

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5873 OF 2021

Shri Kondiba B. Dhebe ..Petitioner

Versus

State of Maharashtra & Ors ..Respondents

Mr. Sumit V. Khaire, Advocates for the Petitioner

Mr. Pankaj Deokar, Advocates for Respondent Nos.4 to 6.

Mr. A. I. Patel, AGP with Mr. M. M. Pabale, AGP.

ANJALI
TUSHAR
ASWALE

Digitally signed by
ANJALI TUSHAR
ASWALE
Date: 2023.07.06
13:42:23 +0530

**CORAM : B. P. COLABAWALLA, J &
M. M. SATHAYE, JJ.**
DATE : JULY 4, 2023

P.C.

The above Writ Petition is filed inter alia to direct the Respondents to allot alternate land or to pay compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the “**2013 Act**”). In the alternative, a further direction is sought to direct Respondent No.2 to hand over possession of land Gat No.1175B admeasuring 40R situated at Patas as per the Tabapawati dated 4th May, 1988.

2 In the Writ Petition, it is stated that he is a project affected person of the Veer Baji Pasalkar Dam. He is a landless person belonging to Dongri Dhangar Community from village Bhembatmal, Tal-Mulshi, Dist-Pune. As a project affected person, the Petitioner was allotted the land bearing Gat No.1175 B area ad-measuring 40R situated at Patas as per the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 vide order dated 28th March, 1988. It is the case of the Petitioner that the Respondents have prepared Tabapawati (possession receipt) on 4th May, 1988 and handed over possession of the said land to the Petitioner. Thereafter, the name of the Petitioner was also mutated in the 7/12 extract.

3 The Petitioner has stated in the Petition that he is cultivating land as per the Tabapawati but as there was a dispute with the adjoining owner regarding possession, in the year 2010, the Petitioner filed an application for measurement of the said land. As per the Petitioner's application, the said land was measured by the TILR on 20th January, 2012. According to the Petitioner, this map showed that a road is constructed on the land of the Petitioner. According to the Petitioner, as per the Tabapawati, there is no road on the land of the Petitioner. It is on

this basis that the Petitioner claims that he be given alternate land or in the alternative compensation to the extent of the area of the road running through his land.

4 We have heard the learned counsel appearing for the Petitioner, who has basically submitted what we have set out above. We have heard the learned counsel appearing on behalf of Respondent Nos.4, 5 and 6 and the learned AGP appearing for Respondent Nos.1 to 3. In the affidavit in reply, filed on behalf of Respondent Nos.4, 5 & 6, it is categorically stated that the road of which the Petitioner complains of, was in existence prior to the allotment of the said land and this road was specifically mentioned in the Road Development Scheme, 1981-2001 issued by the State of Maharashtra. It is further stated in the affidavit that this road was in existence much prior to the said land being allotted to the Petitioner in the year 1988 and the same was maintained by the Zilla Parishad prior to the allotment of the said land to the Petitioner. Thereafter, by a Government Resolution dated 26th October, 2020 even the road was upgraded as a main district road and from that date the State Government is maintaining authority of the said road.

5 The learned counsel for Respondent Nos.4, 5 & 6 therefore submitted that there was no question of any acquisition because the road was in existence much prior to the allotment of the said land to the Petitioner. He therefore submitted that the above Petition be dismissed. The learned AGP supported the submissions made on behalf of Respondent Nos.4, 5 & 6.

6 We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. After going through the papers, and hearing the learned counsel, we are of the opinion that the above Writ Petition is wholly misconceived.

7 It is not in dispute that the said land was allotted to the Petitioner as far back as on 28th March, 1988. In fact, the Petitioner has stated on oath in the Petition that he is cultivating land as per the Tabapawati. This is mentioned in paragraph 4 of the Petition. This would only lead to the inference that the Petitioner was very well aware that the road of which he complains of was running through his land. The Petitioner has been unable to tell us as to when this road was constructed or if it was constructed after the year 1988. In fact, the first representation

made by the Petitioner to Respondent No.2 in this regard was on 27th November, 2015. From 1988 to 2015, the Petitioner did absolutely nothing and made no grievance that a road was passing through his property.

8 In these circumstances, and coupled with the fact that Respondent Nos.4, 5 & 6 have clearly stated on oath that the road running through the property of the Petitioner was in existence as far back as prior to 1981, we find that the reliefs claimed in the above Petition are wholly misconceived. This is apart from the fact that there are serious disputed questions of fact in the present matter. In these circumstances, the Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

9 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M. M. SATHAYE, J.]

[B. P. COLABAWALLA, J].