
(2015) 08 BOM CK 0252

In the Bombay High Court

Case No : Writ Petition Nos. 4558 and 5881 of 2011

Kisan Babu Wadekar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Maharashtra Project Affected Persons rehabilitation Act, 1999 — Section 14

Citation : (2015) 08 BOM CK 0252

Hon'ble Judges : Abhay Shreeniwas Oka, J; Revati Mohite Dere, J

Bench : Division Bench

Advocate : S.G. Deshmukh i/by A.M. Joshi and V.K. Bodhare, for the Appellant;
N.P. Deshpande, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Abhay Shreeniwas Oka, J—Submissions of the learned counsel appearing for the parties were heard on the earlier date. In Writ Petition No. 4558 of 2011, the Petitioner has taken an exception to the order dated 2nd March 2010 passed by the District Collector and the order dated 2nd September 2010 passed by the Revenue Commissioner. In Writ Petition No. 5881 of 2011, the challenge is to the order dated 8th March 2011 of the allotment of a land to the Seventh Respondent. With a view to appreciate the submissions made by the learned counsel appearing for the parties, it will be necessary to make a reference to the facts of the case in brief.

2. The Petitioner is a project affected person. The Petitioner's land was acquired for Chaskaman Project, Khed, District Pune. The Petitioner was allotted a plot of land vide order dated 7th February 2000 by way of rehabilitation. The Petitioner is relying upon the document at Exhibit-A to the Writ Petition No. 4558 of 2011. The said document shows that the Petitioner was allotted two portions of the land admeasuring 40 Ares and 80 Ares. In this Petition, this Court is concerned with the area of 40 Ares allotted out of Gat No. 574 (Old Gat No. 841/2) at

Village Koregaon-Bhima, Taluka - Shirur, District - Pune. The document at Exhibit-A shows that under the panchanama dated 3rd March 2000, the Petitioner was placed in possession of both the lands.

3. The Petitioner has pointed out that one Shri Anil Nemichand Bafna and two others (Bafnas) filed a suit against the Petitioner in respect of the said area of 40 Ares bearing Gat No. 574/1 corresponding to the Old Gat No. 841/1. It is contended that the Plaintiffs in the said suit were the owners of the land subject matter of the suit and they had purchased the same under the Sale Deed dated 7th April 1986. The suit was filed by the said Bafnas against the Petitioner for restraining the Petitioner from encroaching upon the land subject matter of the suit.

4. On 2nd March 2010, on the basis of the Application made by the Plaintiffs in the said suit, the District Collector & Deputy Director of the Rehabilitation (Land), Pune passed an order purporting to correct the record of the acquisition proceedings. In the said order, the Collector observed that the Plaintiffs in the said suit have purchased the area of 40 Ares out of the Gat No. 574 which area has been numbered as Gat No. 574/1. The Collector observed that the said area of 40 Ares has been sold by the original owner Shri Babu Bhau Gavhane to the Plaintiffs in the said suit. The said order records that after the sale of the area of 40 Ares out of the Gat No. 574, the area of 1 Hectare and 3 Ares was retained by the original owner. It is stated in the said order that the said area admeasuring 1 Hectare and 3 Ares which remained with the original Bafnas after the sale of the area of 40 Ares to the said Bafnas was acquired under the award dated 28th February 1991 for rehabilitation of the project affected persons of Chaskaman Project. In the said order, the Collector observed that while preparing the plans for the purposes of acquisition, the area of 40 Ares purchased by the said Bafnas was shown as acquired in the acquisition sheet. Therefore, in the purported exercise of powers under Sub-section (1) of Section 14 of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 (for short "the Resettlement Act"), the Collector directed correction of the acquisition sheet. This is the first impugned order which is the subject matter of challenge in the Writ Petition No. 4558 of 2011. Against the said order, the Petitioner preferred an Appeal before the Divisional Commissioner. The second impugned order is passed by the Divisional Commissioner on 2nd September 2010 by which the order of the Collector was confirmed. As far as the Seventh Respondent in Writ Petition No. 4558 of 2011 is concerned, the said Company is the successor of Bafnas.

