

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO. 332 OF 2018**

Shashikant Shivram Salunkhe & Ors.Petitioners
V/S
The State Of Maharashtra & Ors.Respondents

Mr. M. B. Deshmukh for the Petitioners.
Ms. P. N. Diwan, AGP for the Respondent Nos. 1 to 4-State

**CORAM : A. A. SAYED &
ANUJA PRABHUDESSAI, JJ.
DATED : 29th January, 2020**

P.C.:

The Writ Petition is filed seeking the following reliefs:

- a. Rule be issued and record and proceedings be called for;*
- b. This Hon'ble Court be pleased to issue the Writ of Mandamus or Certiorari or any other appropriate Writ/Direction/Order in the nature of Writ of Mandamus or Certiorari under Article 226 of the Constitution of India, 1950, thereby declare and hold that the Petitioners requests for substitution of the Land area 87 R out of Gat No. 258 of 259 instead of area 81 R from Gat No. 541 is required to be granted in the interest of Justice.*
- c. That the Respondent Nos. 1 to 3 may directed to acquire the Land 87 R from Gat No. 258 and 259 instead of 81 R Land from Gat No. 541 situated at Village Kanharwadi, Tal. Kadegaon.*
- d. That the Respondent No. 1 may be directed to take decision on the representation made by the Petitioner in respect of substitution of the Land. Thereby granting the substituted Land Area 87 R from Gat No. 258 and 259.*

e. Pending the hearing and final disposal of the present Writ Petition this Hon'ble Court be pleased to restrain the Respondent Nos. 1 to 4 from disturbing the peaceful possession of the Petitioner in the area 81 R of Gat No. 451 situated at Village Kanharwadi, Tal. Kadegaon, Dist. Sangali.

f. Interim/ad-interim order in terms of prayer clause (e) above be granted;

g. Such other and further reliefs be granted as the nature and circumstances of the case may be.

2. In the Affidavit-in-Reply dated 4th February, 2019 filed by the Dy. Collector, Land Acquisition No. 9, Sangli, in paragraph no. 6 it is stated as follows:

"6. I say that on 16.02.2001, the Respondent authority had taken physical possession of the land from Gat No. 541 by preparing Panchanama. It is incorrect that the Petitioner in possession of entire Gat No. 541 as on date. Hereto annexed and marked as "Exhibit-B" is a copy of the Panchanama.

3. In the Affidavit-in-Reply dated 12th January, 2019 filed by Dy. Collector, (Resettlement), Sangali in paragraph nos. 7 to 14 it is stated as follows:

"7. Further, I say that the same land was allotted to the Respondent No. 5, i.e. Wang Project Affected person by land allotment order dated 11/2/2001. The same is annexed here and marked as Exhibit 'C'. Also I say that the physical possession was handed over to the project affected person by preparing possession receipt (i.e. Kabjepatti) & same is attached here & marked as "Exhibit-D" and the entry of the name of PAP taken on

revenue record (i.e. on 7/12 extract) by Mutation entry no. 913. The same is annexed & marked as "Exhibit-E".

8. I say and submit that it is important to note here that the petitioner has never challenged the above both mutation entries till today.

9. Further I say that respondent no. 5 i.e. Wang Project Affected person has also filed the case against petitioner under Mamlatdar's Court act due to obstruction caused by petitioner in which the Mamlatdar had passed the order of permanent injunction against the Petitioner in the year 2016. The same is annexed & marked as "Exhibit-F"

10. I say & Submit that after this order as petitioner has removed the boundary marks shown to the PAP again as per the request by PAP the surveyer of the rehabilitation department has shown the boundary marks & prepared Kabjepatti. The same is annexed and marked as "Exhibit-G"

11. I say & submit that, further in revision case filed by petitioner under sec. 23 of Mamlatdar's Court act, the lower Court's order was confirmed and as per the judgment again obstruction by the petitioner was removed and the possession of the PAP was protected. The Kabjepatti of the same is annexed and marked as "Exhibit-H"

12. I say and submit that it is important to note that in spite of the above orders as the petitioner continued to obstruct the possession of the PAP again and again, the Tahasildar passed the penalty orders under section 21 of the Maharashtra Project Affected Person's Act 1999. In such situation the petitioner was expected to file an appeal to the divisional commissioner within 15 days from the date of penalty order (section 21[5] of the Act 1999). Instead of that the petitioner has filed another civil writ petition no. 5078/2018 which is also pending before this Court.

13. I say that the Respondent no. 4 had followed the entire acquisition proceeding in accordance with law. Now after completion of acquisition, the petitioner cannot claim for the exchange of land Gat No. 258 and 259 instead of Gat No. 541. It is not possible for this respondent to make any exchange of land Gat no. 258 and 259 instead of Gat No. 541 as same have been allotted to respondent no. 5 in the year 2001 i.e. long before 18 years ago.

14. Further it is important to note that for exchange of land there must be written statement of project affected person is necessary. Also it is important to note here that the land which has been offered by the Petitioner (i.e. Gut no. 258 and 259) is the purchased land by many people in the year 2002. The mutation entries (i.e. ME No. 987 and 988) for the same respectively are annexed and marked as "Exhibit-I". Alos another important aspect here is that the land offered in exchange is not free from encumbrances and petitioner has taken loan on the same property."

4. Thus, physical possession of the land being Gut No. 541 has already been taken as far back as on 16.02.2001 under Panchnama after the award was declared. Moreover, the said land has already been allotted to the Respondent No. 5 being a Project Affected Person by allotment order dated 11.02.2001 and possession of the said land has been handed over to Respondent No. 5 under a possession receipt and the name of Respondent No. 5 is mutated in the revenue records.

5. Hence, the prayer in the Petitioner for the substitution of the land of Gat No. 258 and 259 in place of Gut No. 541 which has been acquired after following due process of law and which has now been allotted to Respondent No. 5 who is a Project Affected Person and who is in possession of the said land cannot be granted.

6. The Petition is devoid of merit and also suffers from delay and latches. It is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(A. A. SAYED, J.)