IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11937 OF 2019

Bhiva Rama Pardole and Others ..PETITIONERS

VERSUS

Rohan Ravindra Sankpal and Others ..RESPONDENTS

....

Mr. P.D. Dalvi a/w Mr. Tejas Shelake and Ms. Sonal Nalawade, Advocates for Petitioners
Mr. Akshay Kulkarni, Advocate for Respondent Nos. 1 to 3
Mr. M.P. Thakur, A.G.P. for Respondent Nos.4 to 7

....

CORAM : SHARMILA U. DESHMUKH AND ABHAY J. MANTRI, JJ.
DATE : 02nd NOVEMBER, 2026.

ORAL JUDGMENT (PER : SHARMILA U. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and taken up for final disposal with consent.

2. By the present Petition, the Petitioners impugn the order/letter no. 15(2)/Rehabilitation/RR/455/2006 dated 04th August, 2006 passed by Respondent No.3 - Special Rehabilitation Officer, Kolhapur, by which the land, which was allotted to the petitioner, is sought to be resumed.

3. Facts of the case are that Petitioner Nos.1 to 6 are the Project Affected Persons of Dudhganaga Irrigation Project and Petitioner Nos. 7 to 10 are the purchasers of certain portion of an agricultural land in Old Gat No. 485 (new Gat

No. 324) admeasuring 1 H 62 R situated at village Agar, Tq. Shirol, Dist. Kolhapur, which was notified for Compulsory Acquisition for Rehabilitation of Project Affected Persons. The procedure contemplated under the Land Acquisition Act, 1894 (for short, "**the Act of 1894**") was followed and the award and compensation under Section 11 of the Act of 1894 was accepted by the land lady, who was the owner of the said land at the relevant time. Writ Petition No. 2306 of 1988 was filed by the said land lady challenging the compulsory acquisition, which came to be dismissed on 17th January, 1996. Review petition filed also came to be dismissed on 21st March, 2001.

4. On 12th April, 1988, the Collector has taken the possession of the said land under Section 16 of the Act of 1894. On 19th June, 1995, area of 0.80 R land was allotted to one Laxman Rama Tambe and on 15th June, 1997 area admeasuring 0.41 R out of Gat No. 485 came to be allotted to present Petitioner No.1. The balance land was allotted to other Project Affected Persons and the mutation entries were accordingly effected.

5. On 17th May, 1999, the erstwhile land lady approached the Hon'ble Minister for Revenue seeking deletion of said land from acquisition, which came to be allowed by the Hon'ble Minister by order dated 29th September, 2000. Writ Petition 6215 of 2000 was filed by the present petitioners challenging the order of Hon'ble Minister dated 29th September, 2000. On behalf of the State, affidavit-in-reply was filed informing the Court that order dated 29th September, 2000 is not yet implemented by the Collector and acquisition is not yet deleted.

There was an admission that the land is already allotted and given in possession to the Project Affected Persons. In view of the submissions canvassed, vide order dated 22nd June, 2004 the petition was disposed of as the order of the Hon'ble Minister was not implemented by reserving the right of the petitioners to challenge the order, if any, is adverse to the petitioners' interest. On 4th August, 2006, the impugned order has been passed. Hence, the present Petition has been filed.

6. Learned counsel for the Petitioners has taken this Court to the previous order passed in Writ Petition No. 6215 of 2000 and contended that though the order of Hon'ble Minister was not implemented at that stage, by the present impugned order it is implemented and in view of the liberty granted by this Court, the Petitioners are challenging the same by way of present petition. He further pointed out that in 1997, the land was allotted to present Petitioner No.1 and the Petitioner is in possession of the said land since then and has therefore become absolute owner of the said land. He submits that no power vested in Government, thereafter deleting the land from the acquisition proceeding. He further submits that the erstwhile land lady has accepted the compensation amount and by the impugned order, entire acquisition proceeding is now sought to be reversed, which is not permissible in law.