5. In Writ Petition No. 5881 of 2011, the Petitioner has referred to the aforesaid impugned orders. It appears that on 18th January 2011, the Petitioner made an Application without prejudice to his rights and contentions for allotment of a land out of Gat No. 1123 in the Village - Shikrapur, Taluka- Shirur, District - Pune, admeasuring 40 Ares in lieu of the area of 40 Ares which was allotted earlier to the Petitioner. In the said Petition, a reference has been made even to a further Application made by the Petitioner on 15th February 2011. It is stated that the

Petitioner thereafter became aware that the land which was claimed by the Petitioner was allotted to the Seventh Respondent (Smt. Savitribai Gurav) in the said Petition. The challenge in this Petition is to the order of allotment of the land to the Seventh Respondent therein.

6. As far as the Writ Petition No. 4558 of 2011 is concerned, there is a reply filed by one Shri Sanjeev Shripad Vable on behalf of the Seventh Respondent. There is a rejoinder filed by the Petitioner to the said reply. There is a sur-rejoinder filed by the Seventh Respondent. One Shri Bhausaheb B. Jadhav, the Resettlement Officer, Kukdi Project, Junnar, District-Pune has filed an affidavit dated 22nd February 2012 by which certain lands are offered to the Petitioner. The choice was given to the Petitioner to select any of the lands stated in the affidavit which will be allotted to the Petitioner in lieu of allotment of the area admeasuring 40 Ares out of Gat No. 574. To the said affidavit, the Petitioner has filed a rejoinder. There is an affidavit in sur-rejoinder filed by Shri Bhausaheb B. Jadhav. Lastly, an affidavit was filed by Ms. Sushma Abhay Choudhari, the Resettlement Officer in the Collector's Office at Pune. The Petitioner filed a rejoinder to the said affidavit.

7. The learned counsel appearing for the Petitioner invited our attention to the order dated 2nd March 2010 passed by the District Collector, Pune. He urged that firstly the said order could not have been passed without giving an opportunity of being heard to the Petitioner. The second submission is that by exercising the power under Section 14 of the Resettlement Act, the Collector had no authority to correct the record of the acquisition proceedings. He pointed out that the award under which the area of 1 Hectare and 3 Ares out of the land bearing Gat No. 574 was acquired was made on 28th February 1991. Therefore, after such a long lapse of time, there was no occasion to amend the acquisition sheets. His submission is that apart from the breach of the principles of natural justice, the Collector was powerless to pass such an order. He pointed out that Bafnas had already filed a suit against the Petitioner, and therefore, there was no occasion to exercise any such powers in case of Bafnas. He pointed out the panchanama dated 3rd March 2000 under which the Petitioner was placed in possession of the said area of 40 Ares out of Gat No. 574. He also pointed out the possession receipt which is also signed by the Resettlement Officer. The submission of the learned counsel appearing for the Petitioner is that for the benefit of Bafnas, the entire legal procedure was bypassed and the impugned order of the Collector has been passed.

8. The learned AGP appearing for the State Government mainly relied upon the affidavit-in-reply of Ms. Sushma Abhay Choudhari, the Resettlement Officer. On a query made by this Court about the power of the Collector to pass an impugned order, though the learned AGP could not satisfy this Court that the power under Section 14 of the Resettlement Act could have been invoked, he placed reliance on various provisions of Manual of Land Acquisition for the State of Bombay by Anderson. He submitted that as provided in the said Manual, obvious error in the acquisition sheets can be corrected by the Collector. Relying upon the said

