



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4022 OF 2021

Manik Chandru Deokar,

Age 78 years, Occupation : Agriculturist,

Residing at : Sugaon Khed Bhose,

Taluka : Pandharpur, District : Solapur.

...Petitioner

Versus

1. **State of Maharashtra,**
Through the Secretary,
The Ministry of Revenue and Forest,
Mantralaya, Mumbai.
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil Procedure, 1908)
2. **The Divisional Commissioner,**
Pune Division, Pune.
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil Procedure, 1908)
3. **The District Rehabilitation Officer,**
Solapur, District – Solapur.
(Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4, of the Code of Civil Procedure, 1908).
4. **The Additional Collector and Deputy Director
(Rehabilitation), Solapur,**
District – Solapur.

(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908).

5. **Dattatray Mohan Deokar**,
Age: Adult, Occupation: Business and Agriculturist,
Residing at: Post Sugaon Bhoose,
Taluka: Pandharpur, District: Solapur. ...Respondents

Mr. Sandeep M. Pathak for the Petitioner.

Mr. Sachin H. Kankal, AGP for the Respondent (State).

Mr. Sandeep S. Salunkhe for Respondent No.5.

CORAM : **G. S. KULKARNI,
JITENDRA JAIN, J.J.**

RESERVED ON : **13th SEPTEMBER, 2023.**
PRONOUNCED ON : **30th OCTOBER, 2023.**

JUDGMENT (Per Jitendra Jain, J.):

1. By this petition under Article 226 of the Constitution of India, the Petitioner prays for quashing of the orders dated 17th December 2019 and 24th November 2015 passed by Respondent No. 4, by which allotment of land No.82 admeasuring 2500 sq.ft. is sought to be cancelled. He further prays for issuance of writ of mandamus for allotment of balance land of 1500 sq.ft., as the Petitioner is entitled for 8000 sq. ft. land and he has been allotted only 6500 sq.ft. till date, in lieu of the Petitioner's land acquired long back.

2. Narrative of the relevant events :-

- (i) The Petitioner's land and residential house situated at village Sugaon, Khed Bhoose, Taluka Pandharpur, District Solapur was acquired for Ujjani Dam Project. The family of the Petitioner consisted of 15 persons. The Petitioner, therefore, was entitled to alternate land admeasuring 8000 sq.ft. under the Maharashtra Resettlement of Project Displaced Persons Act, 1976 as further replaced by the 1989 Act and 1999 Act (for short "Resettlement Act").
- (ii) In the year 1976, the Petitioner was first allotted plot, being Plot No.82 admeasuring 2,500 sq.ft. at village Sugaon, Khed-Bhoose, Taluka Pandharpur, District Solapur, but possession of this plot was handed over in the year 1989, i.e., after 13 years. The official translation of relevant extracts of letter dated 6th February 1976 allotting Plot No.82 imposing conditions reads thus:

Conditions:

- (1) The price for getting possessory right of the said plot which will be determined as per Government Resolution, General Administration Department No. R.PA.1070 Occupancy/ Ra-1, dated 4-9-71, shall be paid in lump-sum, within 30 days from the date of its demand.*
- (2) The agreement should be executed in the format prescribed in the Government Resolution, General Administration Department No. R.PA./1067 / Ra-1, dated 11-1-71.*
- (3) The Occupant shall not transfer plot allotted to him in the gaathan area, without obtaining prior permission from the*

Collector, Solapur.

- (4) The Occupant should construct house within a period of one year.*
- (5) If it is found that the Occupant is not dam affected person, the plot which is allotted to him, will be withdrawn.*
- (6) The loan taken for the house in the new gaonthan area situated at Sugaon in Taluka Indapur as per the above mentioned Government Order, will be transferred to the plot being allotted under this Order and recovery thereof shall be made as per the Rules.*

If any of the aforesaid conditions is violated and if the compliance in respect thereof, is not made, the Collector, Solapur shall take further action as per the provisions prescribed in the Law and shall revoke the right, title and interest to the said plot.”

