

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9645 OF 2024

Mr. Kamalabai Shantaram Bhoir & Ors.

..Petitioners

Vs.

Union of India & Ors.

...Respondents

Mr. Amogh Karandikar for Petitioners.

Mr. Atharva Dandekar with Mr. Hitendra Parab for Respondent No.7.

Mr. R. V. Govilkar, Senior Advocate with Mr. D. P. Singh i/b. Nikita Shrivastava for Respondent Nos.9 and 10.

Mr. A. I. Pate, Addl. GP i/b. Ms. P. N. Diwan, AGP for State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATED: 17 OCTOBER 2024

P.C.

1. We have heard learned counsel for the parties on the present proceedings.

2. The petitioners claim to be the owners of certain lands which are in petitioners' possession and which are salt pan lands as held by the petitioners from the time of the British regime. The averments in that regard are made in the memo of the petition that, since and prior to 1927, the petitioners and their predecessors have been the owners, and in possession and occupation of the subject salt pan lands as held by the then Civil Court at Thane, as also confirmed by the Queens Bench. It is also the petitioners' case that between the period 1935 to 1967, documents such as 1949 list of salt work, list of

Assets of then Indian Government 1959 and list of salt pans belonged to the then Central Government of India prepared in the year 1967 also would go to show that the petitioners' land was used for cultivation of salt was privately owned by the petitioners and their predecessors. It is also contended by the petitioners that the manufacturing of salt was in accordance with the Central Excise Rules, 1944 applicable for grant of a licence and for regulatory control of the cultivation of salt. However, it is the petitioners' case that Chapter IV of the Central Excise Rules, 1944 pertaining to salt land, its licensing and regulatory authority of Salt Department was deleted.

3. It is next contended by the petitioners that a portion of the salt works was acquired by the railway authorities and the entire acquisition was carried out through respondent nos.3 and 4 without adverting to the Salt Department. This has taken place between 1998-2002. It is also the petitioners' case that the Salt Department/respondent no.9 in the past had issued a notice to the petitioners informing that the Salt Department intended to resume the lands of the petitioners if the petitioners failed to execute a lease. The contention of the petitioners is that there was no question of execution of lease as per the records with the Salt Department, as the subject salt work was privately owned salt work belong to the petitioners and their predecessors. In these circumstances, the petitioners had approached this Court in the proceedings of writ petition, being Writ

Petition No. 1114 of 2005 (Shri. Yogeshchandra Shantaram Bhoir Vs. Union of India & Ors.). The said writ petition was disposed of in terms of an order dated 18 September 2008 passed by a co-ordinate Bench in Writ Petition No. 1683 of 2007 (Sir N. P. Vakil Trust and another vs. Union of India and other) which order was followed by the Court in disposing of the said writ petition filed by the petitioners. We note the orders passed in the case of Sir N. P. Vakil Trust and another vs. Union of India and other, as also on the petitioners' writ petition:-

“Order dated 18 September 2008-(Sir N. P. Vakil Trust & Anr. vs. UOI & Ors.)

1. Heard.
2. The petitioner has approached this court seeking a Writ of this court to declare that the attempted resumption of the said lands by the respondents is ultra vires Article 246 read with Entry 18 of List II to the Seventh Schedule to the Constitution of India and Article 300A of the Constitution of India, contrary to law, and wholly without jurisdiction and therefore, this court should prohibit the respondents, by themselves, their servants, agents, officers and subordinates, from resuming the said lands, acting under the impugned notices or at all, and/or in any manner dispossessing the petitioners from the said lands except by the due process of law, and in any event, not without first establishing their legal right, title and entitlement to do so in a court of competent jurisdiction and for other ancillary reliefs like withdrawing the impugned notices which have been issued by the respondents to the petitioners annexed as Exhibits EE and CC1 to CC3.
3. Our attention has also been drawn to the decisions of the Division Benches of this court in the case of Abdul Samad Abdul Kadir Thakur vs. the Union of India and Ors. in Writ Petition No.176 of 1983 decided on 9.10.91 and the other in the case of Shri Vinayak Yadneshwar Sathe vs. Union of India & Ors. in Writ Petition No.7916 of 2003 decided on 6.5.08 and the decision of the Supreme Court rendered in the case of Union of India through Deputy Salt Commissioner v. Shri Puranmal Lalchand Mundra and anr. reported in AIR 1996 SC 3195.
4. After giving our anxious consideration to the decisions which have been relied upon by the parties and going through the

impugned notices, we are of the view that the petition can be disposed of with a direction to the respondents not to resume the land in possession of the petition without following due process of law.

