

(2024) 10 BOM CK 0008

Bombay High Court

Case No: Writ Petition No. 3592 Of 2022

Dagdabai Vitthal Kadam

APPELLANT

Vs

State Of Maharashtra Thr The
Revenue And Forest Dept And Ors

RESPONDENT

Date of Decision: Oct. 25, 2024

Acts Referred:

- Wild Life (Protection) Act, 1972 - Section 18, 18A, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 33A

Hon'ble Judges: G. S. Kulkarni, J; Somasekhar Sundaresan, J

Bench: Division Bench

Advocate: Ketan Shinde, Ranjit D. Shinde, P.J. Gavhane

Final Decision: Disposed Of

Judgement

Somasekhar Sundaresan J

1. Rule. Rule made returnable forthwith. With the consent of the parties, Writ Petition is taken up for final hearing and disposal since pleadings are complete.

Factual Matrix :

2. This is a Petition essentially seeking a direction against the District Rehabilitation Officer/District Collector, Satara, Respondent No.2 ("Respondent No.2") for allotment of alternate land admeasuring 300 sq.ft. on the premise that the Petitioner is a project affected person of the Koyna Wildlife Sanctuary Project ("Project"). The Petitioner's late husband was the original owner of a house bearing no. 30 situated at Village Zhadoli (Ambeghar), Taluka Patan, District Satara admeasuring 300 sq.ft. which came to be acquired for purposes of the Project under the Wildlife (Protection) Act, 1972 ("Wild Life Act").

3. The Petitioner's case is that she had been living for almost 60 years in the said property prior to losing her house, when it was taken over in 2012, pursuant to the acquisition. The Petitioner's three step-sons also handed over their respective agricultural and non-agricultural properties for the Koyna Project, the Petition states, as did various project affected families who were rehabilitated under the Rehabilitation Program pursuant to the acquisition. The Petitioner's grievance is that she has neither received any alternate land nor any other accommodation. In fact, the Petitioner's grievance is that her name was not even included in the list of project affected persons.

4. Various written and oral representations seeking allotment of alternate land or accommodation having failed, the Petitioner has filed this Petition. A complaint was filed by the Petitioner with the Lok Ayukta of the State. In proceedings before the Learned Lok Ayukta, Respondent No.2 submitted that the three step-sons have been paid compensation and granted alternate accommodation, and since the Petitioner was purportedly living with them, it would be inappropriate to give her the benefit of rehabilitation. Consequently, the Learned Lok Ayukta closed the complaint of the Petitioner without any directions.

5. It is Petitioner's case that the compensation and accommodation granted to the three step-sons relate to their respective properties and had nothing to do with the Petitioner's land and residential property thereon. According to Petitioner, who the Petitioner was living with, is totally irrelevant, when the question to be considered is whether the Petitioner was entitled to compensation and rehabilitation in respect of the land that she had occupied as a house. In any case, it is her case that she was not living with her step-sons, and at an advanced age, she has been forced to live at the mercy of her brother.

6. According to the Petitioner, the contention of Respondent No.2 that giving her alternate accommodation may be "inappropriate" is clever word play, which obfuscates addressing her legal entitlement under the Wild Life Act. The Petitioner has annexed records of the Gram Panchayat from the year 2009-10 to demonstrate that the residential property in question admeasuring 300 sq.ft. was in her name and it should be reasonable and logical that she must get compensation for the same. Likewise, the Petitioner has also annexed records to show other properties that had been standing in the name of her step-sons at the relevant time which would point to the compensation and other benefits granted to them being demonstrably for other properties and not in respect of the property of the Petitioner, which has been acquired for the Project.

7. The journey of this Petition is littered with multiple attempts by various benches of this Court attempting to enable the State resolving the grievance of the Petitioner. On October 11, 2023, an order was passed directing the Respondents to reconsider their

stance and after examining the claim of the Petitioner (by then a 92-year old widow), to pass an appropriate order. The Respondents passed an order dated October 16, 2023 rejecting the Petitioner's claim.

8. The Petition was then amended to bring such order of rejection on record to show that the rejection is on the ground that:- (a) the Petitioner's name does not appear in the village records prior to 1985; and (b) alternate land was given to the step-sons of the Petitioner.

9. The Petitioner's case is that she had inherited the house from her late husband who passed away in 1998 and therefore there can be no question of her name being in the village records prior to 1985. According to her, the village itself was established and recognised in 1998 and the village records were prepared for the first time in 2001, and indeed the Petitioner's name is reflected in the records as the owner of 300 sq.ft. of land with a house on it.

10. In these circumstances, the Petitioner has prayed that the rejection order dated October 16, 2023 be quashed and set aside and that the Respondents be directed to allot alternate land to the Petitioner along with monetary compensation for construction of a residential house.

Review and Analysis :

11. We have heard Mr. Ketan Shinde along with Mr. Ranjit Shinde, Learned Counsel on behalf of the Petitioner and Ms. P.G. Gavhane, Learned Additional Government Pleader on behalf the Respondent State.