affidavit of Ms. Sushma Choudhari, he urged that the obvious error which has crept in the acquisition proceedings has been corrected, and therefore, no interference is called for. However, on a query made by this Court, he stated that out of the acquired area of 1 Hectare and 3 Ares forming part of the land bearing Gat No. 574, only an area of 63 Ares has been allotted to a third party and out of the said acquired portion of the land, an area of 40 Ares has not been allotted to any one. Accordingly, the learned AGP has tendered an affidavit of the same officer Ms. Sushma Choudhari dated 4th August 2015. The learned senior counsel appearing for the Seventh Respondent supported the action of the State Government and urged that the Petitioner has been already offered an alternate land. He also pointed out that the Petitioner claimed another land which was allotted by the State Government to a third party and that action has been challenged by the Petitioner in Writ Petition No. 5881 of 2011 and therefore, in the Writ Petition No. 4558 of 2011, no interference is called for.

9. We have given careful consideration to the submissions. Firstly we are dealing with the Writ Petition No. 4558 of 2011. The entitlement of the Petitioner for allotment of the land admeasuring 1 Hectare and 20 Ares cannot be disputed by the State Government in view of the letter dated 15th March 2000 annexed to the Petition. It cannot be disputed that the area of 40 Ares out of the Gat No. 574 of the said Village was allotted to the Petitioner. It is also not in dispute that the notification dated 27th July 1988 was issued under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 under which various lands were notified for rehabilitation of the project affected persons in which the area of 1 Hectare and 3 Ares out of the land bearing Old Gat No. 841 was notified and that the said land was accordingly acquired. The award was made on 28th February 1991.

10. It is not in dispute that the Old Gat No. 841 was numbered as New Gat No. 574 which belonged to Babu Bhau Gavhane and two others. It appears that on 17th March 1986, permission was granted by the District Collector to the land owners who sold the area of 40 Ares out of the Gat No. 841 to the said Bafnas and accordingly, a registered Sale Deed dated 7th April 1986 was executed by the original owners in favour of the said Bafnas. The mutation entry No. 1223 which was made on the basis of the said Sale Deed shows that the area of 40 Ares was sold to the said Bafnas was numbered as Gat No. 841/1 and the remaining area of 1 Hectare and 3 Ares continued with the said Bapu Bhau Gavhane and two others which was numbered as Gat No. 841/2. In the affidavit of the said Ms. Sushama Choudhari, the possession panchanama dated 24th July 1991 under which the possession of an area of 1 Hectare and 3 Ares was taken over, has been annexed. In Paragraph 10 of the affidavit, on examination of the acquisition sheets and the description of the property in the Sale Deed dated 7th April 1986, it is stated that the Petitioner was allotted a portion of the land admeasuring 40 Ares bearing Gat No. 841/2 which was sold to Bafnas. Reliance is placed on the acquisition sheet which is marked as Exhibit-10 to the said affidavit. It is contended that the acquisition sheet wrongly showed that the Gat No. 841/1 was allotted to the Petitioner-Allottee.

11. In the affidavit, it is contended that after the Application was made by Bafnas, the Collector called for the report from the Special Land Acquisition Officer as well as the Deputy Superintendent of Land Records. Reliance has been placed on the report submitted by the Special Land Acquisition No. 23 which is dated 12th December 2007. The report records that there is a mistake in the acquisition sheet and, therefore, he recommended that a land out of the actual acquired area should be allotted to the Allottee (the Petitioner).

12. We have carefully perused the report dated 12th December 2007 submitted by the Special Land Acquisition Officer. The Special Land Acquisition Officer has considered the acquisition sheet, description of the property sold to Bafnas and thereafter, he has recorded that out of the acquired land, the Petitioner has been allotted an area of 40 Ares, one Eknath Maruti Gaikwad was allotted an area of 23 Ares and one Shripad Waman Joshi was allotted an area of 40 Ares. This admitted position which emerges is that out of the acquired land of 40 Ares out of the Gat No. 574, the area of 63 Ares was allotted to the other parties and the area of 40 Ares was allotted to the Petitioner.

13. It is true that while passing the impugned order, the Collector has purported to exercise the powers under Section 14 of the said Act which he could have exercised. However, in the second last paragraph of the said order, he has observed that he has come to the conclusion that the acquisition sheet will have to be modified. It is true that in the order dated 1st January 2009, even the Divisional Commissioner has purported to direct the Collector to exercise the power under Section 14 of the said Act.

