

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5774 OF 2024

Kantilal Nathmal Baldota & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Jaydeep Deo, for Petitioner.

Mr. Abhijeet Kulkarni a/w Mr. Gourav Shahane, Krushna Jaybhay and Sweta Shah, for Respondent No.4/PMC.

Smt. R. M. Shinde, AGP for State.

CORAM:

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

DATE

04 JULY 2024

P.C.

1. We have heard learned counsel for the parties. We have also perused the orders passed by this Court on the earlier writ petition which came to be filed by the petitioners, being Writ Petition No. 15290 of 2022 being order dated 28 November 2023 and the subsequent order dated 9 January 2024.

2. It appears that the petitioners' land in question was the subject matter of acquisition at the behest of respondent No.4 / Pune Municipal Corporation for the purpose of constructing a primary school. Land acquisition proceedings ultimately culminated into an Award dated 3 August 1979. In pursuance of

the award, the petitioners also received compensation, however, there were subsequent developments inasmuch as there was an agreement dated 24 January 2001 which was entered between the petitioners and the Municipal Corporation to develop the school (**Exhibit “G”**), which according to the petitioners is also not disputed on behalf of the Municipal Corporation. Such agreement was acted upon.

3. In view of such agreement, the compensation amount which was received by the petitioners was also returned to the Municipal Corporation along with interest. The possession of the acquired property at all material times had however remained with the petitioners. There is no dispute in this regard.

4. In view of such subsequent developments, the petitioners invoked the jurisdiction of the State Government under the provisions of Section 48(1) of the Land Acquisition Act, 1894 (for short, “the LA Act”) requesting that the acquisition of the land in question be deleted / withdrawn. Such application of the petitioners came to be rejected by the Divisional Commissioner, Pune by the impugned order dated 19 December 2023.

5. Mr. Deo, learned counsel for the petitioners in assailing the impugned order passed by the Divisional Commissioner has two primary contentions. His first contention is that the subsequent developments which were material and

relevant for consideration of the petitioners' application for deletion of their land from acquisition has not been appropriately considered and from the perspective, the law would mandate, in passing the order and / or in exercising jurisdiction under Section 48(1) of the Act. Mr. Deo's contention is that although an award was published, the possession of the land had remained with the petitioners and therefore the basic jurisdictional requirement under Section 48(1) for the Divisional Commissioner to pass an order under Section 48(1), when there was a concurrence of the acquiring body for deletion/withdrawal of the acquisition, has not been considered by the Divisional Commissioner. He submits that there was no dispute in regard to the return of the compensation amount to the Municipal Corporation by the petitioners. His contention is also that the reference to the decision of Supreme Court in **State of Kerala Vs. M. Bhaskaran Pillai & Anr.**¹ in the impugned order was not well founded, more particularly considering the peculiar facts of the present case as also a complete approval / no objection of the acquiring body, namely the Pune Municipal Corporation for deletion of the land from acquisition.

6. We have heard learned counsel for the parties. We have also perused the record with their assistance.

1 AIR 1997 SC 2703

7. In view of the subsequent developments which are in the form of a binding agreement between the parties (the petitioners and the Pune Municipal Corporation-the acquiring body), we find much substance in the contentions as urged by Mr. Deo. It appears that the jurisdictional requirement under Section 48(1) of the Land Acquisition Act was imminently present, for the Divisional Commissioner to exercise jurisdiction in as much as possession of the land had remained with the petitioners as also the subsequent developments were material which completely go to show that the simplicitor land in the nature of the same being sought to be acquired, was not required, for the purpose for which the process of acquisition was set into motion and which in fact resulted in the compensation amount being returned by the petitioners. In this view of the matter, it was necessary for the Divisional Commissioner to take into consideration all these circumstances and pass appropriate orders.

8. In the aforesaid circumstances, without delving into the merits of what the State Government would intend to contend on the impugned order, we are of the opinion that interest of justice would be served if the Divisional Commissioner revisits the entire issue from its proper perspective. For such purpose, the petitioners also need to make an appropriate application under Section 48 of the LA Act with all the relevant documents being placed before the Divisional Commissioner.

9. We may also observe that the Pune Municipal Corporation, in light of the subsequent developments, is free to issue a NOC agreeing to the petitioners' application under Section 48(1) so that the same can be effectively considered, and this more particularly, in the light of the agreement which is entered between the Municipal Corporation and the petitioners on 24 January 2001. We, accordingly, dispose of the petition by the following order.

ORDER

(i) The petitioners are at liberty to make a fresh application under Section 48(1) of the Land Acquisition Act, 1894 before the Divisional Commissioner with all the supporting documents praying for deletion of the land in question. Let such application be made within a period of four weeks from the day a copy of this order is made available. The Pune Municipal Corporation / respondent No.4 shall grant to the petitioners a no objection certificate within a period of two weeks from the copy of this order being made available.

(ii) In view of the agreement dated 24 January 2001 entered between the petitioners and the Pune Municipal Corporation, let the entire material be accordingly placed before the Divisional Commissioner, Pune Division, for deciding the proposed application of the petitioners under Section 48(1) by a fresh order to be passed.

(iii) All contentions of the parties are expressly kept open.

(iv) Needless to observe that the Divisional Commissioner shall pass a fresh order without being influenced by the impugned order. Let such order be passed within three weeks of the presentation of the fresh application by the petitioners.

(v) Till the fresh order is passed by the Divisional Commissioner, Pune Division, the ad-interim protection granted by this Court shall continue to operate and if an order adverse to the petitioners is passed, for a period of four weeks thereafter.

(vi) Disposed of in the above terms. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)