(emphasis supplied)

- (iii) In the year 1996, the Petitioner was allotted second plot, being Plot No.12, admeasuring 4,000 sq.ft. at village Sugaon Khed Bhoose, Taluka Pandharpur, District Solapur. The second allotment in the year 1996 was almost after 20 years from the date of acquisition of the Petitioner's land.
- (iv) However, the balance 1,500 sq.ft. land (8000-2500-4000) still remains to be allotted to the Petitioner as of today, which is one of the prayers made in the present petition.
- (v) On 14th May 2015, Respondent No.5–Shri. Dattatray Mohan Deokar (not related to the Petitioner in any manner as we are informed that most of the people residing in that area have similar

surname) filed a complaint with Respondent Nos. 3 and 4, alleging that the Petitioner has not constructed the house on Plot No.82, admeasuring 2,500 sq. ft. and, therefore, the said allotment of 2,500 sq. ft. should be cancelled.

- (vi) On 24th November 2015, Respondent Nos.3 and 4 passed an order cancelling the allotment of Plot No.82, admeasuring 2,500 sq. ft. on the ground that the Petitioner has not constructed house on Plot No.82 admeasuring 2500 sq. ft. and thereby violated condition no.4 of order dated 6th February 1976.
- (vii) The aforesaid order was challenged in review application filed by the Petitioner and was also a subject matter of Writ Petition No.2161 of 2018. However, the said writ petition was withdrawn since the Petitioner had availed the remedy of review.
- (viii) On 6th July 2019, the Divisional Commissioner, Pune, in review, remanded the proceedings back and directed Respondent No.4 to make inquiries in respect of the following three issues, namely:-
- (a) The number of family members of the Petitioner on the date of publication of Notification under Section 4 of the Land Acquisition Act, 1894.
 - (b) Permissible plot area as per G.R. dated 12th July 1978 to which the Petitioner would be entitled, and;
 - (c) Reconsideration of order passed on 24th November 2015.

(ix) Pursuant to above, Respondent No.4 passed the impugned order dated 17th December 2019 by giving following findings on each of the above three issues:-

- (a) On the date of Notification under Section 4 of the Land Acquisition Act, 1894, the family of the Petitioner comprised of 15 persons.
- (b) The Petitioner is entitled to 8,000 sq. ft. in lieu of the acquisition of the land.
- (c) The Petitioner has violated condition no.4 of order dated 6th February 1976 which required the Petitioner to construct the house on Plot No.82, admeasuring 2,500 sq.ft. within one year of its allotment and, therefore, the allotment of 2,500 sq.ft. land stands cancelled.

3. It is on such backdrop that the present petition is filed challenging the order dated 17th December 2019 cancelling the allotment made in the year 1976 of Plot No.82, admeasuring 2,500 sq.ft. for violation of condition No.4 of the order of allotment dated 6th February 1976.

4. Heard Mr. Pathak, learned counsel for the Petitioner, Mr. Kankal, learned AGP and Mr. Salunkhe, learned counsel for respondent no. 5 and with their assistance, we have perused the documents annexed to the petition.

Submission of the Petitioner :-

5. At the outset, the Petitioner submitted that as per Condition No.4 of the order dated 6th February 1976, the occupant should construct the house within a period of one year and failing, which the right, title and interest to the said plot would be revoked, is arbitrary, unconstitutional and without jurisdiction, since such power is not conferred by the Maharashtra Project Affected Persons Rehabilitation Act, 1976 as replaced in the years 1989 and 1999. Secondly, the Petitioner's family consisted of more than 15 persons and, therefore, the plot area of 2,500 sq.ft. was not sufficient to construct a house to accommodate all these members, who were living under one roof. The Petitioner, therefore, constructed house on the second plot, i.e., Plot No.12, admeasuring 4,000 sq.ft., which was allotted in the year 1996. Furthermore, where Plot No.82 admeasuring 2500 sq.ft. was allotted, it was not having basic civic amenities as also essential facilities like, education, transport, water, etc. and, therefore, they could not construct a house on the said plot. The Petitioner submitted that had the State allotted one full plot of land admeasuring 8,000 sq. ft. in that event, it would have been possible for the Petitioner to construct the required house on such plot to accommodate all the members of the family under one roof. The Petitioner also contended that as against the entitlement of 8,000 sq. ft., the Petitioner was allotted only 6,500 sq.ft.

and, therefore, the Petitioner is still deprived of 1,500 sq.ft. of land till today. The Petitioner also contested the locus of Respondent No.5 and it is his submission that the impugned action smacks of malafides at the behest of Respondent No.5, who has no locus to make a complaint.

