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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**CIVIL APPLICATION NO.51 OF 2013
IN
CONTEMPT PETITION NO.396 OF 2013**

Govind Baban Deshmukh and Anr. Applicant

Vs.

Mr.Dadabhau Joshi, the District
Resettlement Officer & Ors. Respondents

Mr.Gaurav Potnis i/b Ms.Pallavi Potnis for the Applicant

Mr.V.S.Gokhale, 'B' Panel Counsel for the State

Mr.Drupad S. Patil for the Respondent no.3

**CORAM: K.K.TATED &
RIYAZ I. CHAGLA, JJ.**

DATED : MARCH 12, 2021

P.C.

. Heard.

2. By this Application, Applicant is seeking order to quash and set aside the order dated 11.06.2019 issued by

District Rehabilitation Officer in respect of 40 R of land from Gat No.203 of Village Nanekar Wadi, Taluka Khed, District Pune allotted in favour of Respondent no.5 who is also project affected person.

3. The learned counsel for the Applicant submits that in the present proceeding, this Court passed order on 25.07.2012 in Writ Petition No.3768 of 2010 directing Respondent State to allot 80 Ares of land from Gut No.203. In support of this contention, the learned counsel for the Petitioner relies on paragraph 2 and paragraph 4 of the said order which reads thus:

“2. In this batch of Petitions, the Petitioners' lands have been acquired for the purpose of “Bhama Askhed Project”. The Petitioners have deposited 65% of the amount of compensation towards alternate land for resettlement on various dates. The relevant dates of the notification award area and dates of payment and the village from which the Petitioners made a request for the land and their Gat numbers can be seen from the chart below:-

W.P. No.	Name	Date of Notification	Date of Award	Gat Nos. Acquired	Area Acquired H- A	Date of Payment of 65%	Area Alloted As Per Sanklan H- A	Land Requested from Village	Gat No. to be allotted
3572/2010	Pandurang Bhau Bandal	25/12/1997	29/04/2000	135,72 & 199	OH-71A	22/05/2000	OH - 80A	Kadachiwadi	724
3571/2010	Ram Laxman Hole	25/12/1997	29/04/2000	68,79,81,130 & 133	1H-08A	22/05/2000	1H - 20A	KadachiwadiNanekarwadi	597 & 418
3806/2010	Radhu Dhondiba Hole	25/12/1997	29/04/2000	2,18,20,146,152,160,161,162,176,178,184 & 197	2H-68A	22/05/2000	OH - 80A	Nanekarwadi	390/1
3765/2010	Tukaram Chindu Hole	25/12/1997	29/04/2000	155,204,156,192,118,187,112,92 & 86	2H-14A	22/05/2000	1H - 60A	KadachiwadiNanekarwadi	115 & 193
3767/2010	Babusha Dhondiba Hole	25/12/1997	29/04/2000	2,18,20,146,152,160,161,162,176,178,184 & 197	2H-68A	22/05/2000	1H - 20A	Nanekarwadi	182
3768/2010	Govind Baban Deshmukh Namdeo Baban Deshmukh	04/09/1997	01/12/1999	210	1H-06A	22/05/2000	OH - 80A	Nanekarwadi	203
3912/2010	Mahadu Shankar Deshmukh	04/09/1997	01/12/1999	295,189A,189B,304 & 310	2H-11A	22/05/2000	OH - 80A	KadachiwadiNanekarwadi	390/1 & 360
3913/2010	Shahubhai Bhagwan Bandal	25/12/1997	29/04/2000	135,72 & 199	OH-71A	22/05/2000	OH - 80A	Nanekarwadi	205
3914/2010	Devdas Sahadu Jadhav	04/09/1997	05/05/2000	108,129,25,35,33,126,23,84,326 & 328	4H-11A	22/05/2000	OH - 80A	Kadachiwadi	720 & 137

4. *In these circumstances, having regard to the moral and statutory obligations of the Respondent-State to provide land to the people who have been divested of their lands for the purpose of a project, we consider it expedient in the interest of justice to direct the Respondents to allot a partial of land out of lands specified by the Petitioners in their request and as it apparent from the chart above. A similar decision was rendered by this Court in Writ Petition No.6067 of 2010 decided on 22nd March, 2011. We may also usefully refer to the Judgment of the Supreme Court in the case of **S.N.Rao & Ors.Vs.State of Maharashtra & Ors.**,reported in **AIR1988 SC 712**, wherein it is settled that the State cannot take into account any reservation etc. unless the said reservation etc. has been notified. Thus, we, therefore, hold that it is not permissible for the Respondents to refuse allotment of lands, which is otherwise permissible on the ground that a MIDC Extension Project is going to come up near by the said lands.”*

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4. The learned counsel for the Applicant submits that inspite of the specific order passed by this Court, the Respondents allotted only 40 Ares of land to the Applicant by order dated 26.02.2014. Hence, the Petitioner filed the Contempt Petition. He submits that Contempt Petition is already admitted by this Court and notice is issued to the Respondent by order dated 01.09.2015.