12. It is seen from the record that the primary stance of the Respondents is that the Petitioner is not entitled to any compensation or alternate land since the Petitioner's name did not stand in the list of project affected persons owning any property as of October 10, 1985, which was the "appointed date" for purposes of the Project.

13. We have examined in detail, the pleadings of the parties filed through the journey of these proceedings. In the Respondents' affidavit-in-reply dated June 28, 2022, they acknowledge that the Petitioner's name indeed stood in the Gram Panchayat records from 1998 but that such records would not help since the appointed date for the acquisition was October 10, 1985. Consequently, according to the Respondents, this development deserves to be ignored. The Respondents affirm that the Petitioner and her step-sons are treated as a "single unit" entitled to an alternate plot. However, from the affidavit in reply it is apparent that three distinctly numbered plots have been allotted to the three step-sons in Survey No.227/2 of Village Palus, Dist. Sangli, admeasuring 370 sq.mtrs. each.

14. In rejoinder, vide an affidavit dated October 3, 2022, the Petitioner has submitted that Section 20 of the Wild Life Act provides that after the issuance of a notification, no right may be acquired in land covered by the notification except by succession, testamentary and intestate. According to the Petitioner, since the statute itself recognises an exception of inheritance, and the Petitioner's case has always been that the land came to her name upon the demise of her husband in 1998, the stance of the Respondents is very causal and untenable. The Petitioner contends that the order dated October 16, 2023 did not contain any logical reasons and the reasons are sought to be improved upon by way of an affidavit, which itself contains untenable reasons. The Petitioner has also submitted that there is no provision of law entailing the concept of treating her step-sons and her as a "single unit".

15. In a subsequent affidavit dated February 17, 2023, the Petitioner has brought on record the house tax receipts, the extracts of land records from the Gram Panchayat, the gift-deed executed by her step-sons in favour of the Government in respect of their own properties and attempted to demonstrate that her property is distinct from the properties of her step-sons. In response, an additional affidavit has been filed on behalf of the State on September 8, 2023, stating that seven names had been shown as the family unit of the Petitioner's late husband, namely, two wives, three sons and two daughters. It is also stated that Gram Panchayat Form No.8 for the years 1985-86 to 1989-90 were inspected, but no record was found in the name of the Petitioner even while confirming that the Gram Panchayat records were initiated only in the year 2001-02. Such records indeed reflect the name of the Petitioner as the owner of House No.30. A mutation Entry No.178 dated July 26, 1994 points to the three step-sons being included as heirs as per the report of the Tehsildar, which according to the Respondents, would show the entitlement of the step-sons to being given compensation for acquisition of the property.

Wild Life Act and Land Acquisition:

16. Before dealing with the contentions of the parties, it would be important to examine the scheme of the Wild Life Act in order to understand the framework of land acquisition as compared with other laws governing land acquisition. Under Section 18, the State Government may declare its intention to constitute any area other than an area within any reserved forest if it considers that such area is significant for the purpose of protecting, propagating or developing wild life. Such notification would need to specify as nearly as possible, the location and the limits of such area and it would be sufficient to describe the area by reference to roads, rivers, ridges and other well known and readily intelligible boundaries.

17. Under Section 18A of the Wild Life Act, when such a notification is issued, the provisions of Sections 27 to 33A would come into effect forthwith, which essentially

deal with restrictions on entry, prohibition on construction without permit, causing fire, entry with a weapon, usage of injurious substances such as chemicals and explosives, initiation of control measures, and mandatory immunization of life stock in a radius of 5 kilometers, with prohibition on grazing of live stock that is not immunized.

18. Sections 19 to 24 of the Wild Life Act deal with resettlement of affected persons. Until the rights of the affected persons are settled, under these provisions, it would be the responsibility of the State of make alternative arrangements for making fuel and other forest produce available to the affected persons. Under Section 19, once a notification is issued under Section 18, the Collector must enquire into and determinate the existence of any person in the land comprised within the limits of the sanctuary. Section 20 essentially bars acquisition of new rights after a notification has been issued under Section 18 except for inheritance and succession. Under Section 21, the Collector is required to issue a proclamation calling for filing of claims of rights for which compensation would be required. Thereafter, the Collector is meant to conduct an enquiry into such claims under Section 22 and such enquiry must include even determining the existence of any right that may not have even been claimed under Section 21. Towards this end, regard should be had to records of the State Government and the evidence of any persons acquainted with the same. Under Section 24 of the Wild Life Act, the Collector is required to adjudicate and pass an order admitting or rejecting the claims.

Petitioner 's Evident Entitlement:

19. It will therefore be seen that the exercise of land acquisition for purposes of the Wild Life Act is designed differently from the conventional provisions of land acquisition laws that are generally used for acquiring land for various stipulated public purposes. In the facts of the instant case, it is common ground that while the notification may have been made with the appointed date being in 1985, the actual acquisition occurred much later, in 2012. There was no formal village and records of the village until 2001-02 but after such records started being maintained, the Gram Panchayat's records indeed showed the Petitioner as the owner of the house in question. It is also common ground that on the appointed date of the notification, the Petitioner's husband was alive and he expired in 1998 leading to the Petitioner inheriting the same – a matter explicitly envisaged and covered by Section 20 of the Wild Life Act. All these are events between 1985 and 2012.