Submission of the Respondents :-

6. Respondent No.5 contended that the Petitioner has violated Condition No.4 of the order dated 6th February 1976 by not constructing house on plot no.82 admeasuring 2,500 sq.ft. and, therefore, the allotment should be cancelled. Respondent No.5 further stated that this fact of non-construction of house was not brought to the notice of Respondent Nos.3 and 4 at the time of allotment of 4,000 sq.ft. and, therefore, there is a fraud played by the Petitioner in getting allotment of Plot No.12, admeasuring 4,000 sq.ft.

7. Learned counsel for the State adopted the submissions made by Respondent No.5 and prayed that the cancellation of allotment of Plot No.82, admeasuring 2,500 sq. ft. is justified and in accordance with law. Respondents have also relied upon the affidavit-in-reply in support of their aforesaid contentions.

8. On the above conspectus, the question which would fall for determination are:-

- (1) Whether order of cancellation dated 17th December 2019 of Plot No.82 admeasuring 2500 sq.ft. on the ground of violation of Condition No.4 of order dated 6th February 1976 is illegal, unfair, arbitrary, unreasonable and without jurisdiction and more particularly in case of beneficial allotment to project affected persons?
- (2) Whether Respondent-State is justified in not allotting balance 1500 sq. ft. of land?

Analysis and Conclusion :-

9. **On Question No.1** :- Insofar as the cancellation of Plot No.82 admeasuring 2500 sq. ft. is concerned, whether Respondent No. 4 was justified in cancelling the allotment of Plot No.82 admeasuring 2500 sq. ft., the only reason given in the impugned order is that the Petitioner had not constructed the house on the said plot within one year from the date of allotment and therefore, there has been a violation of Condition No.4 specified in the order dated 6th February 1986.

10. The object and purpose in rehabilitating a person like the Petitioner by allotting him the alternate land in lieu of his land being acquired for a public project is purely on special and humanitarian considerations and not merely to compensate him as in a normal case of land acquisition. It is for such beneficial reason and only with such

intention that the person who stands uprooted from his land is rehabilitated by allotment of land, is sought to be achieved. The object being to mitigate the extreme hardship which was faced by such persons whose lands have been taken away. This would certainly not contemplate imposing of a condition which would take away the benefits of such rehabilitation, and in fact would subject such person to a coercive taking away of the alternate land allotted to him. In short, such condition imposed in allotment of land, to the project affected persons so as to expropriate the land allotted to a person, to rehabilitate him would certainly not stand the test of reasonableness, when tested on the anvil of Article 14 of the Constitution. This apart we wonder as to how it can be reasonable for any person as a mandate to construct a house within one year. This has to be subjective. It may not be possible for everyone to construct a house within one year. Further the State-Respondent has not been able to show any policy or any provision under the Rehabilitation Act which empowers the State to impose such condition in the context of rehabilitation. Therefore, imposition of such condition in the allotment order issued by the Collector was without jurisdiction. Moreover, having any such condition and revoking the allotment on such condition would not only be draconian but also arbitrary, unfair, unreasonable and contrary to the object of the Resettlement Act. Thus, in our considered opinion, imposing a

condition to foist on the Petitioner to undertake construction within one year of the allotment, would be on the face of it arbitrary and unreasonable condition. In any case, such a condition could not have been implemented after 40 years of allotment of the land and that too on a complaint of Respondent No.5, who in no manner was concerned with the allotment of the land to the Petitioner. Acting on such complaint itself, was a colourable exercise of power, discriminatory, unjust and arbitrary action on the part of the Respondent No.4. In fact by resorting to such action, the very object and purpose of resettlement/rehabilitation would stand defeated and destroyed in the facts of the present case.

