

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9123 OF 2016

Keraba Bhavana Patil (Deceased) Through
LRS And Ors. ...Petitioners

Versus

The State Of Maharashtra Through
Additional Chief Secretary (Forest) And Ors. ...Respondents

Mr.Utkarsh Desai i/b. Mr.Prashant Bhavake, for Petitioners.
Mr.A.I Patel, Addl. G.P a/w.Mrs.M.S. Bane, for Respondent Nos.1
to 3.

CORAM : R.D. DHANUKA &
M.M. SATHAYE, JJ.

DATED : 21st FEBRUARY, 2023

P.C. :

1. Rule. Rule is made returnable forthwith. Learned AGP waives service for the Respondents. By consent of the parties, matter is taken up for final hearing.

2. By this petition, filed under Article 226 of the Constitution of India, the Petitioners are seeking declaration that the Petitioners' land admeasuring 8 Acre 16 Ares out of Gat No.110 and agricultural land admeasuring 6 Acre 30 Ares out of Gat No. 112 situated at Mouje Shenavade, Taluka Ganganbawada, District Kolhapur are not required by the Respondents under any

provision of law and further direction to Respondents to correct the Records of Rights i.e. 7 X 12 extracts of the said lands thereby deleting the name of Respondent No.3 and entering / restoring the names of the Petitioners.

3. Mr.Patel, learned Addl. G.P for the Respondents invites our attention to an affidavit in reply affirmed on 14.10.2022 by Deputy Collector Resettlement Collector Office, Kolhapur. Perusal of para 4 of the said affidavit in reply shows that it is admitted by the Respondents that Gat No.110 and 112 is still in possession of the Petitioners and they are cultivating the land and taking income therefrom. It is further stated in the said paragraph that if the Petitioners are demanding to delete the entry from kabjedar column of 7/12, the Respondents are willing to delete entry and enter a remark as per Government Resolution dated 11.02.2022 to the effect that the State's right of acquisition is kept, however, only transfer is permissible for agriculture purpose.

4. Learned AGP fairly submits that as on date the land of the Petitioners is not acquired for any project affected persons. The entry in the name of the Government even to the extent that the

permission for agricultural transfer is permitted keeping the rights of the Government to acquire open, jeopardize the rights of the Petitioners to deal with the property. We are of the opinion that the rights of citizens to deal with the Government property cannot be kept under continuous and indefinite fetter by entries proposed to be made in the land of the Petitioners.

5. In that view of the matter, we pass the following Order:

[i] The Respondents are directed to delete / remove the endorsement of restrictions from 7 X 12 extract of Petitioners' land bearing Gat No.110 and 112 situated at Mouje Shenavade, Taluka Ganganbawade, District Kolhapur within a period of four weeks from today.

[ii] It is made clear that if the Respondents seek to acquire the said property and if the Respondents are permissible in law to acquire the writ property, the Respondents to follow the requisite procedure of law for acquisition of such property.

[iii] It is further clarified that this Court has not

expressed any views as to whether the State Government would be empowered to acquire writ property under any provisions of law or not.

[iv] All the contentions of the both the parties and issue of acquisition for good faith for any public purpose is kept open.

[v] The writ petition is disposed off in the aforesaid terms. Rule is made absolute. No order as to costs.

[vi] All concerned to act on an authenticated copy of this order.

6. Place the matter under the caption of 'Direction' on supplementary board on **2nd March, 2023**.

(M.M. SATHAYE, J.)

(R.D. DHANUKA, J.)