

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3293 OF 2023

1. **Rukmini Dattatraya Tirawade,**
Age : 55 years, Occupation : Household,
R/o. : Radhanagari, Tal. Radhanagari,
Dist. : Kolhapur.
2. **Vikram Hari Palkar,**
Age : 62 years, Occupation : Agriculture,
R/o. : Radhanagari, Tal. Radhanagari,
Dist. : Kolhapur.

...Petitioners

Versus

1. **State of Maharashtra,**
Through Chief Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 400 001.
2. **Collector, Kolhapur,**
E-Ward, Kolhapur - 416 012.
3. **Deputy Collector (Rehabilitation),**
Collector Office, E-Ward,
Kolhapur - 416 012.

...Respondents

Mr. Anilkumar T. Tatle a/w. Ms. Archana P. Gaikwad for the
Petitioners.

Mr. Rajan S. Pawar, AGP for the Respondent (State).

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

RESERVED ON : 2th AUGUST, 2023.

PRONOUNCED ON : 9th AUGUST, 2023.

Oral Judgment (Per Jitendra Jain, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the Petitioners have prayed for following reliefs:-

- “(a) That this Hon’ble Court be pleased to issue a writ of Mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing the Respondents to take appropriate action to hand over actual physical possession of deficit area viz. O Hec. 11 R to Petitioner No.1 and O Hec. 29 R to Petitioner No.2 from the land available at Uchgaon, Tal. Karveer, Dist. Kolhapur out of Gat No.160/7 which is demanded by the Petitioners;*
- (b) That this Hon’ble Court be pleased to issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus or any other appropriate writ, order or direction of quashing of the orders of Respondent No.3 dated 17/08/2022 sent to Petitioners;*
- (c) That this Hon’ble Court be pleased to pass the order of prohibiting the Respondent Nos.2 and 3 from allotting the land available at Uchgaon, Tal. Karveer, Dist. Kolhapur out of Gat No.160/7 which is demanded by the Petitioners till pending the hearing and final disposal of the Writ Petition.*
- (d) A sum of Rs.20,000/- per month may kindly be ordered to be given as compensation from 1985 till actual allotment of land to each Petitioner.”*

3. Narrative of the relevant events:-

- (i) The Petitioner No.1 is a daughter of late Mr. Sakhoba Babaji Manjare and the Petitioner No.2 is a relative and beneficiary by testamentary disposition of late Mr. Vithoba Babaji Manjare. Late Mr. Sakhoba Babaji Manjare and late Vithoba Babaji Manjare are sons' of Babaji Manjare. Mr. Sakhoba B. Manjare died on 9th December 1979 and Vithoba Manjare died on 26th September 2001.
- (ii) On 31st December 1971, a notice under Section 4(1) of the Land Acquisition Act, 1894, came to be issued to Mr. Vithoba Manjare with respect to the land which was originally belonging to his father Mr. Babaji Manjare.
- (iii) On 15th April 1974, proceedings under Section 9 of the Land Acquisition Act, 1894, were taken for acquiring land admeasuring 6 H 24 R. The said notice under Section 9 was issued to Mr. Vithoba Babaji Manjare.
- (iv) Pursuant to the above proceedings under the Land Acquisition Act, 1894, a compensation of Rs.7,020/- was awarded to Mr. Vithoba Manjare towards acquisition of land admeasuring 6 H 24 R and the said compensation was accepted by Mr. Vithoba Manjare.

- (v) On 9th July 1993, Mr. Vithoba Manjare deposited a sum of Rs.6,225/- towards allotment of land in lieu of acquisition under the Land Acquisition Act, 1894.
- (vii) On 15th December 2000, Respondents allotted 1 H 21 R against entitlement of 1 H 60 R in lieu of acquisition of 6 H 24 R of land. Similar order was passed allotting 0.40 R to Petitioner No.1, daughter of late Mr. Sakhoba Manjare.
- (viii) Pursuant to a camp organized by the Respondents, the Petitioners made an application on 30th May 2022 for allotment of 0.40 R being short fall of the land allotted to Mr. Vithoba Babaji Manjare and 0.11 R, being short fall of land allotted to Mr. Sakhoba Manjare.
- (ix) On 17th August 2022, the Respondents rejected the aforesaid application of the Petitioners on the ground that the Petitioners do not fall within the definition of family provided under part III and part IV of schedule to the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short “the 1999 Act”). It is on this backdrop that the present petition is filed for the reliefs reproduced hereinabove.

4. We have heard the learned counsels for the Petitioners and the Respondents and with the assistance of the counsels have

also perused the records of the present petition.

