

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

**WRIT PETITION NO.8001 OF 2018
WITH
INTERIM APPLICATION NO.126 OF 2022**

Appaso Babagonda Patil (Gandhare)
(Deceased, through his LRs)

1 A. Vijaykumar Appaso Patil (Gandhare)
And Anr.

.. Petitioners

Versus

The Additional Commissioner,
Pune Division, Pune and Ors.

.. Respondents

.....

Mr.Nikhil Wadikar a/w. Mr.Onkar Kanbarkar i/b. Mr.Nanadu Pawar,
Advocate for the Petitioners.

Ms.Kavit N. Solunke, AGP for the Respondent – State.

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**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATED : 20 September 2022.

P.C. :

Heard learned counsel for the parties. Taken up for
disposal.

2 By this Petition, the Petitioner has challenged the order dated 24 November 2017, passed by the Hon'ble Minister for Revenue, Mumbai, confirming the order passed by the Divisional Commissioner, Pune dated 19 September 2016, whereby the Application filed by the Petitioner under Section 48(1) of the Land Acquisition Act was rejected.

3 Both the Divisional Commissioner, Pune, and the Hon'ble Minister for Revenue, Mumbai have held that the land of the Petitioner was acquired, possession is taken over, and is allotted to the project affected persons, and, thereafter, the power under Section 48(1) of the Land Acquisition Act, cannot be exercised. Though, the legal position is that once the property is acquired and possession is taken and vested in the State, the return of property to the original owner is not automatic, is correct, however, in the facts of this case, this was not the only issue that had fallen for consideration of the authority.

4 The Petitioner had filed a Writ Petition No.708 of 1987, in this Court questioning the acquisition of the properties of the Petitioner's family under the Maharashtra Resettlement of Project Displaced Persons Act, 1976, on the ground that there was partition

between the family members and the share that was allotted to the Petitioner was below the permissible holding, and, therefore, his share could not have been acquired. The Division Bench by order dated 13 June 2006, disposed of the Writ Petition directing the Divisional Commissioner, Pune, to hold an inquiry as to whether the Petitioner's land fell below the permissible holdings in the context of the partition that took place with reference to the material regarding separate cultivation or cultivation to be carried out together on the date the Act came to be applied i.e. 13 May 1977. The Divisional Commissioner, Pune, was expected to examine documents, particularly, entries in Khateutara, and, reference was made to the order passed by the Hon'ble Supreme Court in Civil Appeal No.11809 of 1995, in the case of *Babaso Bhau Balwan Vs. Director of Resettlement and Ors.*

5 The Divisional Commissioner rejected the Petitioner's Application by order dated 6 May 2013. The Petitioner filed a Revision before the State. The Hon'ble Minister for Revenue, Mumbai by order dated 22 January 2014, remanded the matter to the Divisional Commissioner holding that the Divisional Commissioner while dismissing the Appeal has not conducted the inquiries contemplated by this Court. Thereupon, the Divisional Commissioner passed an order

on 19 September 2016, whereby he held that since the acquisition proceedings are complete, the Divisional Commissioner, Pune, has no power to delete the same from acquisition. This order was confirmed by the Hon'ble Minister by dismissing the Revision against it by order dated 24 November, 2017.

6 A perusal of the orders that are placed before us show that there is no adjudication as was expected by the Division Bench by the order dated 13 June 2006. Though the property after acquisition has been allotted to project affected persons, if it was found that it could not have been acquired in the first place since the holding was below the stipulated limit, the State would have to take necessary steps to remedy the situation. Neither the Divisional Commissioner, Pune, nor the Hon'ble Minister for Revenue, have examined the main issue. It is in this Petition, the reply is sought to be filed trying to put forth the case on merits. We disapprove of such conduct on the part of the authorities of not deciding the matter when directed to do so, and then filing affidavits calling upon this Court to adjudicate at the first instance.

7 Therefore, we set aside the impugned orders and direct the

Divisional Commissioner, Pune, to hold an inquiry into the factual position as was contemplated by the Division Bench in its order dated 13 June 2006, and if the outcome is in favour of the Petitioner, to take necessary remedial steps.

8 We, accordingly, pass the following order:

:: ORDER ::

- (i) The impugned orders dated 19 September 2019 and 24 November 2017, are quashed and set aside;
- (ii) The Appeal of the Petitioner's stands restored to the file of the Divisional Commissioner, Pune, to be disposed of in the light of what is stated above, within a period of twelve weeks from the date order is uploaded;
- (iii) Writ Petition stands disposed of accordingly;
- (iv) Interim Application does not survives and is accordingly disposed of.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.