

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14131 OF 2023

Akkatai Parsu Kamble
Age: 75 years, Occ: Agriculture
Residing at Bambavade
Taluka Shahuwadi, District Kolhapur

...Petitioner

Versus

1. State of Maharashtra
Through Principal Secretary
Public Works Departments
Having Office at Mantralaya, Mumbai

2. Competent Authority as also
Deputy Collector, Land Acquisition
Office No.6, Kolhapur

3. Deputy Director of Land Records
Shahuwadi, Taluka Shahuwadi,
District Kolhapur

4. Tahsildar
Taluka Shahuwadi, District Kolhapur

5. National Highways Authority of India
Having office at G5 & 6, Sector 10,
Dwark, New Delhi – 110075

...Respondents

**WITH
INTERIM APPLICATION (ST) NO. 21176 OF 2024
IN
WRIT PETITION NO. 14131 OF 2023**

1. Mahadeo Dattu Kaigade
2. Shamrao Ramchandra Mohite
3. Bajirao Bhau Atigre

4. Baban Balu Shinde
All through Power of Attorney holder
Bandu Ramchandra Mohite
Age: 73 years Occ: Agri
R/at: Vadicharan, Taluka Shahuwadi, Kolhapur

...Applicants

IN THE MATTER BETWEEN

1. Akkatai Parsu Kamble
Age: 75 years Occ: Agriculture
Residing at Bambavade
Taluka Shahuwadi,
District Kolhapur

...Petitioner

Versus

1. State of Maharashtra
Through Principal Secretary
Public Works Departments

2. Competent Authority as also Deputy Collector

3. Deputy Director of Land Records

4. Tahsildar
Taluka Shahuwadi, Dist Kolhapur

...Respondents

WITH

INTERIM APPLICATION NO. 7256 OF 2024

IN

WRIT PETITION NO. 14131 OF 2023

1. Maya Ramesh Shinde
2. Dasharath Prakash Kamble
3. Alaka Prakash Kamble
4. Vaishali Popat Gavali

...Applicants /
(Interveners/
Prop. Resp.)

IN THE MATTER BETWEEN

1. Akkatai Parsu Kamble

Age: 75 years, Occ: Agriculturist,
R/o. Bambavade, Tal. Shahuwadi,
District: Kolhapur

...Petitioner

Versus

1. State of Maharashtra
Through Principal Secretary Public Work
Department
2. Competent Authority as also Deputy Collector
3. Deputy Director of Land Record
4. Tahasildar
Tal. Shahuwadi; Dist Kolhapur

...Respondents

**Mr. Chetan Patil, i/b Mandar G. Bagkar, Advocates for the
Petitioner.**

Mr. S.H. Kankal, AGP, Respondent-State.

**Mr. Rakesh Singh, a/w Heena Shaikh, i/b M.V. Kini & Co.,
Advocates for Respondent No.5.**

**Mr. Namitkumar S. Pansare, i/b Drupad Patil, Advocates for
Applicant in IA/21176/2024.**

**Mr. Nikhil N. Pawar, a/w Salim Mulla, Advocates for Applicant n
IA/7256/2024.**

**CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.**

RESERVED ON: AUGUST 01, 2024

PRONOUNCED ON: AUGUST 07, 2024

JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. Rule. With the consent of the parties, rule is made returnable

forthwith and the Writ Petition is taken up for final disposal.

2. This Writ Petition challenges the land acquisition proceedings initiated at the instance of the National Highways Authority of India (“**NHAI**”) in connection with National Highway No. 166 connecting Kolhapur and Ratnagiri, which is required to pass through Bambavade Village. The Petitioner claims to have ownership interests in land admeasuring in 2.4 hectares in Gat No.403 at Bambavade. Out of such land, 0.14 hectares (“**Subject Land**”) has been subjected to acquisition proceedings under the National Highways Act, 1956 (“**the Act**”).