14. There is material on record to show that there were errors in the acquisition sheet and due to the said errors, the area of 40 Ares which was sold to Bafnas by the original owners on 13th July 1986 was allotted to the Petitioner. Though the Collector may have passed an order in purported exercise of power under Section 14 of the said Act, the direction issued by him to correct the acquisition sheet appears to have been based on the record and based on the report submitted by the Survey Officer as well as by a Special Land Acquisition Officer on examination of the record. The learned AGP pointed out certain provisions of the Manual of Land Acquisition which empower the Collector to correct the acquisition sheet.

15. Therefore, it is not possible to find fault with the orders of the Collector and the Divisional Commissioner. However, the fact remains that out of the acquired land, the Petitioner is entitled to the allotment of an area of 40 Ares. This aspect is clear even from the report of the Special Land Acquisition Officer dated 12th December 2007 which is Exhibit- 13 to the affidavit of the said Ms. Sushma Choudhari. Even as of today, going by the stand taken by the State Government, the area of 40 Ares out of the acquired area of 1 Hectare and 3 Ares is available and the Petitioner is entitled to vacant and peaceful possession of the said area of 40 Ares. From the affidavit of Ms. Sushma Choudhari dated 4th August 2015, a clear stand has been taken by the State Government that the State Government will ensure that the Petitioner is put in possession of the allotted

land admeasuring 40 Ares as per the corrected acquisition sheet.

16. In view of this position, at this stage, we are not disposing of the Writ Petition No. 5881 of 2011 inasmuch as there is no dispute as regards the entitlement of the Petitioner to the allotment of an area of 40 Ares. Thus, we are keeping the said Writ Petition pending which can be disposed of only after the Petitioner is properly put in possession of the area of 40 Ares.

17. Hence, we dispose of the Writ Petition No. 4558 of 2011 by passing the following order:--

ORDER

"(a) The impugned orders in Writ Petition No. 4558 of 2011 are not disturbed;

(b) We hold that the Petitioner is entitled to the vacant and peaceful possession of the area of 40 Ares out of the area of 1 Hectare and 3 Ares acquired out of the Old Gat No. 841 corresponding to the New Gat No. 574 acquired under the Award dated 28th February 1991 made under the Land Acquisition Act, 1894;

(c) We, accordingly, direct the Petitioner to remain present in the office of Tahasildar, Shirur on 31st August 2015 at 11.00 a.m. On that date, the Tahsildar, Shirur shall fix the date and time for demarcation of the area of 40 Ares out of the acquired land admeasuring 1 Hectare and 3 Ares out of the land bearing Gat No. 574;

(d) The demarcation shall be carried out in the presence of the Petitioner and Tahsildar, Shirur by the Deputy Superintendent of the Land Records, Shirur, District - Pune;

(e) The notice of the date fixed for demarcation shall be also served to the Seventh Respondent in Writ Petition No. 4558 of 2011;

(f) After the demarcation of the area of 40 Ares out of the acquired land as aforesaid, the Petitioner shall be placed in the vacant and peaceful possession of the said area of 40 Ares under the panchanama and the possession receipt duly signed by the Petitioner;

(g) Compliance affidavit shall be filed by the Tahsildar, Shirur, District-Pune, on or before 30th September 2015;

(h) Though the Writ Petition No. 4558 of 2011 is disposed of, the same shall be listed on 6th October 2015 under the caption of "Directions" for considering the compliance affidavit;

(i) Depending upon the compliance, appropriate order will be passed in Writ Petition No. 5881 of 2011 which shall be listed on that date;

(j) At the time of demarcation, the concerned officer of the rank of Tahsildar working in the office of the District Rehabilitation, District-Pune, shall be entitled to take police assistance, if necessary;

(k) The Civil Application No. 2531 of 2011 stands disposed of."