7. Per contra, learned A.G.P. submits that the impugned order has been passed as the challenge to restoration of land failed. He submits that the Special Land Acquisition Officer has directed recovery of compensation paid to

the land lady and has executed the order of Hon'ble Minister. He further submits that before this Court in Writ Petition No. 6215 of 2000, it was submitted that the Project Affected Persons from Gat No. 485 will be given another cultivable land of their choice from the landpool or from Gat No. 467 which is also a cultivable land. He submits that as challenge to the order of Hon'ble Minister has failed, there is no warrant for interference.

8. Mr. Kulkarni, learned counsel for Respondent Nos. 1 to 3 submits that position of the land owner is that after the acquisition of Gat No. 485, they made available alternate land Gat No. 467, which was accepted by the State Government. He submits that the agreement was that instead of Gat No. 485, Gat No. 467 would be given which has already been taken by the State Government. He submits that though Gat No. 485 was sought to be restored to the ownership of the land lady, same has not been done and in the meantime Gat No. 467 has also been taken over by the State Government as an alternate land. He submits that in the connected petition, the petitioner is seeking restoration of possession in Gat No. 485 by deleting the names of present petitioners from the mutation entries. He submits that State Government is required to file an affidavit-in-reply clarifying it's stand qua the land lady.

9. We have considered the submissions and perused the record.

10. In so far as the present petition is concerned, the question which arise for consideration is whether any power vested in the State Government through Special Land Acquisition Officer to direct the resumption of possession of the

acquired land which was allotted to Petitioner No.1 in the year 1995 by following due procedure under the Act of 1894. Perusal of the Act would indicate that the only provision under which the Government can withdraw from acquisition is Section 48 of the Act of 1894. Section 48(1) of the Act of 1894 clearly provides that the Government is at liberty to withdraw from the acquisition of any land of which possession has not been taken. Therefore, State can withdraw from acquisition prior to taking possession of the land and once possession is taken there cannot be any withdrawal from acquisition or release of the land in favour of the erstwhile owner.

11. The legal position is settled by catena of judicial decisions of this Court as well as the Hon'ble Apex Court. Despite the settled position of law, the impugned order exercises powers under Section 48 of the Act of 1894, deleting the subject land i.e. Gat No. 485 from acquisition proceedings and dispossessing Petitioner No.1, who has been allotted the land on 19th June, 1995. We do not find the action supported by any statutory provisions. The order of Hon'ble Minister dated 29th September, 2000 accepting the representation of the erstwhile land lady and deleting the acquisition is not supported by any statutory provision and was challenged before the Court. By order dated 22nd June, 2004, this Court deemed it fit not to interfere with the said order in view of the submission canvassed that the State is not going to disposses the petitioners and the order dated 29th September, 2000 has not yet been implemented. This Court, while disposing the petition, granted liberty to the Petitioners to challenge the adverse order made hereinafter. Passing of the

order/letter dated 04th August, 2006 is such action which has been taken implementing the order dated 29th September, 2000 as evident from the contents of order/letter dated 04th August, 2006. The order in effect exercises power under Section 48(1) of the Act of 1894 and admitted position is that in the year 1997, itself the possession was taken and handed over to the Petitioners. There is no power vested in the Stated Government to withdraw from the acquisition proceeding. It is not the case that on lapsing the acquisition as possession has been taken and the same has been accepted by the land lady. The challenge by the erstwhile land lady to the acquisition proceeding filed by way of Writ Petition No. 2306 of 1988 has failed and lands stood vested in State Government and allotted to present Petitioners in the year 1997. The Petitioners cannot be divested of their allotment by the impugned order.

12. In light of the above discussion, we do not find the impugned order/letter being sustainable in the eyes of law. Resultantly, the impugned order/letter dated 04th August, 2006 is hereby quashed and set aside. It is clarified that in so far as the rights of Respondent Nos. 1 to 3 qua Gat No. 467 is concerned, this Court has not made any observation and it is only the validity of order/letter dated 04th August, 2006 which has been considered by this Court.

13. Resultantly, the Petition is allowed. Rule is made absolute.

SUSHANT
SHARAYU
DESHPANDE

Digitally signed by
SUSHANT SHARAYU
DESHPANDE
Date: 2026.11.04
16:49:47 +0530

[ABHAY J. MANTRI, J.] **[SHARMILA U. DESHMUKH, J.]**

SSD