5. We may reiterate that the emphasis is of due process of law and it will be open for the parties to agitate their rights at appropriate forum.

6. Petition stands disposed of accordingly.”

“Order dated 18 June, 2009 passed in petitioner’s Writ Petition No. 1114 of 2005

Nobody is present on behalf of the petitioner. Last time on 2nd April, 2009 also nobody was present on behalf of the petitioner. The learned counsel appearing for the respondent-State and the learned Additional Solicitor General state that the controversy in the present case is squarely covered by the Division Bench judgment of this court in the case of *Sir N. P. Vakil Trust and another v. Union of India and other*, Writ Petition No. 1683 of 2007, decided on 18th September, 2008.

2. Resultantly, we dispose of all these writ petitions in terms of the order passed and for the reasons stated in the case of *Sir N. P. Vakil Trust* (supra). All the writ petitions are disposed of. No order as to costs.”

4. Learned counsel for the petitioners hence has contended that in so far as the Salt Department is concerned, this Court has clearly directed that the land in possession of the petitioners cannot be resumed without following due process of law and that the emphasis as recorded by the Court in paragraph 5 of such order, is of due process of law in which it is open for the parties to agitate their rights before an appropriate forum. It is submitted that such order continued to operate and, in fact, attained finality. Learned counsel for the petitioners accordingly would submit that the rights of the petitioners in the land in question are legal, valid, subsisting and recognized.

It is submitted that hence the Salt Department cannot, without following due process of law or without the consent of the petitioners in any manner whatsoever, deal with the petitioners' land, including to hand over any possession of the land to the State Government.

5. The present proceedings are brought before the Court in view of the need of the petitioners' land for the purpose of laying down the 5th and 6th railway track/line between Borivali to Virar and car shed near Vasai Railway Station by Western Railway, which is an acquisition sought to be initiated at the behest of respondent no.7. Learned counsel for the petitioners has contended that respondent no.7 has approached respondent no.9/Deputy Salt Commissioner requesting that on papers the said land be handed over in favour of respondent no.7. It is submitted that such action is wholly illegal and more particularly considering the long standing rights of the petitioners existing and recognized from the British regime which the petitioners had enjoyed. It is also submitted that without payment of compensation, the petitioners' land cannot be dealt in any manner whatsoever. This is the complexion of the proceedings before us.

6. The petitioners have prayed for diverse reliefs in respect of the petitioners' land, which is now purportedly made subject matter of acquisition, there is no formal notification issued as mandated in law to acquire the land. What is sought to be done by respondent no.7 is to have some negotiations with respondent nos.9 and 10 to transfer the petitioners'

land for the purpose of such public project which is being objected by the petitioners. We would be required to delve on such issues as it appears to us that respondent nos.9 and 10 are asserting some rights in respect of the salt pan lands in question as belonging to the petitioners on which salt works are being undertaken by the petitioners and on which the petitioners are asserting ownership. Also, there are orders passed by this Court as noted by us above which have directed due process of law to be resorted to by the Salt Department in so far as such lands belonging to the petitioners are concerned. Such orders in our prima facie opinion would also entail to the benefit of the petitioners in so far as the present land acquisition is concerned. Any claim of respondent no.7 qua the said lands cannot overlook the binding orders passed by this Court and such orders have relevance even qua respondent nos.9 and 10 requiring the petitioners land.

7. Let reply affidavits to the petition be filed within a period of **four weeks** from today. Copy of the same be furnished to the advocate for the petitioners well in advance.

8. Till the adjourned date of hearing, we direct that, except by a due process of law being followed, the land of the petitioners, be not acquired and the possession of the petitioners shall not be disturbed. Ordered accordingly.

9. The aforesaid orders however would not come in the way of respondent no.7 to proceed with the acquisition by any private negotiation with the petitioners and as permissible in law. All contentions of the parties in that regard are expressly kept open.

10. Parties to act on an authenticated copy of this order.

(FIRDOSH P. POONTIWALLA, J.)

(G. S. KULKARNI, J.)