, Bhore filed reports before Sub-divisional Officer, Bhore/Respondent No.4 to exclude the said lands of Petitioners from acquisition and deletion of entries in 7/12 extracts of their lands. However, the Respondent No.4 failed to take steps to exclude their lands from acquisition and consequential entries in 7/12 extracts of their respective lands. Hence, the Petitioners have filed this Petition.

4 We have heard the learned Counsel for the Petitioners as well as learned A.G.P. for Respondents and perused the record and proceedings.

5 Learned Counsel for the Petitioners assails the impugned orders imposing restrictions passed by Respondent No.2 with contention that restrictions as imposed by Respondent No.2 are unsustainable in law and liable to be set aside. It is submitted that while passing the orders and imposing restrictions the Respondent No.2 failed to consider that the provisions of Section 12 of the Act of 1986 are applicable to the lands to be acquired under the provisions of the said Act. The Respondent No.2 also failed to take into account that once the lands are deleted/dropped

from acquisition no such restriction can be imposed. So also the Respondent Nos.2 to 4 failed to take into account that the Respondent No.1 had taken the decision way back in the year 1997 to exclude the lands of those persons whose lands already acquired for Veer Irrigation Project. In this background, learned Counsel for the Petitioners urged to set aside the impugned orders.

6 The Respondent Nos.2 to 4 have filed affidavit in reply. They have not disputed the case as put forth by the Petitioners. The Respondent Nos.2 to 4 have taken the stand that as the Divisional Commissioner, Pune, had moved proposal seeking modification of Government decision dated 21.07.1997, in anticipation of such change/modification from the State Government, while passing the impugned orders the Respondent No.2 imposed said restrictions, which leads to continuation of remark “Reserved for Rehabilitation” recorded in 7/12 of lands owned by Petitioners. Pursuant to order dated 12.03.2013 passed in Writ Petition No. 7242 of 2012, the Respondent No.2 sought guidance from State Government. Since the guidance is awaited from State Government, the Respondents could not take steps to delete/drop the said lands from acquisition.

7 Having appreciated the submission advanced in the light of orders passed by Respondent No.2, we are of the considered opinion that the restrictions imposed vide orders dated 27.06.2006 and 30.06.2006 are unsustainable in law. Once the Respondent No.2 has exercised powers u/s. 48(1) of the said Act and the lands of Petitioner Nos.2 and 3 ordered to be released/excluded from the acquisition, no such restrictions should have been imposed to restrict them from alienation of said lands. So also the provisions of Section 12 of the Act of 1986 cannot be invoked to impose such restrictions, while passing orders u/s.48(1) of the said Act. The provisions of Section 12 of the Act of 1986 are attracted only against those lands which are to be acquired under the provisions of the said Act of 1986. Since the lands of Petitioner Nos.2 and 3 were excluded from acquisition in exercise of power u/s.48(1) of the said Act, the Respondent No.2 should not have imposed such restrictions. In that view the impugned orders imposing restrictions are not sustainable in law and liable to be set aside.

8 While deciding the Writ Petition No.7242 of 2012 vide order dated 12.03.2013 the Division Bench of this Court (Coram : A.S. Oka & Mrs. Mridula Bhatkar, JJ.) based upon identical facts had set aside the

orders and passed the following order :

“(1) We quash and set aside that part of the directions incorporated in the impugned orders dated 27th June 2006 and 30th June 2006 by which the petitioners were prevented from alienating the lands which were ordered to be released for acquisition ;

(2) However, we make it clear that if the lands which are released under the aforesaid orders are required for some other public purpose, the impugned orders as well as this order will not prevent the State Government from initiating a fresh acquisition proceedings in accordance with law ;

(3) It will be open for the petitioners to apply to the revenue authorities for making appropriate mutation entry on the basis of this order ;

(4) The writ petition is allowed on the above terms.”

9 The facts of the case and challenges raised in the instant Petition is almost identical to Writ Petition No. 7242 of 2012. Similar orders dated 27.06.2006 and 30.06.2006 were passed by Respondent No.2 restraining Petitioners from alienation of their lands excluded from acquisition. In view of order dated 12.03.2013 passed, there was no reason for Respondent No.2 to make reference and seek guidance from State Government. The Respondents had no option except to comply the orders passed in the Petition.

10 Perusal of orders dated 27.06.2006 and 30.06.2006 reveals

that the condition to impose restrictions on transfer of lands released from acquisition has been incorporated in orders after the period of more than 5 months the orders were declared in open Court. The part of orders imposing restrictions appears to be incorporated in the orders on 27.06.2006 and 30.06.2006 though the orders were declared in open Court on 13.01.2006. Such an act of Respondent No.2 to modify the orders and incorporate the restriction subsequent to declaration of orders without opportunity of hearing to Petitioners also not sustainable in law. For this reason also the impugned order imposing restrictions deserves to be set aside.

11 Thus in view of the conclusions to which we have arrived at the Petition deserves to be allowed. Accordingly the Petition is allowed in terms of prayer clause (b) with no order as to costs. However, we make it clear that if said lands are required for some other public purpose the impugned orders as well as this order will not prevent State Government from initiating fresh acquisition proceedings in respect of said lands.

12 Rule made absolute in above terms.

(V.L. ACHLIYA, J.)

(R.M. BORDE, J.)