

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10832 OF 2015

1. Sudamati w/o Rameshwar Todkar
2. Jitesh s/o Bhimashankar Todkar
3. Shantiling s/o Utreshwar Todkar
4. Pravin s/o Utreshwar Todkar
5. Jailing s/o Utreshwar Todkar ...Petitioners

Versus

1. The State of Maharashtra
2. The Deputy Collector cum Competent Authority
(Land Acquisition), Jayakwadi Project, Beed.
3. Ramnath s/o Ganpatrao Khod
4. Narayan s/o Bhanudas Lonkar ...Respondents

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Advocate for the Petitioners : Mr. Tungar Hrishikesh V

AGP for Respondent/State : Mrs. R.R.Tandale

Advocate for Respondent No.3 : Mr. A.N. Nagargoje

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CORAM : S.G. MEHARE, J.

DATED : JANUARY 10, 2024

PER COURT:-

1. Heard the learned counsel for the petitioners, learned
AGP for respondent nos.1 and 2 and learned counsel for respondent
no.3. Nobody was present for respondent no.4.

2. A short question in the case is whether the suit land bearing Survey No.36 of Village Shidod acquired by the Government is a property of trust.

3. Respondents nos.3 and 4 had raised the objection before the Land Acquisition Officer that it is a trust property. The present petitioners submitted before the Land Acquisition Officer that the nature of the property acquired had been decided long back, and the Assistant Charity Commissioner held that the suit field Gut No.36 was not the trust property. At that time, one of the person interested, namely Rajaram was contesting the issue before the Assistant Charity Commissioner that the suit field is a trust property. However, the learned Assistant Charity Commissioner, Aurangabad, by his order dated 24.02.1965 passed in Application No.47/1962 and 1696/1962, held that few house properties were the properties of the trust. The petitioner, Kachrual Ratanlal Parikh, appealed the order before the District Judge. The learned District Judge registered his application as Application No.12/1970 and, by order dated 25.02.1971 dismissed the application confirming the order of the Assistant Charity Commissioner. Against the said order, Kachrual again approached the Bombay High Court and filed an appeal bearing No.814/1971. The Bombay High Court again dismissed the appeal by its order dated 30.08.1978. In such a way, it was concluded that Gut No.36 is not a trust property.

4. Learned counsel for the petitioners submits that the entire material was placed before the Land Acquisition Officer. He did not consider it and erroneously passed the order referring the issue to the Civil Court. He submits that the impugned order of the Land Acquisition Officer is illegal and against the facts. He prayed to allow the petition.

5. Learned counsel Mr. A.N. Nagargoje for respondent no.3 has strongly submitted that the said Kachrual had played a fraud with the trust. There was a revenue record showing that the suit field was the trust property. All the trustees were in collusion. Therefore, the correct facts were not brought before the Assistant Charity Commissioner. Therefore, some proceedings for the removal of the trustees were preferred. The trustees who were not acting in the interest of the trust have been removed. A detailed enquiry is opened before the Assistant Charity Commissioner to determine whether the suit land is a trust property. Since the petitioners' title is under the cloud, a huge compensation of more than Rs.1 Crore should not be disbursed to the petitioners.

6. The order of the Assistant Charity Commissioner, the District Judge and this High Court appear to have not been passed ex-parte. One of the persons interested in the trust opposed the contention of Kachrual, who allegedly claimed the exclusive owner of the suit field. He was saying it was a trust property. Since the

beginning, there was an objector, and objections were considered. Then, after enquiry, the Assistant Charity Commissioner recorded the finding that the suit field Survey No.36 is not the trust property. There was no record indicating that this property was shown in the schedule of the properties maintained under the Bombay (now Maharashtra) Public Trusts Act, 1950. The issue that was raised by respondent no.3 has already attained the finality long back in 1978. The present petitioners are the purchasers of the suit land. They were in enjoyment and possession. *Prima facie*, the petitioners had a strong case. Though the objection has been raised about their title, earlier judicial orders support their contention. It has been submitted that the Assistant Charity Commissioner has opened a fresh enquiry. Let that enquiry be done. However, the earlier judgments confirming the status of the suit land as not the land of the trust cannot be ignored.

7. Considering the facts and the earlier orders in toto, this Court is of the view that the Land Acquisition Officer did not consider the earlier judgments which have attained finality. *Prima facie* material was available before it. Hence, he should not have passed the order impugned before this Court. The law is well settled that once the issue has been settled, it cannot be ignored. The petitioner should not be deprived of the right to get the compensation and again prove his title. Therefore, the petition deserves to be allowed. Hence, the following order :

ORDER

- I) Writ Petition is allowed.
- II) The order of the Competent Authority cum Deputy Collector (Land Acquisition), Jayakwadi Project, Beed passed in Case No.2015/LNQ/LA/Ja.Pra/NH-211/14/12 dated 28.08.2015 is quashed and set aside.
- III) The compensation amount be released in the name of the petitioners, subject to the result of the enquiry pending before the Assistant Charity Commissioner.
- IV) No order as to costs.
- V) At the request of learned counsel for the respondent, this order is stayed for six weeks.

(S.G. MEHARE, J.)