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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.128 OF 2024

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Meena Sakharam Dhone ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Kalpesh U. Patil for the petitioner.

Mr. R. S. Pawar, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2024

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. The challenge in this writ petition is to the order dated 26th August 2021 passed by respondent No.3 in exercise of purported power under Section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.
3. Undisputedly, the petitioner is the owner of Gat No.125/1. According to him, he purchased the property on 5th November 2007 for consideration of Rs.2,75,500/- and he was put in possession of the property.
4. On 22nd December 2017, Gat No.125 along with Gat No.168 and Gat No.151 were acquired for special railway project undertaken by the Dedicated Freight Corridor Corporation by

issuing preliminary Notification under section 20(a) of the Railways (Amendment) Act, 2008. Accordingly, mutation entry No.438 was effected by the Sub-Divisional Officer. Final Award under Section 20F of the Railways (Amendment) Act, 2008 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was issued in relation to the area ad-measuring .0412-Are. In the Award, the petitioner was held to be entitled to compensation of Rs.5,49,786/-.

5. On 28th August 2021, respondent No.3 passed an order in exercise of power under section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 thereby having effect of shifting property of the petitioner to another location as indicated in the map annexed along with the order.

6. The petitioner has, therefore, challenged the order by way of present writ petition.

7. According to the petitioner, power under section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 could not have been exercised as such modification would not amount to clerical or arithmetical error in preparation of the scheme. Said modification amounts to substantial modification which was not possible even under Section 32 of the Act. Moreover, according to him, after the land was acquired and the Award contains his name as owner of the property, such exercise was not permissible which has the effect of taking away substantive rights of the petitioner.

8. Per contra, learned AGP invited my attention to the reply to

urge that the exercise of power under section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 as has been done by impugned order is nothing but arithmetical and clerical mistake and, therefore, it is permissible. According to him, such clerical mistake do not effect entire scheme.

9. Having heard parties and scrutinizing the material on record, following factual scenario emerges:

(i) The predecessor of the petitioner on 14th December 1998 filed an application for conversion of Gat No.125/1 into non-agricultural use and accordingly the Additional Collector on 21st May 1999 granted such permission;

(ii) The documents produced on record in the form of map issued on 16th December 2019 indicates that the petitioner's property is situated adjoining to Gat No.120;

(iii) Notification published under the Railways (Amendment) Act, 2013, indicates Gat No.125 as a property acquired and compensation of Rs.5,49,786/- payable to the petitioner;

(iv) Physical possession of Gat No.125 was taken from the petitioner in July 2019;

(v) Mutation Entry No.490 was effected indicates that the property Gat No.125 was acquired for “Virar-Dahanu Road Quadrupling Project, transfer restricted”;

(vi) The consolidation scheme was completed in the year

1978;

10. Based on aforesaid factors, it appears that the effect of the impugned order purportedly passed under Section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, would have substantive effect on the petitioner's right as it will amount to change of location of petitioner's property. The factors referred above indicate that Gat No.125/1 was situated adjoining Gat No.120. The third column of the map annexed along with the impugned order and earlier columns indicate that location of petitioner's property has been shifted from North to South. Therefore, exercise of power under Section 31A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, was not permissible. Hence, the petitioner has made out a case for setting aside the impugned order.

11. Rule is made absolute in terms of prayer clause (a).

12. No costs.

(AMIT BORKAR, J.)