

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

WRIT PETITION NO.4261 OF 2000

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Shri. Dhonddeo Shambhuroo Limaye
Since deceased through his legal heirs
Ajit Dhonddeo Limaye & Ors. ..Petitioners

Versus

The State of Maharashtra & Ors. ..Respondents

Mr. Y. V. Divekar a/w Kalyani Bane i/by M/s. Divekar & Co., for the
Petitioners.

Mr. S. H. Kankal, AGP for the Respondent Nos.1 to 4/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 14th JUNE, 2022

PC.

1. All the petitioners are siblings and because of untimely death of their father on 27th November, 1944, they being minor at relevant time, the property mentioned in the petition was under the supervision of Court of Wards. The property was released in favour of all the four petitioners on 18th October, 1973 by the order of State Government.

2. The respondent/State Government issued Notification on 3rd December, 1992 thereby notifying that the property is required for the public purpose. Accordingly, after the aforesaid notice, the petitioners appear to have objected to the acquisition proceedings. After the land was acquired post the acquisition award, I am informed that the petitioners have received the

compensation and the land is already allotted by the respondent Nos.1 to 4 in favour of respondent Nos.5 and 6 i.e. Project Affected Persons.

3. Subsequent thereto, the petitioners invoked provisions of Section 48(1) of the Land Acquisition Act seeking release of the land from the acquisition on the ground that the same was illegally acquired and the land in question was no more required for the public purpose.

4. The said proceedings taken out by the petitioners were rejected vide impugned order dated 16th May, 2000 passed by the Additional Commissioner, Pune Division, Pune. As such, this petition.

5. Counsel for the petitioners would urge that the petitioners are the Project Affected Persons and land to the extent of 1 hector and 29 R is already taken by the Government in the year 1987 therefore, the Government ought not to have acquired land of the petitioners again. It is claimed that land from Survey No.528/2/2 out of the following holdings of the petitioner

Sr. No.	Survey No.	Total land of petitioners	Pad Land
1.	26/A/1	0.42 R.	42 R. (it comes under mun. jurisdiction and quarry land being non-agricultural
2.	152	3.61 R.	2 R.-being a pot kharaba.

3.	198/2B/2B	3.21 R.	3.21 R. being pot kharaba, veer pad house paid & uncultiable land.
4.	357	5.10 R.	1.81 R. employees' houses, vir pad etc. & pot kharaba.
5.	394/1+2+3	1.08 R.	.13 R. (land sold out)
6.	824/3	2.31 R.	2.30 (salty land, vir pad hence sold out)
7.	348/1	0.48 R.	0.16
		Total : 16.21 R.	8.06

was already acquired and as such, it is claimed that the action of the Government acquiring land of the petitioners is highhanded manner. As such, release of the land was sought. It is also claimed that since the property remained in the custody of the Court of Wards, the appropriate mutation entries in the name of each of the petitioners was not carried out. As a sequel of above, the entire holding was shown jointly in the name of the petitioners. Drawing support from the Circular issued in support of the land in benefited zone which is produced on record at "Annexure-K" bearing date 28th June, 1998. It is claimed that the authority ought to have considered the individual entitlement out of the joint holdings. As such, it is claimed that since the land acquired is within the slab prescribed by the Government, the acquisition is frustrated. It is also claimed that at the relevant time, notices were not issued to the petitioners in regard to the acquisition of the land and that being so, the provisions of Section 48 are invoked.

6. Counsel for the petitioners would urge that the authorities have failed to consider the aforesaid legal issues while passing the order impugned.

7. While countering aforesaid submissions, learned AGP Mr. S. H. Kankal would oppose the prayer. According to him, the order impugned passed by the Commissioner is self-explanatory. He would urge that since possession of the land is already taken way back, the acquisition proceedings are completed and the same is already allotted in favour of respondent Nos.5 and 6, the order impugned is quite justified. As such, he would urge that the petition is liable to be dismissed.

8. I have appreciated the aforesaid submissions.

9. At the outset, it is required to be noted that the petition at the behest of co-owner i.e. petitioner No.2 was already dismissed on 17th July, 2002. No steps are taken by the petitioners to restore the petition. As such, the acquisition proceedings, so also the order impugned rejecting the prayer for release of the land under Section 48 of the Act has attained finality against the said co-owner. In absence of the partition of the petitioner on record, once one of the co-owner has accepted the order impugned, the maintainability of the petition at the behest of other petitioners is also required to be appreciated.

10. The fact remains that the petitioners have never objected the acquisition proceedings. Rather from the conduct of the petitioners, it appears that they have received compensation and after the possession of the acquired land was received by the State Government i.e. respondent Nos.1 to 4, same came to be allotted in favour of respondent Nos.5 to 6 Project Affected Persons.

11. In the aforesaid background, in my opinion, it cannot be said that the petitioners are entitled for release of the land in their favour for the reason of same being illegally acquired.

12. The fact remains that the acquisition proceedings *qua* the petitioners claim for entitlement of release of land in their favour has already attained finality as one of the petitioners i.e. petitioner No.2 has already accepted the order impugned and none of the petitioners have questioned the acquisition proceedings. The fact remains that the land was acquired for public purpose is also not in dispute. The fact that the petitioners have received the compensation equally justified the case of the respondent authorities of rejecting the prayer for release of the petitioners land.

13. Contentions of the petitioners that the land remained in possession of the petitioners goes contrary to the very record. Rather the petitioners' land was acquired for public purpose and even if such land is not utilized for public purpose, the same can be used for any other public purpose than the purpose for which it was

acquired. Even if the land in question is not required by the respondents for public purpose, same cannot be returned to the owner like the present petitioners, as such land has to be disposed of by auction. In support of the aforesaid observation, reliance can be placed on the order of Apex Court in the matter of ***State of Kerala & Ors. Vs. M. Bhaskaran Pillai and Anr.*** reported in ***(1997) 5 SCC 432***. Apart from above, the division bench of this Court in the following two judgments :-

- 1) ***Bansilal N. Kankaria Vs. S.L.A. Officer & Ors.*** reported in ***2001(1) Bom.CR 136***; and
- 2) ***Dattatraya Gopalrao Borkute Vs. State of Maharashtra & Ors.*** reported in ***2005(2) Bom.CR 151***

has already held that the petitioners have no locus to claim release of the land acquired once the acquisition proceedings have attained finality.

14. In the light of aforesaid observation, no case for interference in extraordinary jurisdiction is made out.

15. The petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]