5. **Submissions of the Petitioner** :- The Petitioners contended that they are legally entitle for resettlement of the land as per Section 16 of the 1999 Act in their capacity as legal heir and pursuant to testamentary disposition made by Mr. Vithoba Manjare. The Petitioners submitted that they have deposited the occupancy price that is 65% of the compensation amount in the year 1993 and, therefore, they are entitle to the relief sought for in the present petition. The Petitioners also contended that the 1999 Act has been repealed by the Maharashtra Project Affected Persons Rehabilitation Act, 2013 (2013 Act), which is in existence now and, therefore, the impugned order passed relying on the 1999 Act is illegal. The Petitioners also stated that the impugned order is passed by an Authority, who is junior to the Collector who had allotted the land in the year 2000 and, therefore, the impugned orders/communications is bad in law. The Petitioners also relied upon definition under Section 2(2) of the “Affected Persons” as per the 2013 Act and sought to contend that in lieu of Section 6 of Hindu Succession Act, 1956, the daughter is entitled to the land which her father was to get. The Petitioners also relied upon the decision in the case of **State of M. P. Vs. Narmada**

Bachao Andolan¹ and N. D. Jayal Vs. Union of India². The Petitioners, therefore, prayed that they are entitled to the deficit area which was due to late Mr.Vithoba Manjare and late Mr.Sakhoba Manjare.

6. **Submissions of the Respondents** : Per contra, the Respondents at the outset sought for dismissal challenging the maintainability of the present petition on the ground of delay and laches. Alternatively, the Respondents supported the order on the ground that the Petitioners do not fall within the definition of family as per part III and IV of the Schedule to the 1999 Act. The Respondents also contended that the acquisition proceedings relates to the year 1974, at which point of time, the Maharashtra Resettlement of Project Displaced Persons Act, 1976, (for short “the 1976 Act”) was not in existence and, therefore, the Petitioners are not entitled to the relief as sought for.

7. **ANALYSIS**:- The land acquisition under consideration is of the year 1974, at which point of time, the Maharashtra Resettlement of Project Displaced Persons Act, 1976 Act (1976 Act), had not come into existence. The said 1976 Act came into force with effect from 11th March 1977. We failed to understand as to how the land acquired prior to 11th March 1977, the day

1 (2011) 7 SCC 639

2 2004 (9) SCC 362

when the 1976 Act came into force would governed, the predecessors of the Petitioners for claiming the shortfall of land under the 1976 Act or the 1989 Act or the 1999 Act. The Petitioners have not contended that the 1976 Act has retrospective operation. In our view, if the land was acquired prior to March 1977, then the Petitioners would not be governed by the 1976 Act or 1989 Act or the 1999 Act.

8. The petition does not contain any averment to show that Mr. Vithoba Manjare and Mr. Sathoba Manjare had ever made a grievance of the shortfall in the allotment of land by the Respondents, nor any document is annexed in support thereof to the petition. The cause of action, if at all arose on 15th February 2005, when the land came to be allotted, when land admeasuring 1 H 21 R and 0.40 R came to be allotted by the Collector. Therefore, the Petitioners cannot after a period of almost 2 decades can revive a claim which would amount to having given up by the predecessor of the Petitioners in the absence of any objection to the allotment made in 2005. There is also no averment in the petition on such delay. Therefore, even on this account the petition fails. We draw support from the decision of this Court in the case of **Nana Bhalerao Vs. District Resettlement Officer** (Writ Petition No.1332 of 2023) wherein we have

dismissed similar petition on ground of delay.

9. The Petitioners in their petition in paragraph 7 have averred that total land acquired by the Respondents was 12 H 48 R, but the Respondents have shown only half of the land as acquired. In our view, this is an issue which relates to disputed questions of fact and the same cannot be examined in the present petition under Article 226 of the Constitution of India.

10. The Petitioners in their written submissions have submitted that the 1999 Act has been repealed by the 2013 Act. In our view that is not correct, the 1999 Act still exists and is in operation and the same has not been repealed. However, in the year 2013, an amendment was made to the definition of the “Affected Persons” in the 1999 Act. The amended definition reads as under:

“(a) an occupant whose land in the affected zone (including land in the gaathan) is acquired under section 14 for the purposes of a project;

*Explanation – For the purpose of this sub-clause, where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a Karta or Manager of a Hindu Joint Family, then every brother or **sister (son or sons or daughter or daughters of each deceased brother or deceased sister as one separate unit of such brother or***

sister) who has a share in the lands, whether his name is recorded in such village record or not, shall be treated as affected person;”

11. In our view, the aforesaid definition of the “Affected Persons” which is amended in 2013 cannot be made applicable to the Acquisition of 1974 nor it is contended and rightly so that the said amendment is retrospective.

12. We failed to understand as to how the decision relied upon by the Petitioners in the case of **State of M. P. Vs. Narmada Bachao Andolan** (supra) and **N. D. Jayal Vs. Union of India** (supra) are applicable to the facts of the present Petitioners.

13. In any case, the Petitioners do not fall within the definition of family as defined under parts III and IV of Schedule to the 1999 Act which reads as under:-

“Explanation - For the purpose of Parts III and IV, The expression “family” means the spouse, sons, unmarried daughters or sisters, father and mother of the affected persons; provided that all such persons are residing with and are dependent on the affected persons.”

14. The Petitioner No.1 is a married daughter of late Mr. Sukhoba Babaji Manjare whereas definition of “family” only includes unmarried daughter. Insofar as Petitioner No.2 is

concerned, he is relative and beneficiary by testamentary disposition. However, such a person is also not covered by the definition of “family”. Therefore, even on this account the Petitioners are not entitled to maintain the present petition.

15. In view of above, we are not inclined to entertain the present petition and the same is dismissed with no order as to costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]