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Date: 2024.01.08
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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15804 OF 2022

Shri Shivaji Haribhau Murkute and Ors.

... Petitioners

Versus

The Resettlement Officer, Kukadi Project & Ors.

... Respondents

Mr. Uday B. Nighot for the Petitioners

Ms. P.J. Gavhane, A.G.P. for the State

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 3 January, 2024

P.C.

1. We have heard Mr. Nighot learned counsel for the Petitioners and Ms. Gavhane learned A.G.P. for the respondents.

2. At the outset, we may note that earlier detailed Orders were passed on this Petition on 30th August, 2023, 6th September, 2023 and 20th September, 2023. The issue in the present proceeding is in regard to the entitlement of the Petitioners, who claim to be project affected persons, for allotment of alternate land. In this regard, although the nature of the dispute was referred and discussed in the earlier Orders, we may observe that in our Order dated 20th September, 2023, in paragraph 5, we had directed the concerned officer, who had jurisdiction, to take a decision in terms of the Order dated 30th January, 2019, read with our Order dated 20th September, 2023, and inform the Court of the appropriate decision taken on the adjourned date of hearing. Pursuant to the said direction, reply affidavit is placed on record of Ajay More,

Additional Collector, Rehabilitation, Pune, District Pune, whereby he has stated that an Order dated 2nd October, 2023 has now been passed by him whereby alternate land in Gat no. 31, admeasuring 1H 60 Ares, at Village Pimpalgaon, Sidhanath, Taluka Junar, Dist. Pune, has been allotted to the Petitioners and others. The affidavit has also set out the background of the acquisition proceedings and more particularly with regard to the land in question belonging to the Petitioners. So also, in regard to the land on which Respondent Nos.6, 7 and 8 claim interest, which is stated to be jointly acquired. The relevant statements in this regard are contained in paragraph nos.15 and 16 of the reply affidavit which reads thus:

“15. As to Para no.3, h) I say that, the payment of compensation and allotment of alternate land are two different issues. Further, the lands were acquired jointly by the acquisition process and the Petitioner never challenged the award also until today. The 75% amount has been accepted against the joint property.

16. As to Para no.3, I) I say that, as the land was acquired jointly, entry on the 7/12 extracts shows jointly of all petitioners and respondents no.6 to 8.”

3. On such backdrop, now the grievance of the Petitioners is with regard to the allotment order dated 2nd October, 2023. The contention as urged on behalf of the Petitioners is that the Petitioners alone and to the exclusion of Respondent no.6 to 8 would be entitled for the allotment of the land under the Order dated 2nd October, 2023. It appears that, as per the Government record, the allotment is required to be made to the Petitioners and Respondent Nos.6 to 8 jointly. This position is seriously being disputed by the Petitioners on the ground that there was already a partition.

4. Certainly, such issues / dispute cannot be gone into in proceedings of the present Writ Petition filed under Article 226 of the Constitution of India. The dispute requires examination of documents and other evidence for ascertaining the rival claims. If what is contended by the Petitioners is correct namely Respondent Nos.6 to 8 do not have any right in respect of the land belonging

to the Petitioners, which came to be acquired, as the lands as acquired, were bifurcated, in that event, all such material would be required to be considered by the Additional Collector, inasmuch as it would certainly have a bearing on the Order dated 02.10.2023 passed by the Additional Collector granting allotment of the said land in favour of the Petitioners and others. Such controversy has cropped up in view of the subsequent developments that have taken place and the order dated 2nd October 2023 passed in pursuance to our directions.

5. In the above circumstances, in our opinion, further adjudication of the present Petition is not called for as allotment has already been made to the Petitioner vide 2nd October 2023.

6. We are therefore, inclined to dispose of the Petition by the following orders:

a. The Petitioner is at liberty to make a representation to the Additional Collector on the allotment order dated 2nd October, 2023, which allots the “Petitioners and others” Gat no. 31, adm. 1H 60Ares, at Village Pimpalgaon, Sidhanath, Taluka Junar, Dist. Pune. The Petitioners would be entitled to submit all necessary documents indicating their exact entitlement of such land to the exclusion of the Respondent Nos.6 to 8.

b. Also, Respondent Nos.6 to 8 would be entitled to place all such documents and material in support of their contentions.

c. The Additional Collector shall, after taking into consideration all materials in support of the respective claims, pass an appropriate order in accordance with law, which in a given situation can also be to correct, modify the order dated 2nd October, 2023.

- d. All contentions on the representations to be filed by the parties are expressly kept open.
 - e. The Petitioners shall make appropriate representation, along with all documents, within a period of three weeks from today. If the same is accordingly submitted, the Additional Collector shall grant opportunity of hearing to the petitioner and Respondent nos.6 to 8 within six weeks from filing of representation and decide the representation of the Petitioners, within six weeks from the date of hearing.
7. Disposed of in above terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)