

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1795 OF 2022

- 1) Mirabai Namdeo Gaurkar,
Aged 50 years, Occ.- Housewife,
- 2) Raju Namdeo Gaurkar,
Aged 34 years, Occu. - Unemployed,

Both R/o Kondi (Neri), Ward No.5,
Post – Urjanagar, Tahsil and District
Chandrapur.

.... **PETITIONERS**

VERSUS

- 1) Western Coalfields Ltd.,
through its Chief General Manager,
(Chandrapur Area), Babupeth,
Tahsil and District Chandrapur.
- 2) Homdas Kisan Upre,
Aged about 48 years, Occ.-Agriculturist,
R/o Payali Bhatali, Tahsil and
District Chandrapur.

.... **RESPONDENTS**

Mr. A.A. Dhawas, Counsel for the petitioners,
Mr. A.M. Ghare, Counsel for respondent 1.

CORAM : ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATED : 27th APRIL, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Heard. **Rule.** Rule made returnable forthwith with consent of the parties.

2. The challenge in the petition is to the communication dated 05-12-2020 whereby petitioner 1-Mrs. Mirabai Gaurkar is informed that since Regular Civil Suit 172/2016 is pending in which the title to the land acquired is in issue, her request to grant compensatory appointment to petitioner 2-Mr. Raju Gaurkar in terms of the Rehabilitation Policy, is kept in abeyance.

3. Facts to the extent relevant, may be noted :

(i) Mrs. Mirabai Gaurkar is the mother of petitioner 2-Mr. Raju Gaurkar who is a Commerce Post Graduate. Mrs. Mirabai Gaurkar was the owner of land Survey 71/3-D, admeasuring 1.20 H.R. situated at Mouza-Payali Bhatadi, Tahsil and District Chandrapur (subject land).

(ii) The subject land was acquired by the Western Coalfields Ltd. (WCL) under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (Act) vide Notification dated 17-9-2011 issued under Section 9(i) of the Act. The acquisition

was for the Open Cast Mine Project.

(iii) It is not in dispute that in terms of the extant rehabilitation policy, the land owner whose land is acquired, is entitled, subject to satisfaction of certain conditions, to employment.

(iv) Initially Mrs. Mirabai Gaurkar sought employment for herself. She was informed that in view of her age, it would not be possible to provide her employment. Mrs. Mirabai Gaurkar then sought employment for her son Mr. Raju Gaurkar.

(v) WCL has refused to consider Mrs. Mirabai Gaurkar's request for granting appointment to her son on the ground that Regular Civil Suit 172/2016 is pending in which there is a challenge to the exclusive ownership or title of Mrs. Mirabai Gaurkar.

4. Few glaring facts will have to be noted.

(i) Regular Civil Suit 172/2016 is instituted by one Mr. Homdas Upre seeking partition and separate possession of the subject land. Mr. Homdas Upre preferred an application under Order XXXIX Rules 1 and 2 of the Civil Procedure Code seeking an

injunction restraining the defendant Mrs. Mirabai Gaurkar from availing the benefit of the Rehabilitation Policy. The learned 6th Joint Civil Judge (Junior Division), Chandrapur rejected the application seeking injunction vide order dated 23-12-2016. Mr. Homdas Upre preferred Miscellaneous Civil Appeal 6/2017 which the learned Ad hoc District Judge-1, Chandrapur dismissed vide judgment dated 23-4-2018. Undeterred, Mr. Homdas Upre approached the High Court in Writ Petition 5092/2018 which is also dismissed.

5. We do not appreciate the attitude and approach of the WCL, and which we have noticed in matters more than one. It is an admitted position that as on the date of the issuance of the Notification under Section 9 of the Act, and which is the relevant date, the name of Mrs. Mirabai Gaurkar is recorded as the owner of the subject land and as a fact, WCL has paid the monetary compensation to Mrs. Mirabai Gaurkar. The Rehabilitation Policy entitles the land owner to, apart from the monetary compensation, employment. WCL, in our considered view, could not have refused to consider the claim of Mrs. Mirabai Gaurkar on

the specious ground that her title to the subject land is under cloud in view of the pendency of the Regular Civil Suit 172/2016.

6. We have considered a similar situation in Writ Petition 1123/2022 and we may extract the relevant observations therein.

“5. It is not in dispute that in the revenue record, names of petitioners 1 to 4 are shown as the owners of the agriculture land acquired, as on the date of the publication of Section 9 notification which is ordinarily treated as the relevant and cut off date by the acquiring body for the purpose of benefits under the Policy.

6. We see no reason why the nominees of the petitioners whose names are reflected in the revenue record as the owners of the land acquired, as on the date of the publication of Section 9 notification, should be denied employment only on the ground that there is a challenge to their title. The title dispute may take years and indeed decades. It would neither be in the interest of the petitioners nor WCL nor respondent 2 to keep the vacancy in limbo only on the ground of pendency of the title dispute.

