

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION (STAMP) NO. 17072 OF 2018

Dr. Bhupesh Narendra Doiphode & Anr. .. Petitioners
Vs.
The Deputy Collector Rehabilitation & Ors. .. Respondents

Mr. Nitin P. Deshpande for the Petitioners.
Mr. M. M. Pabale, AGP for Respondent Nos.1 to 3.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 6th FEBRUARY, 2020.

P. C. :

1. Heard learned Counsel for the parties.
2. Case of the Petitioners is that late Sarubai Laxman Kadam was the owner of 3 Hectare 59 Are land out of which 26 Are land was non-cultivable and remainder was cultivable. The land was acquired for the Kasarsai Irrigation Project vide Award dated 29.09.1985. Being entitled to compensatory land under the Maharashtra Project Affected Persons Rehabilitation Act, late Sarubai Laxman Kadam was held entitled to 1 Hectare 60 Are alternate land and for which an order was passed by the Collector, Pune on 05.02.1994 allotting 1 Hectare and 60 Are land comprised in Gat No.17 at village Nere, District Pune. Pursuant to the allotment order, late Sarubai Laxman Kadam was put in possession of the allotted land. Vide Mutation Entry No. 1943 mutation was

effected. That vide Mutation Entry No. 2029 the said land was reverted in the name of the Collector and Deputy Director (Rehabilitation). As per the Petitioners late Sarubai Laxman Kadam had executed a will dated 21.12.2013 bequeathing the compensatory land allotted to her to the Petitioners. Grievance made is to the State Authorities having allotted the land comprised in Gat No.17 to other project affected persons.

3. Prayer made is to allot 1 Hectare 60 Are land to the Petitioners.

4. As drafted, the Petitioners do not explain under what circumstances Sarubai lost possession of the land. Having pleaded that Sarubai was put in possession of the land allotted in Gat No.17, the Petitioners were obliged to disclose how Sarubai lost possession of the land.

5. Be that as it may, the reply filed to the Writ Petition explains it all.

6. After being allotted the compensatory land comprised in Gat No.17 at village Nere, Sarubai paid ₹ 40,000/-. On 08.04.1996 she submitted an application stating that since she was issueless she was not interested in taking the said land and demanded ₹ 40,000/- to be paid back to her. She appeared in the office of the Collector where her statement was recorded on 17.09.1996. An order was passed directing the Treasury to return ₹ 40,000/- to Sarubai which she received on 19.09.1996. Pursuant thereto the State revoked the allotment of the

land in favour of Sarubai requiring the same to be reverted to the Government on 21.05.1997.

7. The facts pleaded in the reply have not been denied.

8. In the Petition it is pleaded that Sarubai expired on 06.09.2016.

9. Suffice it to record that a will operates on the death of the executor and relates to the estate of the executor which stands in the name of the executor on the date of the death of the executor.

10. Having executed the will on 21.12.2013 late Sarubai could not have bequeathed any right in the subject property to the Petitioners for the reason in the year 1997 itself she has surrendered her right in the land and had taken back the money which she had deposited with the Government. The bequest is obviously void.

11. The Writ Petition is dismissed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
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