Ajay

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

## WRIT PETITION NO. 9508 OF 2021

Laxman Girijappa Bhubal
Since Deceased through his L.Rs.
Raghunath Girijapa Bhujbal and Ors. **..** Petitioners
**Versus**
The State of Maharashtra Ors. **..** Respondents

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- Mr. R.M. Haridas a/w. Mr. Pankaj Deokar, Advocate for Petitioners.
- Mr. P.P. Pujari, AGP for Respondent Nos.1 to 7 – State.
- Mr. Abhaysingh Shinde, Advocate for Respondent Nos.8 to 10.

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**CORAM : MILIND N. JADHAV, J.**
**DATE : DECEMBER 19, 2022.**

**P.C.:**

**1.** Heard Mr. Haridas, learned Advocate appearing for Petitioners; Mr. Pujari, AGP for Respondent Nos.1 to 7 – State and Mr. Shinde, learned Advocate appearing for Respondent Nos.8 to 10 at length.

**2.** The order impugned in the present Writ Petition is dated 19.09.2016 passed by the leaned Additional Commissioner, Pune Division, Pune in Rehabilitation Appeal No.S.R./151/2014.

**3.** Mr. Haridas, learned Advocate appearing for Petitioners would submit that in the present case the impugned order is an appealable order before the State under the provisions of Section 257 of the Maharashtra Land Revenue Code, 1966 (for short "**MLR Code**").

He has drawn my attention to paragraph No.2(i) of the Petition wherein the averment reads as under:-

> *2.(i) Petitioners further state that the Advocate who was appearing in their behalf Advocate Hon'ble Minister, was advised to the Petitioner that it would be proper for them to conduct this appeal before Rehabilitation Minister instead of Revenue Minister because the matter is pertain to land acquisition and rehabilitation and Rehabilitation Minister is having jurisdiction to conduct the said proceeding and hence Petitioners had directed to their lawyer to withdraw the proceeding before Revenue minister and file fresh proceeding before Hon'ble Minister for Rehabilitation. Accordingly the proceeding before Revenue Minister was withdrawn the same appeal was filed before Hon'ble Minister for Rehabilitation. Petitioners further state that subsequently after filing the proceeding before Hon'ble Minister for Rehabilitation, the Hon'ble Minister had orally replied that he don't have jurisdiction as well as power to decide the appeal under the provision of Land Acquisition Act 1984. Hereto annexed and marked as **"Exhibit H"** are the copies of Order of Withdrawal of appeal before Hon'ble Revenue Minister and Appeal filed before Hon'ble Rehabilitation minister."*

**4.** He would submit that on the advise of the Advocate, the Petitioners had filed the Statutory Appeal before the Revenue Minister but the same was withdrawn and subsequently re-filed before the Rehabilitation Minister. That the said Statutory Appeal is pending hearing and final disposal before the Rehabilitation Minister. Further averments also appear which state that the Petitioners have been orally informed that the jurisdiction to decide the said Statutory Appeal would not lie before the Rehabilitation Minister.

**5.** In view of the above facts, Mr. Haridas has fairly submitted that considering the *lis* involved in the present case which pertains to the issue of possession which is disputed by the Petitioners and the

Government, it would be in the interest of justice, if the Court permits the Petitioners to challenge the impugned order dated 19.09.2016 passed by the learned Additional Commissioner and the Statutory Appellate Authority i.e. the Revenue Minister.

**6.** Mr. Pujari, learned AGP appearing for Respondent Nos.1 to 7 – i.e. State submitted that in the present case possession of Petitioner's lands has already been taken over by the Statutory Authorities pursuant to completion of acquisition proceedings. He submitted that after passing award dated 01.12.2000, actual physical possession of the acquired lands in question belonging to Petitioners were already taken by the answering Respondents on 09.07.2008. That effect of taking possession was also noted by carrying out Mutation Entry No.7820 in the revenue records in respect of acquired lands. Such mutation entry is not challenged by Petitioners. He therefore submitted that Petitioner's right in the acquired lands stands extinguished and in that view of the matter, the acquired lands now been sought to be allotted to the private Respondents i.e. Respondent Nos.8 to 10 in the Petition. He has therefore sought dismissal of Petition.

**7.** Mr. Shinde, learned Advocate appearing for Private Respondent Nos.8 to 10 has vehemently objected to grant of any relief in the present Petition on the ground that acquisition of the said lands has been completed; that Petitioners' rights in the said lands stood extinguished; that said lands have been allotted to the private Respondents and the have also paid the amount for taking *kabjevahivat* of the said lands.

**7.1.** Mr. Shinde, further submitted that the Sub-Divisional Officer, Satara has also issued a letter dated 09.12.2021 which states that possession of the said lands was to be handed over to the private Respondents on 28.12.2021. That this letter is part of record. Further, the Petitioners have now invoked the extra ordinary jurisdiction by filing the present Writ Petition despite possession of the said lands having been taken over by the Government.

**8.** Mr. Haridas in his usual fairness has submitted that admittedly the Petitioners should not suffer because of the mistake committed by their Advocate in withdrawing the Statutory Appeal before the Revenue Minister and advising the Petitioners to file the same before the Rehabilitation Minister. He further submitted that Petitioners take a strong exception to the submissions made by the learned AGP for Respondent Nos.1 to 7 that physical possession of the said lands was taken over by Respondents on 09.07.2008. He submitted that physical possession of the said lands is still with the Petitioners. In that view of the matter, he submitted that the provisions of Section 48(1) of the Land Acquisition Act, 1894 would come into play and aid the case of Petitioners. He has therefore refuted the submissions made by learned AGP.

**9.** Be that as it may, interest of justice would be served if Petitioners are allowed to exhaust the remedy of challenging the impugned order dated 19.06.2016 passed by learned Additional Commissioner, Pune Division, Pune before the State Government i.e. the Revenue Minister who is the Appellate Authority to hear the Appeal under the MLR Code. The Statutory Appeal is a substantive provision available to a litigant which cannot be deprived merely because an admitted mistake has occurred on the part of the litigant through the litigant's Advocate as is observed in the present case. I am in agreement with Mr. Haridas submissions that Petitioners' should not suffer because of such a mistake. Hence, the following order:-

(i) Petitioners are permitted to withdraw the Statutory Appeal filed before the Rehabilitation Minister refereed to in paragraph No.2(i) of the Petition and file the same before the Revenue Minister within a period of two weeks from today;

(ii) Considering the *lis* in the matter and the objections raised by the learned AGP and Mr. Shinde for private Respondents, the concerned Appellate Authority i.e. Revenue Minister / State shall hear the Petitioners'

Appeal against the order dated 19.09.2016 passed by the learned Additional Commissioner, Pune within a period of four weeks from the date of filing the said Appeal;

(ii) All parties shall be heard by the Appellate Authority after giving due notice to the Respondents;

(iv) The Revenue Minister is directed to pass a reasoned speaking order after hearing the parties within a period of four weeks thereafter;

(v) All contentions of the parties are expressly kept open;

(vi) Since Petitioners have expressed a grievance that they may be permitted to amend the memo appeal filed before the Rehabilitation Minister before they it before the Revenue Minister, leave to amend the memo is granted. Petitioners shall serve the amended memo of appeal on the private Respondents and the other Respondents on filing the same before the Revenue Minister.

**10.** With the above directions, Writ Petition is disposed of.

**[ MILIND N. JADHAV, J. ]**

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2022.12.19 19:09:08 +0530