5. The learned counsel for the Applicant submits that thereafter, the Respondent State preferred Review Petition (ST) No.13599 of 2018 to review the order dated 25.07.2012 passed by this Court in Writ Petition No.3768 of 2010. He submits that there was delay in filing the said Review Petition. Hence, they preferred the Civil Application No.186 of 2018 for condonation of delay. He submits that the Application for condonation of delay was rejected by this Court by order dated 28.06.2019 (Coram: S.C.Dharmadhikari & G.S.Patel, JJ.).

6. The learned counsel for the Petitioner submits that instead of allotting the remaining 40 Ares of land to the Applicant, Respondent State allotted 40 Ares of land to the Respondent no.5 by order dated 11.06.2019 and hence, they preferred the present Application for setting aside the said order.

7. On the other hand, the learned counsel for the Respondent no.5 vehemently opposed the present Application. He submits that in the present proceedings, Respondent State acquired 1 H 4 Ares of land of the the Applicants namely consisting 3 brothers. He submits that after following due process of law, Special Land Acquisition Officer declared the award dated 01.12.1999 and awarded compensation. He submits that at that time, other two brothers of the Applicant gave in writing that they are not

interested in resettlement and therefore 65% of the amount be deducted only from the Applicant's share. To that effect, they executed their statement which is Exhibit R-2 to the State's Affidavit in Reply dated 31.07.2019. He submits that bare reading of the said statement shows that other two brothers were not interested in alternate land and they accepted the compensation. He submits that these facts were not brought to the notice of this Court when the first order dated 25.07.2012 was passed in Writ Petition No.3768 of 2010. He further submits that even when the Contempt Petition was admitted by this Court, it remained on the part of the State to place all these facts before this Court. He submits that in any case, on the basis of paragraph 4 of the State's Affidavit in Reply dated 31.07.2019 and Exhibit R-2 containing statement of all three brothers clearly shows that Applicant is not entitled more than 40 Ares of land as per the provisions of Maharashtra Project Affected Persons Act, 1999. In any case, Applicant cannot challenge the allotment of land in favour of Respondent no.5 by way of Civil Application. Hence, there is no substance in the present Application.

8. The learned A.G.P. for the State also opposed the present Civil Application on same grounds as the Respondent no.5.

9. At this stage, the learned counsel for the Applicant submits that actually in the present proceedings there was

partition between the brothers and therefore, they executed the power of attorney dated 20.06.2006 by which the other two brothers of the Applicant and their legal heirs gave power to the Applicant to apply to the Government for all benefits in respect of acquired land. He further submitted that even they executed the partition deed dated 18.04.2019 stating that other two brothers have no right in respect of the acquired land. Therefore, the Applicant is entitled entire benefit of the acquired land as per award dated 01.12.1999.

10. We have heard both the sides at length. Bare reading of the paragraph 4 of the Affidavit in Reply dated 31.07.2019 duly affirmed by Deputy Collector (Rehabilitation) District Pune, Mr.Bharat Angad Waghmare and Exhibit R-2 on page 81 shows that other two brothers of the Applicant relinquished their right for claiming any land under the Maharashtra Project Affected Persons Act, 1999. Therefore, the Applicant in any case, is entitled for alternate land as per his own share. Presently, on the basis of the document placed on record by Deputy Collector, Mr.Waghmare in his Affidavit in Reply dated 31.07.2019, we are of the opinion that there is no question of setting aside the order dated 11.06.2019 issued by District Rehabilitation Officer in respect of 40 R of land from Gat No.203 of Village Nanekar Wadi, Taluka Khed, District Pune allotted in favour of Respondent no.5.

11. Whether the Respondent State committed any Contempt of the Order passed by this Court dated 25.07.2012 is required to be decided at the time of final hearing of the Contempt Petition. Hence, the following order is passed:

- a. Civil Application stands rejected.
- b. No order as to costs.
- c. At this stage the learned counsel for the Applicant submits that ad-interim relief granted by this Court on 19.07.2019 be continued for further four weeks. Same is vehemently opposed by the learned counsel for Respondent no.5.
- d. Considering the submissions made by the learned counsel for the Applicant and the order dated 19.07.2019, we are satisfied that the Applicant has made out a case for continuing this interim relief for four weeks. Hence, order dated 19.07.2019 to continue till 23.04.2021.

(RIYAZ I. CHAGLA, J.)

(K.K.TATED, J.)