20. It is in 2012 that the residents of the village were shifted and rehabilitated from Satara District to Sangli District. Right since 1998, the Petitioner was indeed and evidently the owner of the land and the house thereon, which were acquired for the Project. It is also apparent that right since 2010 the Petitioner has been corresponding with the Respondents on the issue, indicating that the Petitioner has been vigilant and

has not slept over her rights. Indeed, the records of the village and the Respondents' own affidavits confirm that the name of the Petitioner came to be entered in the land records of the Gram Panchayat as an owner of the property in question since 1998 well before the actual relocation of the village and the acquisition took place in 2012.

21. We are unable to agree with the stance of the Respondents that the inheritance by the Petitioner is in any manner in conflict with Section 20 of the Wild Life Act, as argued by them in their affidavits. Section 20, which prohibits acquisition of interest in notified land, explicitly provides for interests in the course of succession being permissible acquisitions. The provision is meant to prevent third party rights intervening into land notified for a sanctuary. This Section explicitly provides for inheritance of existing rights by successors. It is noteworthy that the late husband of the Petitioner was the owner of the said property in 1985. Upon his demise, the property evidently moved to the name of the Petitioner. The rights of the late husband flowed to the Petitioner, upon his demise in 1998. The village started maintaining land records in 2001-02 and the Petitioner's entitlement is evident and clear, as the owner of the house.

22. It is also seen from the record that separate units of property stand in the name of each of the step-sons. Although the Respondents have sought to propound a "single unit" theory about a family being entitled to one unit, it is a matter of record from the Respondents' affidavits that each of the step-sons has been identified as a distinct allottee of a distinct and individual unit of alternate property.

23. There is nothing in the Wild Life Act which supports the theory propounded by the Respondents that all family members would be treated as a "single unit" for purposes of grant of rehabilitation. Each of the step-sons being given a specific separate unit conflicts with the propounded theory of treating all family members as a single unit. The affidavit of the Respondents also demonstrates that from the Gram Panchayat's records and the Tehsildar's records, the Petitioner was indeed the wife of her late husband Mr. Vitthal Kadam. Such evident facts, coupled with the inheritance of the residential unit in question, would point to the fact that anything that the late husband would have been entitled to (had he been alive) would be the entitlement of his successors.

24. Consequently, evidently, the Petitioner has made out a case for her entitlements in lieu of her property that was taken away under the Wild Life Act, and the same needs to be enforced. We are conscious of the fact that at the ripe age of 92, the Petitioner has had to run from pillar to post and has not received any firm response supported by law to explain why she would not be entitled to being rehabilitated. Instead, notions of whether her rehabilitation would be "appropriate" based on a "single unit" theory for every family have been claimed by the Respondents. The individual units would be the individual parcels of land, for which rehabilitation in the form of alternate land would

have to be provided. As and when it became necessary for land records to be kept by the village, the village records recognised the entitlement of the Petitioner. That cannot be wished away by pointing to an appointed date of 1985 to deny the Petitioner her rights and entitlements under the law.

25. The scheme of the Wild Life Act too gives flexibility to the Collector to take into account ground realities – evidently, considering that the land would be in the vicinity of a forest and may not have demarcations as would be normally seen in other cases of land acquisition. We find that the scope of the power of the Collector to do justice and the flexibility to deal with the factual situation on the ground is expansive in the Wild Life Act as compared with other land acquisition law. Instead of exercising such power, which it is a duty to do, the Respondents have gone to great lengths to deny relief to the Petitioner and to bring up notions alien to law.

Summary and Directions :

26. To summarize, we pass following directions :-

- i) the step-sons of the Petitioner have been given individual units, which point to them not being treated as a “single unit” and in lieu of their individual properties, leading to their rehabilitation in their respective units;
- ii) the Petitioner was indeed the spouse of the person whose entitlement to rehabilitation is admitted and recognised by the Respondents. Her direct ownership rights arose when her late husband passed away, and that event cannot be used by the Respondents to state that she was not entitled in 1985, without regard to what transpired since then and before the actual shifting of the village took place;
- iii) the Petitioner is entitled to rehabilitation by provision of land in Sangli in the same manner that others in the same village have been rehabilitated. The Petitioner ought to be allotted land in Village Palus, Dist. Sangli, admeasuring 300 Sq. Ft., with a house on it.

27. We direct that the aforesaid allotment of land admeasuring 300 Sq. Ft. with a dwelling unit be provided urgently to the Petitioner. Considering that the Petitioner is said to be of 92 years of age already, we direct that the direction be carried out within a period of 12 weeks from the date of this order being uploaded on the website of this Court.

28. Rule is made absolute in the aforesaid terms. The Writ Petition is disposed of in the aforesaid terms. No costs.