11. Be that as it may, the Respondent-State in the first place for a period of 40 years, never bothered to implement any such condition. It could not have been implemented. The Respondents have also not disputed the reasons given by the Petitioner for non-construction of a house on the Plot No.82 admeasuring 2500 sq.ft., that is, on account of lack of basic amenities, the plot size being small, considering the number of family members, the house could not be constructed. For such reason the Petitioner has constructed house on Plot No.12 admeasuring 4000 sq.ft., which was not questioned by the Respondents in any manner and therefore it cannot be said that the Petitioner had not complied the condition of construction of a house or there was non-

compliance of condition no.4 as contained in the order dated 6 February, 1976, moreso when the Petitioner has not been allotted a contiguous (single) plot of 8000 sq.ft.

12. We also do not agree with the reasons as set out by Respondent No.4 for cancellation of the Petitioner's allotment of Plot No.82 admeasuring 2500 sq. ft., that while getting allotted Plot No.12 admeasuring 4000 sq. ft., the Appellant has not disclosed non-compliance of the condition of non-construction of house on Plot No.82. The impugned order itself records that it is not clear whether the Petitioner has given false information to the Government for allotment of Plot No.12. In view of what is observed hereinabove, Plot No.82 was not sufficient to accommodate all the family members of the Petitioner as also it lacked the basic civic amenities and as held by us such condition therefore was not applicable. Thus, one cannot say that there is any false information given by the Petitioner at the time of getting allotment of Plot No.12 admeasuring 4,000 sq. ft.

13. We may state that the genesis of the present proceedings initiated against the Petitioner appears to be at the behest of Respondent No.5, who appears to be the architect behind the initiation of the impugned action. It is only after the complaint of Respondent No.5 that the officer (Respondent No.4) of the Respondent-State, who

had not taken any action for a period of almost four decades on this issue, happened to have woken up. We fail to understand the locus of Respondent No.5 to make a complaint, though he is not related to the Petitioner nor he claims any entitlement to the land in question which is allotted to the Petitioner. The intention of Respondent No.5 to make such complaint does not appear to be bonafide or in any public cause. As to how the State and its officers could act upon and succumb to Respondent No.5's complaint and that too after almost 4 decades is a mystery. It is not the case that the State Government and in the manner known to law had suo-moto initiated action, which if at all would certainly include an action to be taken within a reasonable time. Thus, as to how such drastic action could not have been initiated against the Petitioner at the behest of Respondent No.5.

14. **On Question No.2** :- Insofar as the claim of the Petitioner for allotment of 1500 sq. ft. is concerned, it is an admitted fact as evident from paragraph 2 of the order dated 17th December 2019 passed by the Collector, Solapur that the Petitioner is entitled to 8000 sq.ft. of the land in lieu of the acquisition. It is also an admitted fact that as of today, the Petitioner has been allotted two different plots of the land aggregating 6500 sq.ft. (Plot No.82 admeasuring 2500 sq.ft. and Plot No.12 admeasuring 4000 sq.ft.). Therefore, as of today, against the entitlement of 8000 sq.ft., the Petitioner has been allotted only 6,500

sq.ft. There is no reason given in the reply affidavit of the Respondent-State as to what is the justification for not allotting balance land of 1500 sq.ft. The entitlement of the Petitioner to the allotment of balance 1500 sq. ft. of land is not in dispute. It cannot be indefinitely postponed without any justification by the State, which itself is unfair and unreasonable. The Respondent-State have admitted the entitlement of the Petitioner to 8000 sq.ft. of land. The Respondent State has acted upon the same by allotting two plots aggregating 6500 sq.ft., however there is no reason given for withholding balance allotment of land of 1500 sq.ft. Therefore, the Petitioner is justified based on doctrine of legitimate expectation to seek allotment of the balance land. The Petitioner is entitled for allotment of balance plot area admeasuring 1500 sq. ft. as prayed for in prayer clause (b) of the petition.

15. In the light of the above discussion, we allow the writ petition in terms of the following order.

O R D E R

- (i) The impugned order dated 17th December 2019 is as much as it cancels allotment of Plot No.82 admeasuring 2500 sq. ft. for non-compliance of Condition No.4 of 6th February 1976 order is quashed and set aside;
- (ii) The State-Respondent is directed to allot 1500 sq. ft.

balance plot area to the Petitioner within a period of 12 weeks from today;

(iii) Petition is disposed of in terms of the above order. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]