
Sushilaben widow of Shanabhai Patel Vs State of Maharashtra

Criminal Writ Petition No. 632 of 2014

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Sept. 22, 2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) - Section 154#Land Acquisition Act, 1894 - Section 11#Penal Code, 1860 (IPC) - Section 34, Section 427, Section 447

Citation: (2017) ALLMRCri 631

Hon'ble Judges: B.P. Dharmadhikari and A.S. Chandurkar, JJ.

Bench: Division Bench

Advocate: Mr. M.G. Bhangde, Senior Advocate, with Mr. M.P. Khajanchi, Advocate, for the Petitioners; Mr. Jawade, Addl. Public Prosecutor, for the Respondent Nos. 1 to 4, 8 and 9; Mr. M.K. Kulkarni, Advocate, for the Respondent Nos. 13, 15 and 16

Final Decision: Partly Allowed

Judgement

B.P. Dharmadhikari, J. (Oral) - Heard finally.

2. On 05th August, 2014, this Court had issued notice in the matter and directed the parties to maintain status quo. During further hearing, it was

felt prima facie that possession of land was never taken and hence efforts were made to see whether the issue can be resolved in public interest.

3. Land of petitioners was notified for acquisition under the Land Acquisition Act, 1894 and acquisition proceedings culminated Award under

Section 11 on 31st March, 1999. However, there is no document to show that possession of acquired land was thereafter taken from petitioner as

per law.

4. Petitioners have made a grievance about their forcible dispossession and, therefore, commission of offences under Sections 447 and 427 read

with Section 34 of Indian Penal Code on 25th July, 2014, when they have been forcibly dispossessed. This complaint to the Superintendent of

Police dated 28th July, 2014 was preceded by a notice dated 10th July, 2014, pointing out that possession was never taken and petitioners could

not have been forcibly dispossessed. In the complaint to the Superintendent of Police lodged on 28th July, 2014, petitioners have given details of

mode and manner in which they are dispossessed. They have also mentioned that Police Station Officer, Police Station, Ghuggus, has video-

graphed the entire episode through the Police Constable $\tilde{\hat{A}}_{\hat{A}}^{\hat{A}1/2}$ Shankar Gharde.

5. The Superintendent of Police has filed a Reply-Affidavit before this Court, which does not indicate whether said Superintendent of Police has

examined this video recording. The reply filed by the Superintendent of Police or then by the Collector, Chandrapur, or other Govt. Officers does

not indicate the date on which possession was taken from the petitioners. Though petitioners have placed on record two Possession Receipts as

Annexs. P-8 & P-9, petitioners have pointed out that both are undated and without any signature. This fact is also overlooked by the

Superintendent of Police.

6. The respondents could have come up with a case that after possession was taken from the petitioners as per law or ex parte, they have again

encroached upon and taken back the possession of acquired land. However, that is not the defence before this Court.

7. Realizing all this, on 21st December, 2015, this Court passed an order calling upon the Divisional Commissioner to pass an order in the matter

of determination of compensation. The Divisional Commissioner has passed an order on 30th April, 2016 holding that provisions of the Right to

Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, are not applicable in present matter. Petitioners

before this Court sought leave to challenge that order by moving Criminal Application No. 142 of 2016 in present proceedings only. However,

after realizing the nature of said challenge, today, that application has been withdrawn with liberty to file appropriate civil proceedings in that

respect.

8. The public road has been constructed on lands of other fifty-three land owners. Thus, construction of road on either side upto the land allegedly

acquired from the field of petitioners is over. If intervening portion is built, the road will be complete. All these facts weighed with this Court in

passing the order dated 21st December, 2015. Petitioners then had also not opposed passing of this order.

9. In this situation, we find that the complaint as filed by the present petitioners on 28th July, 2014 needed to be registered as First Information

Report and appropriate action in response thereto ought to have been initiated. Refusal of respondent no.4 to do so is unsustainable. Accordingly,

we direct the respondent no.4 to take cognizance of the grievance contained in the report dated 28th July, 2014 and to proceed further in the

matter in accordance with law.

10. Criminal Writ Petition No. 632 of 2014 is, thus, partly allowed. No costs.