

(2011) 04 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 6675 of 2000

Yashwant Barku Donhe

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 36, 4, 48(1), 6

Citation : (2011) 4 ALLMR 84 : (2011) 3 BomCR 689 : (2011) 4 MhLj 244

Hon'ble Judges : U.D. Salvi, J; D.B. Bhosale, J

Bench : Division Bench

Advocate : G.S. Godbole, for the Appellant; V.S. Gokhale, AGP for Respondent Nos. 1 to 4, for the Respondent

Judgement

U.D. Salvi, J.

1 The Petitioners father was project affected person, whose agricultural land at Mouje Bhugaon, Taluka Mulshi, District Pune, was acquired for the purpose of Veer Baji Pasalkar Dam and in lieu thereof was allotted a land at Mouje Manjari, Taluka Haveli, District Pune, admeasuring 80 Ares out of Gat No. 50/1K/2 (for short the said land) by an order dated 31st December, 1987. By this writ petition, the Petitioner has impugned the orders dated 19th December, 1989 and 26th October, 1999 passed by the Respondent No. 1 Additional Commissioner, Pune Division, Pune, deleting the said land at Mouje Manjari from acquisition, and consequently, setting aside the order dated 31st December, 1987 of the allotment in favour of the Petitioners father of the said land.

2 Rule was issued on 23rd January, 2002. The Respondent Nos. 1 to 4 appeared and are represented by the Additional Government Pleader. Learned Advocate Shreepad Deshmukh filed appearance on behalf of Respondent No. 5. Affidavit-in-reply of Mr. Suraj D. Mandhre, District Resettlement Officer, Pune _ Respondent No. 2 herein was tendered.

3 Material facts laid bare in para Nos. 3 and 4 of the affidavit-in-reply dated 25th

January, 2001 of Mr. Suraj D. Mandhre, District Resettlement Officer, Pune, concerning the matter in issue are reproduced herein below:

3. I say that following is the chronology of events as can be seen from the record.

1) Section 4 notification dated 7-4-1972 Section 6 notification dated 14-11-1973 Declaration of award dated 10-3-1976 Mutation entry denoting possession dated 29-9-1983

2) Date of allotment of land to Project Affected Person dated 31-12-1987 Mutation entry denoting handing over possession to Project Affected Person dated 17-9-1993

3) Date of deletion order of Additional Commissioner, Pune dated 19-12-1989.

4. I submit that in the year, 1989, the original land owner filed application before the Additional Commissioner, Pune for deletion of his lands. After perusing the record, the land was deleted by the Additional Commissioner, Pune vide his order dated 19-12-1989. This order was again considered by the same authority. It has been maintained vide order dated 26-10-1999.

4 Drawing attention to Section 48(1) of the Land Acquisition Act, 1894, learned Advocate Shri G.S. Godbole for the Petitioner submitted that in the instant case as revealed through the affidavit in-reply dated 25th January, 2001 and the order of allotment dated 31st December, 1987 coupled with kabjepavati dated 14th July, 1988, the possession of land at Mouje Manjari allotted to the father of the Petitioner was actually handed over to the allottee much before the deletion order dated 19th December, 1989 and the order of the Additional Commissioner, Pune Division, dated 26th October, 1999 and as such the Government had no authority in law to withdraw from the acquisition of the said land and pass the deletion order. He further submitted that the father of the Petitioner was a beneficiary in respect of the said land at Mouje Manjari as a project affected person and it was incumbent upon the State not to have withdrawn from the acquisition without hearing his father. In support of this submission, he relied upon the judgments reported in M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, . (2001) 1 SCC 610 State Govt. Houseless Harijan Employees Association v. State of Karnataka and Ors. 2006 (4) MLJ 453 Gram Panchayat, Burambali, Kolhapur v. Collector, Kolhapur and 2009 (111) BLR 1939 Pimpri Chinchwad v. The State of Maharashtra and Ors..

5 Section 48(1) of the Land Acquisition Act, 1894 is a clear guide in instant case. It reads as under:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -

(1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(emphasis supplied)

6. Order dated 31st December, 1987 at Exhibit-A to the petition reveals that the father of the Petitioner Barku Gopal Donhe was a project affected person whose land at Mouje Bhugaon, Taluka Mulshi, District Pune, was acquired for the purposes of a dam and in lieu thereof a land admeasuring 80 Ares out of the Survey No. 50/1 Part at village Manjari, Taluka Haveli, District Pune was allotted to him. Kabjepavati dated 14th July, 1988 reveals that the possession of the said land at village Manjari was physically handed over to the allottee (father of the Petitioner) in the presence of the panchas through one of the accepted modes of taking possession of the land. The fact of handing over possession was accordingly entered in the Revenue Records. Thus, the possession of the said land was no more with the Government but with the allottee much before the deletion order was passed. It can also be seen that the acquisition of the said land was complete inasmuch as the Government has taken possession of the said land from its erstwhile owner pursuant to the award u/s 11 of the Land Acquisition Act, 1894, and it made mutation entry in the record as back as 29th September, 1983 of the said fact. Obviously, the Government could not have withdrawn from the acquisition of the said land by just passing the impugned orders deleting the said land from the acquisition. Whether the notice of the proposed deletion of the said land from the acquisition was served on the father of the Petitioner beneficiary of such acquisition or not is of a little consequence in view of clear mandate of law in Section 48(1) of the Land Acquisition Act, 1894.

7 In this view of the matter, Rule is made absolute. Orders dated 19th December, 1989 and 26th October, 1999 passed by the Additional Commissioner, Pune, Division Pune, are quashed being illegal and void. Order dated 31st December, 1987 allotting the said land admeasuring 80 Ares out of Survey No. 50/1Pt., Village Mouje Manjari, Taluka Haveli, District Pune, is confirmed. No order as to costs.