3. There are various disputes and proceedings in connection with the land on which the Petitioner claims ownership interests, and two Interim Applications for intervention by competing parties have been filed. However, for purposes of disposing of this Petition, it is not necessary to outline the contours of the disputes between the Petitioner and other claimants to interests in the Subject Land.

4. While multiple grounds have been pleaded in the Writ Petition, the primary grievance pressed by Mr. Chetan Patil, Learned Counsel on behalf of the Petitioner is that the land acquisition *inter alia*

covering Gat No. 403 is arbitrary and defective owing to a serious misalignment in the survey and measurement of the land earmarked for acquisition. It has been submitted that in the course of demarcation and measurement of the land, there is an admitted mistake by which more land than demarcated was being acquired on one side of the proposed highway and correspondingly, less than the demarcated land was being acquired on the other side. This would have resulted in landowners on one side unjustly losing out and landowners on the other side unjustly benefitting.

5. Complaints in this regard were made after a notification dated of acquisition 6th July, 2018 was issued under Section 3A of the Act. It is the Petitioner's case that a measurement notice published initially on 18th June, 2018 had originally not included any portion of the Petitioner's land but later the Petitioner's land too was included in the acquisition. The Petitioner filed objections on 6th August, 2018, after which a declaration under Section 3D of the Act was notified on 10th October, 2018 in the Official Gazette.

6. Taking cognizance of various complaints in respect of wrong measurement in respect of several portions of the land that had to be

acquired for highway No.166, the Deputy Collector, Land Acquisition, Kolhapur, who is the “Competent Authority” and Respondent No. 2, directed the Deputy Superintendent of Land Records, Shahuwadi, to verify the land measurement by a letter dated 4th October, 2018. The letter cited seven different Gat numbers. On 3rd December, 2018 the Deputy Superintendent of Land Records wrote to the Deputy Collector categorically acknowledging a mistake in carrying out measurement and calling for a fresh joint measurement, not only in the seven Gat numbers but in a total of 25 Gat numbers. Notably, Gat No.403 in which the Subject Land is situated did not form part of the 25 Gat numbers listed for a fresh joint measurement.

7. According to the Petitioner, the entire process of land acquisition is flawed, inasmuch as there has been an admitted mistake in the survey and measurement for the land acquisition. While Gat No. 403 had been listed in the letter dated 4th October, 2018 from the Deputy Collector, the letter dated 3rd December, 2018 in reply with the findings did not list out Gat No.403, perhaps only because of a typographical mistake. According to the Petitioner, despite its efforts till date, the Respondents have not dealt with the error in relation to Gat No. 403, and therefore, the Respondents are guilty of dereliction of

duty, calling the entire land acquisition process into question.

8. On 10th November, 2023 a Division Bench of the Court, taking note of the *prima facie* submissions made by Learned Counsel for the Petitioner, as a *pro tem* measure directed that the Petitioner shall not be dispossessed until 7th December, 2023, when the Petition would be heard for *ad-interim* relief. Thereafter, pleadings have been exchanged and the restraint has continued till date. Mr. Patil would submit that since no effort is being made to rectify the mistake in measurement at Gat No. 403, since the error is not ascertained and rectified, the entire land acquisition proceedings insofar as it relates to Gat No.403 ought to be quashed.

9. It is apparent from the record that there had been errors in the measurement of land that were serious enough to warrant a new measurement and that too on a wider area of land. However, it is also evident that such errors have been addressed and remedied, and there is no typographical mistake in leaving out Gat No. 403. Mr. Rakesh Singh, Learned Counsel for NHAI drew our attention to the fact that the Petitioner's objection has indeed been heard and considered, and the objections were found to be untenable. Indeed, the Deputy Collector had

referred to Gat No.403 when highlighting the complaints about land measurement in his letter dated 4th October, 2018 addressed to the Deputy Superintendent, Land Records. Upon review, it was found that not just in the seven Gat numbers but in a total of 25 Gat numbers, there had been an error necessitating a fresh joint measurement. We are not convinced that Gat No. 403 had been inadvertently missed in the letter dated 3rd December, 2018 or that there had been a typographical error. Wherever there had been an error the same had been rectified and it is because there was no error in relation to Gat No.403 that there is no reference to this land in the confirmation of a fresh measurement by the Deputy Superintendent of Land Records, in his reply letter dated 3rd December, 2018.

