

vdk

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5486 OF 2018

Gangadhar s/o Parasram Jadhav and others Petitioners

Versus

The State of Maharashtra and others Respondents

...
Mr. S. K. Adkine, Advocate for petitioners
Mr. S. B. Yawalkar, AGP for respondents no. 1 to 5 and 7
...

[CORAM : SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.]

DATE : 11th February, 2021

ORDER :

1. Petitioners, owners of lands in *gut* no. 117, 118 and 119 situated at village Asarjan, admeasuring 3 *Hectare*, 64 *Are*, 2 *Hectare* 38 *Are* and 2 *Hectare* 78 *Are* respectively, are before the court, praying for dropping of land acquisition proceedings in respect of their lands. Learned counsel for petitioners submits that they would become landless and some would become small land-holders, if their lands are acquired. He contends that land bearing *gut* no. 120 admeasuring 22 *Acre*, a government land being available in the vicinity can be utilized for the purpose for which their lands are sought to be acquired, relieving economic burden on government. He also refers to the report prepared by

respondents describing that there are fruit bearing trees, two houses, compound fencing of 400 poles, 1000 feet pipeline in land *gut* no. 117 and one cattle-shed covered by tins in the lands of petitioners.

It is being referred to that in the draft development plan, petitioners' lands have been shown under reservation for administrative building, government offices and staff quarters. Petitioners' contention is that lands *gut* no. 129, 130, 131, 132, 133, 134, 135 and 136 are adjacent to main 60-feet wide road and those have not been considered for acquisition purpose; those being owned by politicians and contractors etc. On the northern side, lands *gut* no. 90, 91, 98, 112, 114, 115, 116 are also adjacent to 60-feet wide road and out of that land, *gut* no. 112 is owned by an ex-member of parliament and his relatives and, therefore, is excluded from acquisition proposal.

Petitioners contend that land *gut* no. 120 would be more suitable and economically beneficial for construction of central administrative building etc. A large portion of the same is uncultivated since 2003-2004 which is owned by big contractors, builders or politicians. Petitioners contend that there have been transactions which may not be legitimate among *Inamdar*, contractors and builders and lot of litigation regarding the land is pending before courts and other authorities.

2. Petitioners give emphasis on decision dated 5th January, 2015 by the Secretary and Officer on Special Duty (Appeals) whereunder he had directed to take into account government resolutions dated 29th January, 1981 and 24th June, 1996.

3. On perusal of said decision, it appears that Secretary and Officer on Special Duty had considered that it is not reflected that government resolutions dated 29th January, 1981 and 24th June, 1996 have been followed before initiation of the land acquisition proceedings. Process for land acquisition ought to have been preceded by action according to aforesaid decisions and requirements thereunder. Land being forming single convenient piece of land for development would not be a reason which would be able to stand without such process. As such, *status-quo* had been directed to be maintained and authorities were restrained from passing award. Verification of availability of alternate land was also referred to and government resolutions dated 29th January, 1981 and 24th June, 1996 were directed to be followed seeking permission of competent authority for acquisition proceeding and to complete the same in accordance with the Land Acquisition Act, 1894.

4. While emphasis has been given on decision referred to above, it appears that matter had travelled further. The affidavit in reply on behalf of respondents no. 2, 4 and 5 shows that after

order dated 8th January, 2014 putting restraint on passing of award of land acquisition, directing to follow the instructions under government resolutions dated 29th January, 1981 and 24th June, 1996 in case petitioners were to be rendered small land holders or landless persons after exploring possibility having alternate land are stated to have been acted upon accordingly. It appears that a committee had been constituted and a report had been made. The authorities found that alternatives and lands suggested by petitioners are not feasible and that in case of deletion of petitioners' lands, one continuous single piece of land would not be available making achievement of purpose underlying the acquisition of lands inconvenient and difficult. It appears that the competent authority viz. the divisional commissioner, Aurangabad, with reference to various factors and considerations had accorded approval to going ahead of the land acquisition proceedings.

5. During the course of hearing, it had been referred to by learned Assistant Government Pleader that in the draft development plan, concerned lands have been shown to be reserved for central administrative building, government offices and staff quarters. There has been no objection by petitioners to the decision by competent authority and to the award.

6. It is being referred on behalf of the respondents that the lands are required to be acquired along with the other lands *viz. gut* no. 90, 91, 98, 112, 114, 115 and 116 forming single piece of over 100 *Acre* for government offices, central administrative building and staff quarter etc.

7. In furtherance of approval of competent authority, even the award had been passed on 14th September, 2017 in respect of lands *gut* no. 118 and 119. Award in respect of land *gut* no. 117 concerned in the present petition was passed on 8th May, 2017.

8. It is passingly contended that neither the award nor the decision of competent authority had been communicated to petitioners. The fact remains that affidavit-in-reply has been filed in 2019 referring to the events, *inter-alia*, to permission by divisional commissioner and the land acquisition award. Apart from aforesaid vague reference to that lands which are alleged to have been not taken for acquisition, being of contractors and politicians, neither any details/particulars in respect of the same have been given nor the persons are before the court to answer the allegations. Decision by the competent authority has not been shown to be defective.

9. Affidavit in reply also refers to that in writ petition no. 7867 of 2012, though high court had declared acquisition

proceedings in respect of land gut no. 119 to have lapsed and liberty had been given to initiate fresh proceedings and while similar decision had been given by the high court in writ petitions no. 9088 of 2016 and 10894 of 2016 in respect of land gut no. 117 from village Asarjan, the decisions were taken to supreme court and supreme court had set aside orders of high court finding that there had been stay granted in writ petitions no. 3051 of 2013 and 3159 of 2013 had hindered declaration of award and in the circumstances, the declaration that land acquisition has been lapsed, has been set aside.

10. It is not the case by petitioner at all that the government resolutions dated 29th January, 1981 and 24th June, 1996 have not been followed. The petitioners do not dispute, after order dated 5th June, 2015, the aspects referred to therein have been verified by the authorities. The respondents contend that procedure according to resolutions has been followed.

11. Having regard to that while acquisition proceeding have culminated in acquisition of lands from the very same gut number *viz.* guts no. 117 and 119, the deletion of lands of petitioners and dropping of acquisition proceedings in respect of petitioners' land comprised therein, breaking continuity of forming single piece, may give rise to numerous difficulties and inconvenience in carrying out purpose of acquisition of land and

lot of facilities may be affected.

12. Additionally, when acquisition of land from the very same land gut number has already been allowed, strength of challenge by the petitioners further depletes and diminishes. In the circumstances, challenge on behalf of petitioners would not be sustainable. As such, we do not consider it appropriate to entertain the writ petition.

13. Writ petition fails and is disposed of.

14. At this stage, learned counsel Mr. Adkine submits that alternate lands may be given to petitioners, as they would be rendered small land-holders/landless persons.

15. It is for the petitioners to make proper request and to approach the concerned authorities in accordance with law.

16. Learned counsel for petitioners purports to draw our attention to that, there are standing crops in the field and, therefore, taking possession of the lands may be refrained from. The authorities concerned may decide about the same having regard to law.

[ABHAY AHUJA]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE