



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7932 OF 2024

Mansingh Kondiba Kakde

... Petitioner

vs.

The State of Maharashtra & Ors.

... Respondents

Mr. Sumit V. Khaire for the petitioner

Mr. A.I. Patel, Addl. G.P. a/w. Ms. M.S. Bane, AGP for the State.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 23 August, 2024

P.C.

1. Rule, made returnable forthwith. Learned counsel for the respondents waive service. By consent of the parties, heard finally.
2. Reply affidavit filed by respondent nos. 1 to 4 is taken on record.
3. The petitioner is the owner of land bearing Gat No. 85/1 admeasuring 02 H 00R situated at Village Kedgaon, Taluka Daund, District Pune. The grievance of the petitioner is that there is a mutation entry as incorporated in the petitioner's land showing them to be reserved for allotment to the project affected persons in pursuance of the order dated 7 July, 1997 under the remark "Reserved for Rehabilitation", being mutation entry no. 56. It is the specific contention of the petitioner that land acquisition procedure has been initiated to acquire the petitioner's land for the purpose the entry in the revenue record

was made, and in absence of which, the entry has continued to operate to the prejudice to the petitioner. It is his contention that by virtue of such entry, the petitioner is not in a position to deal with the land.

4. Mr. Khaire, learned counsel for the petitioner in support of the contentions as urged in the petition has drawn our attention to the order of this Court dated 16 August, 2024 in Writ Petition No. 10857 of 2024 (*Parubai Yashwant Thorat vs. State of Maharashtra & Ors.*) wherein similar issue was involved and the petition was allowed by directing that the entry of reservation qua the petitioner's land be deleted. The said order reads thus:

“1. The case of the petitioner is that the petitioner's land in question being Gat No. 377, situated at village Sahajpur, Taluka Daund, Dist. Pune was not acquired for the public purpose under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999, resultantly, neither there is any award nor compensation received by the petitioner. Learned counsel for the petitioner has contended that without the land being acquired, the respondents have made an entry in the revenue records indicating the name of the State Government. He submits that in the absence of acquisition of the land, such entry cannot continue to remain on the revenue records. The learned counsel has drawn our attention to the order passed by this Court on a batch of petitions (Writ Petition No. 15826 of 2023-Ravindra B. Pingale Vs. The State of Maharashtra & Ors. and other petitions), wherein, this Court, after considering similar facts and circumstances, had directed deletion of the entries from the revenue records within a period of ten weeks from the date of the said order. The said order is required to be noted, which read thus :

1. This is a batch of petitions where the grievance of the petitioners is common. The grievance is that the respective lands of the petitioners were not acquired for the concerned irrigation projects and / or for the public purpose under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999.

2. However, without the land being acquired, an entry has been incorporated in the revenue record in respect of these lands belonging to the petitioners that the same are reserved for the respective projects in relation to which such entries are made.

3. It is in these circumstances, the petitioners contends that it would be arbitrary as also illegal for the State to incorporate such entries in the revenue records showing the land to be reserved without any subsisting valid notification for acquisition, which was taken to the logical conclusion resulting in the acquisition of the land.

4. It is submitted that there is no authority whatsoever that such entries can be made on any other lands required for such purpose, land stood acquired and the petitioners' lands were not subject matter of such acquisition, even the notification in that regard also having lapsed.

5. Learned counsel for the petitioners has submitted that similar issues had arisen before this Court. Our attention is drawn to an order passed by a co-ordinate Bench of this court of which one of us (G. S. Kulkarni, J.) was a member in Writ Petition No. 8010 of 2023 Dadabhau Ramdas Ransing and Ors. (page 171) in which this Court in similar circumstances and following similar orders passed earlier by this Court, had allowed the petition, directing that such entries be deleted by the respondents from the revenue records. We note the order dated 5 July 2023 passed on Writ Petition No. 8010 of 2023 which reads thus:

“1. Heard Mr. Deshpande, learned counsel for the petitioners and Mr. Pawar, learned AGP for the respondents.

2. The only prayer as made in the present proceedings reads thus:

a) This Hon'ble Court may, by way of appropriate writ Order or direction, direct the respondents to forthwith delete the entries of reservation from revenue record of the land Gat No. 36, area admeasuring 3 H 42R, situated at village Nimgaon Mhalungi, Tal. Shirur, Dist. Pune.”

3. Mr. Deshpande has drawn our attention to an order dated 2 March, 2022 passed by a co-ordinate Bench of this Court on a batch of petitions (Writ Petition No. 5185 of 2021- Namdeo M. Waghmore vs. The State of Maharashtra & Ors. and other Petitions). He submits that the grievance of the petitioners can be redressed if similar orders are passed. Mr. Deshpande has also drawn our attention to another order dated 18 January, 2023 passed by a co-ordinate Bench of this Court in Writ Petition No. 8623 of 2021 in case of Ankush Bapurao Thakur vs. The Deputy Collector Resettlement, Pune & Ors., to submit that in view of the said order passed by this Court, the respondents in the present case also need to delete entries of reservation from the revenue record in respect of the land in question.

4. Mr. Pawar, learned AGP would also not disagree that similar orders are passed by the Court as noted above.

5. We, accordingly, dispose of this petition with a direction to the respondents to take appropriate action within a period of ten weeks from today in respect of the prayer of the petitioners for deletion of entries of reservation from the revenue record. All contentions of the parties are expressly kept open.

6. Disposed of in the above terms. No costs.”

6. All these petitions concern a similar situation which fell for consideration of the Court qua the petitioners’ lands which have continued to remain on the record for number of years without the petitioners’ lands being subjected to acquisition, much less acquired.

7. In this view of the matter, Mr. Samant, learned Additional Government Pleader would also not dispute that the petitioners’ lands were not subject matter of acquisition. He would however submit that in the event the land is required for public purposes, all rights and contentions of the State Government needs to be kept open.

8. Certainly, the Court cannot curtail any authority of the State Government to acquire lands in exercising the powers of eminent dominion, in the event such lands are required

for public purpose. Such authority is always open to be exercised by the State Government in accordance with law.

9. In the light of the above discussion, we dispose of these petitions with the following directions.

i. The respondents are directed to take appropriate action within a period of 10 weeks from today to delete the entries of reservation of the petitioners' lands for the concerned project as reflected in the revenue record, in each of the petitioners' lands. The description of such land is made in the Writ Petitions as also in the prayer in the Writ Petition.

ii. The compliance of this be forwarded to the petitioners by a letter to be addressed by the Competent Authority.

iii. We observe that we have not examined any other contentions of the parties except what has been observed hereinabove.

iv. We also keep open all rights and contentions of the State Government, in the event any of these lands are required in furtherance of any public purpose, for the same be acquired by following due procedure in law and in accordance with law.

10. Disposed of in the above terms. No costs.

2. In our opinion, as the entries have persisted for a substantial period, unless there is a justifiable reason not to delete such entries, the respondents are directed to take appropriate steps to delete the entries of reservation of the petitioner's land for the concerned project as reflected in the revenue records, within a period of ten weeks from today. In the event, the respondents are not inclined to delete such entries, they shall, after giving an opportunity of hearing to the petitioner, forward appropriate reasons in writing, to the petitioner. All rights and contentions of the State Government in that regard are expressly kept open. The compliance of this be forwarded to the petitioner by the Competent Authority.

3. We observe that we have not examined any other contention of the parties except what has been observed hereinabove.

4. Disposed of in the aforesaid terms. No costs."

5. Our attention is also drawn to an order dated 8 February, 2024 passed by this Court on Writ Petition No. 1689 of 2024 (*Hirabai Popat Wadaghule vs. State of Maharashtra & Ors.*) wherein this Court, of which one of us (G.S.Kulkarni, J.) was a member, has allowed the petition. The said order reads thus:

“1. Rule, made returnable forthwith. Respondents waives service. By consent of the parties, heard finally.

2. We have heard Mr. Khaire, learned counsel for the petitioner and Ms. Diwan, learned AGP.

3. The only prayer as made in the petition reads thus:

“a) This Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate Writ, Order or direction to respondents to delete entry of reservation for the project affected person from other right column of the 7/12 extract of the land bearing Gat No. 317 area admeasuring 01 H 80R situated at village Takali Bhima, Tal. Shirur, Dist. Pune.”

4. The petitioner is the owner of land Gat No. 317 having an area admeasuring 2 H 08 R situated at Village Takali Bima, Taluka Shirur, District Pune. On 27 May, 1997, respondent no. 2 passed an order in regard to the acquisition of land for Chaskaman Dam Project. In pursuance of such order, mutation entry no. 1294 dated 28 May, 1997 came to be made in the other right column of the 7/12 extract of the petitioner’s land to the effect “Reserved for Rehabilitation”.

5. The case of the petitioner is that respondent no. 2 did not issue any notification under section 4 of the Land Acquisition Act, 1884 *inter alia* to acquire the said land for rehabilitation of the project affected persons. It is the case of the petitioner that as such lands were not being acquired, Writ Petition No. 5683 of 2021 along with batch of petitions came to be filed in this Court raising concerns that although entries in the revenue record are made, no action was taken to acquire the said land. It is in such context, the co-ordinate Bench of this Court passed an order dated 2 March, 2022 issuing the following directions to complete the process of allotment to the project affected persons within six months as also *inter alia* directing that the State Government shall initiate the acquisition proceedings under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 1999 within six months. The operative portion of the said order needs to be noted, which reads thus:

4. After hearing the parties including the State Government, the parties have agreed as under :-

- a) The State Government will complete the process of allotting the lands of the petitioners whose lands are declared in benefit zone for allotment and yet to be allotted to the project affected persons. The State Government has agreed that the process would be completed within six months from today, without fail.
- b) It is agreed by and between the parties that if the allotment of land is not issued to the project affected persons for allotment of the lands falling under benefit zone, which are the subject matter of these petitions, the mutation entries effected in the 7/12 extracts towards reservation for project affected persons to be deleted without further reference to the Court within two weeks from the date of expiry of six months. Both the parties have agreed that there would be no extension of time to allot the plots earmarked under the benefit zone to the project affected persons.
- c) If the entire process for allotment of land is not over within a period of six months from today, the petitioners whose lands have been placed under the benefit zone, would be at liberty to deal with their plots in the manner they desire. The State Government shall not initiate any acquisition proceedings in respect of these plots after expiry of six months in that event.
- d) If these plots which are made subject matter of the notification under section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1976, Maharashtra Project Affected Persons Rehabilitation Act, 1986, or Maharashtra Project Affected Persons Rehabilitation Act, 1999 are allotted to Project Affected Persons before expiry of six months, the State Government to initiate acquisition proceedings under the provisions of Maharashtra Project Affected Persons Rehabilitation Act, 2013 expeditiously and to conclude the same in accordance with the provisions of the said Act. The petitioners shall be informed about the allotment of lands in favour of the project affected persons and / or about proposal of the State Government to acquire the lands in case of those lands which are not allotted to the project affected persons within two weeks from the date of expiry of six months.
- e) If the lands though allotted to the project affected persons but the proceedings for acquisition are not initiated within a period of six months from today, even in that event the notification issued under section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, to stand deleted.
- f) It is made clear that within a period of two weeks from today, the lands of these petitioners who have impugned the

notification under section 11 of the Maharashtra Project Affected Persons Rehabilitation Act would be notified by public notice to the members of public more particularly for the benefit of the project affected persons for their information and for application, if any, for allotment of any particular land in this zone. The aforesaid period of six months will commence after expiry of two weeks from today. The notices shall be issued in accordance with the prescribed procedure for the purpose of information of the project affected persons as well as the persons whose lands are notified under section 11 of the Project Affected Persons Rehabilitation Act. Insofar as these cases are concerned, it is made clear that the Government Resolution dated 18th January, 2022 and 11th February, 2022 shall be read with this order.

g) It is made clear that the time prescribed in the aforesaid order is by consent of both the parties and would not be subject to any extension in any circumstances.

h) All the writ petitions are disposed of in aforesaid terms. There shall be no order as to costs.

i) All parties to act on the authenticated copy of this order.”

(emphasis supplied)

6. Admittedly, despite the directions as made in para (a) and (d) of the aforesaid order passed by this Court, no action was taken by the respondents within the period as directed and despite this, the mutation entry to the prejudice of the petitioner has continued to operate.

7. Ms. Diwan, learned AGP, on instructions, states that there is no intention of the Government to acquire the land and merely for the reason that the approval to the proposal of the Commissioner in that regard is pending before the State Government, there is delay in deleting the mutation entry as objected by the petitioner. She submitted that appropriate decision can be taken by the State Government to delete the entry.

8. Learned counsel for the petitioner has also drawn our attention to an order dated 5 July, 2023 passed by the co-ordinate Bench of this Court, of which one of us (G.S. Kulkarni, J.) is a member in Writ Petition No. 8010 of 2023, wherein in similar circumstances, the Court had disposed of the petition with a direction to the respondents to take appropriate action within a period of ten weeks from the date of the order in respect of the deletion of entries from the revenue record.

9. In the aforesaid circumstances, in our opinion, this is a clear case where the land acquisition in regard to the petitioner's land itself is not contemplated as also the time period as directed by this Court to acquire the land had lapsed, however, learned AGP has also made a clear statement that the land would not be subjected to any future acquisition. In this view of the matter, we are inclined to allow this petition by granting the prayer in terms

of prayer clause (a). Necessary deletion be carried out within a period of six weeks from today.

10. Writ Petition stands allowed in the aforesaid terms. No costs.”

6. Mr. Patel, learned Assistant Government Pleader would not dispute as to what has been contended by the petitioner. He would also on instructions submit that the land acquisition proceedings qua the petitioner’s land were not initiated, consequently there was no award published, so as to justify the entry in the revenue record indicating the name of the State Government.

7. In this view of the matter, we are inclined to allow this petition as such entries reserving the petitioner’s land without acquisition cannot continue for such substantial period, as this is certainly prejudicial to the rights and interest of the petitioner to hold the land free from any such encumbrance. The petitioner’s rights guaranteed under Article 14 and 300A of the Constitution of India are prejudicially affected by such action of the respondents. Also there is no justifiable reason as the law would require to maintain such entries. The petition is accordingly allowed in the following terms:

ORDER

- i) The petition stands allowed in terms of prayer clause (a). Necessary action to delete the entries be taken within a period of 10 weeks from today.

8. We have adjudicated the petition on the limited issue as discussed hereinabove. We keep open all contentions of the petitioner and that of the respondents in the event the land is required in future for any public purpose for which lawful procedure of acquisition will be required to be resorted.

9. Disposed of. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)