

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9276 OF 2014

Shri Ananda Sakharam Lokhande and Ors.

..Petitioners

Vs.

State of Maharashtra and Anr.

...Respondents

Mr. Balasaheb R. Deshmukh, Advocate for the Petitioners.

Mrs. V. S. Nimbalkar, AGP State - Respondent Nos.1 & 4.

CORAM : G.S. KULKARNI, J.

DATE : JANUARY 19, 2023

P.C.:

1. Heard Mr.Deshmukh, learned Counsel for the petitioners and Mrs. Nimbalkar. learned Counsel for the respondent nos.1 & 4. By consent of the parties, heard finally.

2. The order impugned in this petition is an order dated 15 January 2014 passed by the Divisional Commissioner and the Chief Controlling Authority (Rehabilitation), Pune Division, Pune, whereby an appeal filed by the petitioners against an order passed under the provisions of Section 48(1) of the Land Acquisition Act,1894 (for short '**the Act**'), contending that the land in question belonging to the petitioners ought

to be deleted from the acquisition, has been rejected. It is not in dispute that the petitioner's land was the subject matter of acquisition for "Gunjwani Irrigation Project". The said land of the petitioner is described as Gut No.223/A + B (part) admeasuring 0.70 Ares, which was acquired.

3. In relation to the acquisition, a notification under Section 4 of the Act came to be issued on 10 June 1999. There was a notice issued under Section 5 on 11 August, 1999 on which an inquiry was conducted as per the provisions of Section 5A of the Act. Thereafter, a Section 6 notification was issued on 3 April, 2000. The land acquisition award came to be declared on 31 August, 2000.

4. Almost about six years after the land was acquired and as possession of the land was not taken over by the State Government, the Petitioner moved an application under Section 48 of the Act, seeking withdrawal of the land from acquisition. The Petitioner raised contentions under Section 11 of the Maharashtra Project affected Persons Rehabilitation Act 1999, contending that considering the total holding of the Petitioners and that there was a potkharaba (non cultivable land) admeasuring **7 Hectors and 5 Ares**, as also that the applicable slab being 17 Acres the Petitioners land could not have been acquired. In the inquiry initiated under Section 48, a report of the sub-divisional officer was called for, which is placed on record (page 42) of

the petition, which was in Form A (प्रपत्र अ) submitted on the Revision Application No.9 of 2006 as filed by the petitioners. In the remark which has been made by the Sub-Divisional Officer, he has stated as under:-

(Translation of a photocopy of MARKED PORTIONS, typewritten in Marathi).

“PROFORMA ‘A’

Report in respect of Revision Application filed under Section 48(1) of the Land Acquisition Act against the action of acquisition of land from out of Command Area under Gunjawani Project.

Sub Divisional Officer,
Sub Division – Bhore, Pune.

No. Rehabilitation/Application/9/2006.

1)	X x x x x	X x x x x
2)	X x x x x	X x x x x
3)	X x x x x	X x x x x
4)	X x x x x	X x x x x
5)	Standard Method Slab (4,6,8 Acres)	8 Acres (3 Hectares, 23 Are)
6)	As on the prescribed date, as per Proforma ‘A’/Slab Register --	
	Total Holding	3 Hectares, 90.1 Are.
	Assessment Slab -	
	(a) Command Area	3 Hectares, 90.1 Are.
	(b) Outside of the Command Area	-----
	(c) Holding eligible for slab	3 Hectares, 90.1 Are.
	(d) Slab	0.70 Are
	(e) Area of Gat No. proposed for acquisition	223 Part.
	X x x x x	X x x x x
	X x x x x	X x x x x
	X x x x x	X x x x x