10. A total area of land in Gat No.403 that was being acquired has remained the same at 0.14 hectares between the two processes – one run in 2018 and the corrected one in 2019, Mr. Singh would submit. The Petitioner alone has raised the grievance that the acquisition is flawed owing to wrong measurement. A hearing had also been given to the Petitioner and it was only thereafter, on 7th March, 2019 that the fresh declaration under Section 3D of the Act had been published. Mr. Singh also submitted that there are internal disputes in relation to

ownership of the Subject Land, and it was because of such dispute that the Petitioner refused to accept the compensation paid by the NHAI. Therefore, the amount has been deposited in the District Court, Kolhapur under Section 3H(4) of the Act, for distribution upon final disposal of the reference proceedings by such Court. Mr. Singh would submit that the entire highway has been constructed without any complaint or interference from any landowner and it is only the portion that has to run through Gat No. 403 is pending construction. Owing to the direction not to dispossess the Petitioner of the Subject Land, the entire project has been held up for this small stretch.

11. The NHAI submitted that the compensation amount has been computed with due regard to all parameters in law and it is only because of the internal dispute between the Petitioner and other claimants to the land in Gat No.403 that the compensation amount is lying in the reference Court. Mr. Singh would submit that no other landowner had moved Court alleging the persistence of any error in measurement and the Petitioner alone is holding up the entire project.

12. Upon a careful consideration of the record, we are not persuaded to find in favour of the Petitioner. Evidently, the reference

made by the Deputy Collector to the originally included Gat No. 403 in connection with the mistake in measurement of land. However, once it was found that there were no errors contained in measurements of Gat No.403, the said portion of land indeed did not find mention in the letter dated 3rd December, 2018. There has been a candid acknowledgment that the measurement had originally been misaligned by range of 10 to 30 metres which led to inequitable treatment of landowners on the sides of the highway, and that too in respect of land across 25 Gat numbers. Such error has been rectified. Landowners across the area having been affected, it would follow that the community had been aware of the error and were vigilant about their entitlements. Should there have been any continued error or a failure to rectify a mistake, it would be highly likely that other landowners would have had grievances. That the Petitioner alone would be singled out for mistreatment is not a reasonable assumption to make, and that too when there is no allegation of bias. The Petitioner's argument that there had perhaps been a typographical or clerical error does not inspire confidence. At significant cost, this part of the project has been held up for over eight months, and without any separate credible evidence, merely relying on an earlier acknowledgment of complaints from multiple Gat numbers (which too have been addressed), we are not

convinced that there is any merit in the Petitioner's expression of apprehensions about a potential mistake in measurement going unnoticed due to another typographical mistake in correspondence.

13. The letter of the Deputy Superintendent, Land Records, dated 3rd December, 2018, in the first part, reproduces the crux of the reference letter dated 4th October, 2018, and in that context makes a reference to Gat No. 403. The very same letter in the second part, leaves out Gat No. 403, and it would stand to reason that it is a conscious elimination of that Gat number rather than an elimination that is deliberate or an omission due to typographical or clerical error.

14. We are conscious that we are in an extraordinary writ jurisdiction and must not conduct a trial of disputed facts, much less, facts apprehended as being mistaken. It is apparent that the notifications, made first in 2018 and then in 2020 are identical in their contents in respect of Gat No.403. There are many other landowners in Bambavade Village and none other than the Petitioner has expressed any grievance about the measurement continuing to be defective. In these circumstances, we are not satisfied that the Petitioner has made out a case for interference by us in exercise of the extraordinary

jurisdiction under Article 226 of the Constitution of India.

15. Therefore, we hereby dismiss this Writ Petition. In view of dismissal of the Writ Petition, nothing survives in the above Interim Applications and accordingly the same are disposed of. Rule is discharged. There shall be no order as to costs.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]