7. We are conscious of the fact that if respondent 3 succeeds in the title dispute, he may as well lodge claim for employment. We therefore, sought an undertaking

from the petitioners which is duly filed. We may extract the relevant portion of the said undertaking.

“2. It is submitted that the petitioners have already made prayer in the petition that the respondents 1 & 2 to accept the nomination form, affidavit and complete other formalities as per Rules for the purpose of employment to petitioners 4 to 7 subject to decision of this petition or subject to the final decision of aforementioned RCS no. 117/2015. The petitioners reserve their rights to avail/prefer statutory remedies as per law. The petitioners who are desirous of employment hereby reiterating and giving undertaking that their appointments can be made subject to final outcome of the aforesaid Regular Civil Suit. Other petitioners have no objection for the same. In the event if it is held that the petitioners are not eligible or they have no share in the suit property or any other person are entitled for the employment in place of the present petitioners, in view of acquisition of land in question, in that event the petitioners shall waive their right of employment and will discontinue the employment upon final decision of aforesaid RCS No. 117/2015 that may be reached to its finality as per law. The petitioners shall not claim any equity or, any permanency or a like service benefits if the petitioners are appointed provisionally subject to final decision of aforesaid RCS No. 117/2015 that may be reached to its finality as per law.”

They further undertake to follow the directions and conditions which may be imposed by this Hon’ble Court. The petitioners are ready to abide by any condition as this Hon’ble Court may deem fit and proper, in the interest of justice.

8. *In addition to the undertaking, we direct that if the civil court rejects the claim of the petitioners as the exclusive owners of the property or put it differently, acknowledges the title of the respondent 3 either as an absolute owner or as co-owner, the petitioners 5 to 7, who may be provided employment under the interim order, shall not claim any equity and shall leave the post on the day on which the verdict is pronounced.*

9. *Mr. Samudra has invited our attention to the order dated 22-7-2016 rendered in Writ Petition 4150/2016. The Coordinate Bench dismissed the writ petition challenging the refusal of WCL to provide employment on the ground that the aunt of the petitioner has filed a civil suit. We note from the facts culled out by the Coordinate Bench that the land belonged to the grandfather of the petitioner. The petitioner claimed to be the owner on the basis of gift deed. It is true that the Coordinate Bench has held the action of WCL of not employing the petitioner is not illegal inasmuch as if the aunt is also held to be the owner of the property, she may have right to compensation and employment.*

10. *With utmost respect to the observations of the Coordinate Bench, it is difficult for us to subscribe to the generalization that pendency of civil suit would permit or entitle WCL and similarly situated acquiring bodies to*

deny employment on the ground of pending dispute. In our considered view, facts of each case will have to be examined and an appropriate decision shall have to be taken. We can conceive of a situation where there is a mischievous attempt to ensure that even a rightful claimant whose land is acquired does not get succor of employment by filing ex facie frivolous suit. We are, therefore, inclined to take a view that the observations in the order dated 22-7-2016 in Writ Petition 4150/2016 shall have to be restricted to the factual matrix. In this view of the matter, we are inclined to grant interim relief and direct WCL to process the proposal forthwith and to take appropriate decision within two months.

7. We have observed in the said decision that judicial notice will have to be taken of the time consumed in civil litigation. It could be years and indeed decades for the litigation to reach its logical end. If employment is denied to the land owner whose name is recorded in the revenue record as on the date of the notification, and that too, a land owner who WCL has found entitled to compensation, there is every possibility that the legitimate claim of the land owner will be defeated due to the filing of a civil suit which may be frivolous, vexatious or

motivated.

8. In any event, the course which we have adopted in Writ Petition 1123/2022, which is that the petitioners were directed to furnish an undertaking, protects the interest of WCL and we see no impediment falling in the line with the earlier view. In the passing, we may note that our order dated 09-1-2023 in Writ Petition 1123/2022 was tested before the Hon'ble Apex Court and the Special Leave Petition is dismissed.

9. In this view of the matter, we allow the petition in the following terms.

(a) We direct the WCL to process the proposal of Mrs. Mirabai Gaurkar and her son and to issue the appointment order unless there is any other impediment in appointing petitioner 2-Mr. Raju Gaurkar. The needful shall be done within the next eight weeks.

(b) We clarify that the proposal shall not be rejected on the ground that civil suit is pending.

(c) We further direct the petitioner to file an undertaking

before the appropriate authority of the WCL that the appointment shall be subject to the final result in the civil suit, and in the event it is held that the petitioners are not the owners of the subject land, and/or some other person is entitled to employment, the petitioners shall not claim any benefit on the principle of equity. The undertaking shall specifically state that the employment which may be granted to petitioner 2-Mr. Raju Gaurkar shall be treated as provisional and conditional upon the outcome of the pending civil suit.

10. The petition is disposed of in the afore-stated terms.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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