

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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**WRIT PETITION NO.1409 OF 2019
WITH
INTERIM APPLICATION NO.11124 OF 2024
WITH
INTERIM APPLICATION NO.3175 OF 2021**

Anil Sopanrao Gaikwad & Anr.	..	Petitioners
<u>Versus</u>		
The Divisional Commissioner, Pune Div. & Ors.	..	Respondents

Mr. Nitin Deshpande (through VC) for the petitioners.
Ms. V. R. Raje, AGP for the State.
Mr. Chaitanya B. Nikle a/w Mr. Prajit S. Sahane and Mr. Ritvij A. Kale
for respondent no.15.
Ms. Kanchan Pathak for respondent no.16.
Mr. Anumkar Joshi for respondent no.33.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

DATE : 3 January 2025

PC.:-

1. Heard learned counsel for the parties.
2. The petitioner seeks the following substantive reliefs by instituting this petition:-

(a) this Hon'ble Court may, by way of appropriate writ Order or direction, declare that land bearing Gat No.369/1 admeasuring 1 hec 41 R, situated at village Mukhai, Tal. Shirur, Dist. Pune which is the subject matter of the Agreement to Sale dated 26.12.1996 and Sales Deeds dated 27.8.1997 is not acquired by the Respondent No. 1 to 5 in pursuance of the Award bearing No. SLAO/17/SR/32 of 2000, dated 18.1.2003 and the petitioners continue to be

owners of the said land.

aa) This Hon'ble Court may by way of appropriate writ order or direction, quash and set aside the Allotment Orders bearing No. SDO/Bhor/Rehabilitation/SR/26/

(b) this Hon'ble Court may direct the respondent Nos. 1 to 6 to correct the revenue record of the land bearing Gat No.369/1 admeasuring 1 hec 41 R, situated at village Mukhai, Tal. Shirur, Dist. Pune.

bb) during the pendency and till the hearing and final disposal of this writ petition, this Hon'ble Court may restrain the respondents from acting upon the Allotment Orders bearing No. SDO/Bhor/ Rehabilitation/SR/26/2016, dated 30/4/2016 and order bearing No.SDO/Bhor/ Rehabilitation/SR/21/2018, dated 11/12/2018 of the respondent No.3A (Exhibit 'H') as also the Sale Deed registered at Sr. No. T.G.D.5353/_/25/2021, dated 16/07/2021 (Exhibit 'J') and the Confirmation Deed registered on 23/08/2021 at Sr. No. T.G.D./ 6457/_/11/ 2021 (Exh.'K') and also from creating further third party interest.

(c) this Hon'ble Court may by way of appropriate writ, order or direction quash and set aside the Judgment and Order dated 31.3.2015 of the Sub-Divisional Officer, Pune Sub-Division, Pune passed in RTS/ Appeal/Add/SR/Number-735/2011.

(d) this Hon'ble Court may by way of appropriate writ, order or direction quash and set aside the Judgment and order dated 21.8.2015 passed by the Additional Commissioner, Pune in Rehabilitation/ Appeal/SR/24/2012.

3. The order dated 21 August 2015 was made on the petitioners' application under Section 48 (1) of the Land Acquisition Act, 1894, urging the Government to withdraw from the acquisition. Apart from the fact that this petition was instituted only on 26 September 2018, we do not see how, in the facts and circumstances of this case, the petitioners can insist that the Government, by exercising its powers under Section 48 of the Land Acquisition Act, must withdraw from the acquisition. Such relief, according to us, is entirely misconceived.

4. Mr. Deshpande then submits that the acquisition is in respect of an area of 0.725 R from out of the total area of 2 H and 82 R bearing Gat No.369/1, Village Mukhai, Taluka Shirur, District Pune. He submits that the petitioner has purchased an area of 1 H and 41 R from out of Gat No.369/1 with prior permission from the concerned authorities. Accordingly, He submits that the petitioners are entitled to a declaration

that the acquired portion does not pertain to the portion of 1 H and 41 R purchased by the petitioners with prior approval from the authorities.

5. The respondents have filed affidavits opposing the grant of any relief in this petition. The State Authorities have pointed out that the petitioners' predecessor-in-title has already collected compensation for the acquired lands.

6. At this stage, we observe only that this petition involves a disputed question of facts, which this Court cannot address in the exercise of its extraordinary jurisdiction under Articles 226 or 227 of the Constitution of India. Any adjudication on the factual issue of whether the acquired portion is included within the lands allegedly purchased by the petitioner would require oral and documentary evidence. At least prima facie, third-party rights are already created and settled.

7. The petitioners did not apply for a reference under Section 18 of the Land Acquisition Act 1894 if the dispute concerned the identity and measurement of the acquired property. However, we cannot decide all such matters by exercising our extraordinary jurisdiction under Articles 226 or 227 of the Constitution of India. Similarly, we cannot accede to prayer for corrections of revenue records or issue a declaration as claimed by exercising our extraordinary jurisdiction under Articles 226 or 227 of the Constitution of India.

8. On the above grounds, we decline to entertain this petition. However, at the request of Mr Deshpande, we clarify that it shall be open to the petitioners to resort to any other remedies that the petitioners might have under the law for the redressal of his grievances. However, all parties' contentions are left open because we have declined to examine them in these proceedings.

9. The petition is disposed of with liberty in the above terms. There

shall be no order as to costs. Pending Interim Applications do not survive and are disposed of.

(Jitendra Jain, J.)

(M. S. Sonak, J.)