	X x x x x	X x x x x																					
16)	Opinion on the points under objection, in the present Revision application.	On the prescribed date, area adm. 3 hectares, 90 Are, stands in the name of the Applicant in his account and from out of the same, the holding of Gat Number 218- Part is 1 hectare, 17.6 Are and the said Gat number is outside of the command area and therefore while considering the said area for the slab, it is necessary to take ¼th area into consideration. Therefore, the below-mentioned status is noticed. <table><tr><th colspan="2">Total holding</th><th colspan="3">Area outside of the command area</th><th colspan="2">Remaining area</th></tr><tr><th>Hectare</th><th>Are</th><th></th><th>Hectare</th><th>Are</th><th>Hectare</th><th>Are</th></tr><tr><td>3</td><td>90</td><td>Minu s</td><td>1</td><td>17</td><td>2</td><td>73</td></tr></table> Plus the 1/4th area from out of the area outside of the command area i.e. 0.29 Are i.e. the area to be considered for the slab is found to be 3 hectares 02 Are. On considering the aforesaid facts, the holding area eligible for slab is 3 hectares 02 Are and the minimum limit of slab for Gunjawani project is 3 hectares, 23 Are. In such circumstances, on perusing the map of the command area affected by Gunjawani project, it is found that the area belonging to the Applicant is not eligible for the acquisition.	Total holding		Area outside of the command area			Remaining area		Hectare	Are		Hectare	Are	Hectare	Are	3	90	Minu s	1	17	2	73
Total holding		Area outside of the command area			Remaining area																		
Hectare	Are		Hectare	Are	Hectare	Are																	
3	90	Minu s	1	17	2	73																	

(emphasis added)

5. Mr. Deshmukh, learned Counsel for the Petitioners, drawing the Court's attention to the impugned order passed by the Divisional

Commissioner on the Petitioners appeal rejecting the Petitioners claim under Section 48 of the Act, for withdrawal of the land under acquisition, would contend that there is no discussion whatsoever on such aspects of the petitioners case as also there is no application of mind to the observations as made by the Sub-divisional Officer who categorically stated that considering the slab as applicable to the holdings, the land of the petitioners was not eligible for acquisition. Perusal of the impugned order, clearly shows that there is substance in the contention as urged by Mr. Deshmukh that, there is no discussion by the Divisional Commissioner to such relevant aspects as contained in the SDO's reports. The impugned order only narrates the relevant dates in regard to the acquisition and records that the application under Section 48 of the Act has been filed almost after six years of the land acquisition award being declared, and hence, for such reason the application was not maintainable.

6. In my opinion, the observations as made by the Divisional Commissioner appear to be not tenable and correct when the jurisdiction under Section 48 of the Act was being exercised on the petitioners application. Such jurisdiction was required to be exercised taking into consideration the basic facts on the quantum of the holding as pointed out in the SDO's report, on which there is no discussion in the impugned order. Secondly, an application under Section 48 was maintainable for the reason that the possession of the land was not

taken by the State Government and once such were the clear circumstances on record, certainly it was an obligation of the Divisional Commissioner to take into consideration these basic jurisdictional aspects. This apart, the report of the Sub-Divisional officer stating that the land of the petitioners would not become eligible for acquisition, has also not been considered.

7. In the above circumstances, in my opinion, the impugned order cannot be sustained. It is required to be set aside, with a direction to remand the proceedings to the Divisional Commissioner and Chief Controlling Officer (Rehabilitation), Pune Division, Pune, for determination of the petitioners appeal afresh and in accordance with the law. Hence the following order:-

ORDER

- i. The impugned order is quashed and set aside.
- ii. Divisional Commissioner and Chief Controlling Officer (Rehabilitation) Pune Division, Pune, is directed to hear the petitioners and all the concerned departments afresh on the petitioners appeal and after considering the entire materials in relation to appropriate slab as applicable and the nature of the holding of the petitioner, pass appropriate orders on petitioners appeal/application under Section 48 of the Land Acquisition Act.
- iii. All contentions of the parties on payments are expressly kept open.
- iv. As the proceedings have commenced in the year 1994, expeditious orders are required to be passed. It is hence ordered that the Divisional

Commissioner shall pass appropriate orders within three months from today.

v. Till the Divisional Commissioner decides the matter afresh, the interim protection dated 10 October 2014 granted by this Court, shall continue to operate.

8. The petition is allowed in the above terms. No costs.

[G.S. KULKARNI, J.]