

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10134 OF 2019

Bala @ Balu Gopal Dalvi & Ors.

..Petitioners

Versus

Smt. Sampada Dhanaji Dalvi & Ors.

..Respondents

Mr. P. D. Dalvi, Advocate for the Petitioners.

Mr. Rushikesh Patil, Advocate for Respondent Nos.1 & 2.

Ms. Nisha Mehra, AGP for Respondent Nos.3 to 5.

CORAM : PRADEEP NANDRAJOG, C.J. &

SMT. BHARATI DANGRE, J.

DATE : 13th DECEMBER, 2019

P.C.

1] From the facts which we would be noting herein-after, it is apparent that Respondent Nos.1 and 2 have pulled wool over the eyes of Additional Collector, Kolhapur when the impugned order dated 22.07.2019 was passed. Why we say so ?

2] One Gopal Babu Dalvi who died on 13.11.1989 was the owner of lands in village Bambarde. His holding was acquired for an Irrigation Project and he became entitled to compensatory land under the Maharashtra Project Affected Persons Rehabilitation Act. He was found entitled to compensatory land ad-measuring 1 hectare 88 Ares. He was allotted the compensatory land in villages Sulkud and Kurnoor. Gopal Babu Dalvi died on 13.11.1989. He was survived by

three sons namely: Bala, Manohar and Dhanaji.

3] The three sons partitioned the holding of their father with each being allocated share as under :-

<i>Name of person</i>	<i>Land in Gat No.</i>	<i>Village</i>	<i>Area in Ares</i>
<i>Bala @ Balu</i>	<i>27</i>	<i>Karnoor</i>	<i>0.26</i>
	<i>438/1</i>	<i>Sulkud</i>	<i>0.21</i>
	<i>438/2</i>	<i>Sulkud</i>	<i>0.12</i>
		<i>Total</i>	<i>0.59</i>
<i>Manohar</i>	<i>741</i>	<i>Sulkud</i>	<i>0.40</i>
	<i>27</i>	<i>Karnoor</i>	<i>0.26</i>
		<i>Total</i>	<i>0.66</i>
<i>Dhanaji</i>	<i>882</i>	<i>Karnoor</i>	<i>0.41</i>
	<i>75</i>	<i>Kagal</i>	<i>0.22</i>
		<i>Total</i>	<i>0.63</i>

4] Mutation entries were made in the revenue record and needless to state land comprised in Gat No.438/1 in village Sulkud was mutated in the name of Bala.

5] Bala having died on 22.08.1995 he is survived by his wife Smt. Savitri, his and two daughters who are the four Writ Petitioners standing before us through their counsel seeking justice.

6] The grievance in the Writ Petition is to the order dated 22.07.2019 passed by the Additional Collector, Kolhapur, recording that 0.28 Ares excess land came to be allotted in the name of Gopal Babu Dalvi when compensatory claim was quantified and that as consented to by Sampada and Vinayak, who are the legal heirs of Dhanaji, land comprised in Gat No.438/1 ad-measuring 0.21 Ares be reverted to the Government.

7] It is thus obvious that Sampada and Vinayak, the heirs of Dhanaji, have played it smart. They have consented to land which was allotted to Bala during partition between the three sons of Gopal Babu Dalvi to be resumed by the Government.

8] The revenue record shows that the Petitioners have sold the land comprised in Gat No.438/1 after taking necessary permission in favour of Dadasaheb Shankar Shinde. This is by a registered sale-deed.

9] Now, if any excess land was allotted to Gopal Babu Dalvi resumption has to be from land proportionate to what has been inherited by his three sons. Further, such land which has been transferred to third parties cannot be resumed. The resumption has to be from lands in possession of the three sons of late Gopal Babu Dalvi. Declaring that the issue of excess land being allotted to Gopal Babu Dalvi has not been questioned in the instant Petition, we dispose of the Petition quashing the impugned order dated 22.07.2019 limited to

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it declaring that land ad-measuring 0.21 Ares in Gat No.438/1 in village Sulkud would be resumed.

11] The Additional Collector, Kolhapur would proceed to pass a fresh order after serving a notice upon the Petitioners as also Sampada, Vinayak and Manohar. In said proceedings the Additional Collector, Kolhapur would identify 0.28 Ares land declared as excess and liable to be resumed.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE