

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 8014-8015 OF 2022

Rajaram Abasaheb Deshmukh

...Appellant(s)

Versus

State of Maharashtra and Ors.

...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 29.04.2022 passed by the High Court of Judicature at Bombay in Writ Petition No. 2876/2022 and Writ Petition (WP) No. 9109/2021, by which, the High Court has allowed WP No. 9109/2021 preferred by respondent Nos. 1 to 4 herein (in Civil Appeal arising out of WP No. 9109/2021) and has quashed and set aside orders dated 02.01.2020 and 17.02.2020 passed by

the Deputy Collector, Pune Division and consequently dismissed WP No. 2876/2022, the original writ petitioner in WP No. 2876/2022 - contesting respondent No. 1 in WP No. 9109/2021 has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under: -

2.1 That both, the appellant as well as contesting respondent Nos. 1 to 4 (in Civil Appeal arising out of WP No. 9109/2021) are claiming to be project affected persons whose lands were acquired for the public purpose. The Sub Divisional Officer allotted the land in question vide order dated 31.10.2018 in favour of respondent No. 1 herein (in Civil Appeal arising out of WP No. 9109/2021) – Kaluram Mahadu Jadhav @ Kalooram Mahadoo Jadhav under the Rehabilitation Scheme. Subsequently, the very land which was allotted to Kaluram Jadhav came to be allotted in favour of the appellant herein – Rajaram Deshmukh by the Deputy Collector (Rehabilitation), Pune Division vide order dated 21.02.2019. Respondent No. 1 herein – Kaluram Jadhav, therefore, filed WP No. 3126/2019 before the High Court challenging order of

allotment dated 21.02.2019 which was in favour of Rajaram Deshmukh – appellant herein. The Division Bench of the High Court disposed of the said writ petition, remanded the matter to the Deputy Collector (Rehabilitation) and directed to pass a fresh order of allotment of the land in question expeditiously. That thereafter, after giving opportunity to both the parties including the co-owners of land held by Kaluram Jadhav, the Deputy Collector vide order dated 02.01.2020 passed a fresh order of allotment in favour of Rajaram Deshmukh – appellant herein and cancelled the order of allotment in favour of Kaluram Jadhav. Thereafter, consequential order dated 17.02.2020 came to be passed by the Deputy Collector in favour of Rajaram Deshmukh allotting the land in question. That thereafter the appellant herein initiated the proceedings before the Talathi to mutate his name in the revenue record as per the allotment order. However, as the name of the appellant was not mutated in the revenue record despite the allotment order, appellant herein - Rajaram Deshmukh filed WP No. 2876/2022 before the High Court. Simultaneously, respondent Nos. 1

to 4 filed WP No. 9109/2021 before the High Court challenging the subsequent orders of allotment dated 02.01.2020 and 17.02.2020 in favour of the appellant herein. By the impugned common judgment and order the High Court has set aside orders dated 02.01.2020 and 17.02.2020 and remanded the matter to the Additional Collector solely on the ground that the Deputy Collector did not possess the powers to pass the orders of allotment and therefore, orders dated 02.01.2020 and 17.02.2020 are bad in law and wholly without jurisdiction. Consequently, the High Court has allowed WP No. 9109/2021 preferred by respondent Nos. 1 to 4 herein and disposed of WP No. 2876/2022 preferred by the appellant herein. The impugned common judgment and order passed by the High Court is the subject matter of the present appeals.

3. Shri Nikhil Goel learned counsel appearing on behalf of respondent No. 1 – Kaluram Jadhav (in Civil Appeal arising out of WP No. 9109/2021) has submitted that pursuant to the impugned judgment and order passed by the High Court the Additional Collector has passed a fresh order

which is in favour of respondent No. 1. It is submitted that at the relevant time the Deputy Collector exercised the powers of allotment as delegatee. However, subsequently and before orders dated 02.01.2020 and 17.02.2020 were passed the powers/authorities of Deputy Collector of Pune Division of allotment was taken away and therefore, the High Court has rightly observed that orders dated 02.01.2020 and 17.02.2020 were *coram non-judice*. It is submitted that therefore as such no error has been committed by the High Court in quashing and setting aside orders dated 02.01.2020 and 17.02.2020 and thereafter directing the Additional Collector to take a decision afresh with regard to allotment of the land in question.

- 3.1 Number of submissions have been made by learned counsel appearing on behalf of the respective parties on merits in support of their respective claims for allotment of the land in question as project affected persons. However, as the High Court has not at all decided the claims of respective parties on merits and for the reasons stated

hereinbelow we propose to remand the matter to the High Court, we are not considering the submissions on merits.

4. Now so far as the impugned common judgment and order passed by the High Court is concerned the High Court has set aside orders dated 02.01.2020 and 17.02.2020 passed by the Deputy Collector solely on the ground that orders were passed by the Deputy Collector without jurisdiction and therefore, the same is *coram non-judice*. However, it is required to be noted that the Deputy Collector was directed to take a fresh decision pursuant to order dated 11.10.2019 passed by the Division Bench of the High Court in WP No. 3126/2019 which was as such in the writ petition filed by respondent No. 1 – Kaluram Jadhav. The order dated 11.10.2019 passed by the Division Bench of the High Court in WP No. 3126/2019 by which the Deputy Collector was directed to take a fresh decision attained the finality. Therefore, the High Court ought not to have set aside orders dated 02.01.2020 and 17.02.2020 passed by the Deputy Collector on the ground that the same was without jurisdiction and *coram non-judice*. At this stage, it is required to be noted that after order dated 02.01.2020,

the said order was sent to the Collector and thereafter, the formal order of allotment dated 17.02.2020 was passed. Therefore, the High Court has seriously erred in setting aside orders dated 02.01.2020 and 17.02.2020 on the ground that the Deputy Collector was not having jurisdiction and therefore order is coram non judice. Under the circumstances impugned common judgment and order passed by the High Court quashing and setting aside orders dated 02.01.2020 and 17.02.2020 on the aforesaid ground is unsustainable. However, at the same time as the High Court has not considered the legality and validity of orders dated 02.01.2020 and 17.02.2020 on merits and has not considered the rival claims of the respective parties on merits, the matter is required to be remanded to the High Court for fresh decision to consider the legality and validity of orders dated 02.01.2020 and 17.02.2020 on merits.

5. In view of the above and for the reasons stated above the impugned common judgment and order dated 29.04.2022 passed by the High Court quashing and setting aside orders dated 02.01.2020 and 17.02.2020 is hereby

quashed and set aside. The subsequent order dated 02.08.2022 passed by the Additional Collector, Pune Division, which has been passed pursuant to the impugned common judgment and order dated 29.04.2022 passed by the High Court is also quashed and set aside. The matter is remitted to the High Court to decide the aforesaid writ petitions afresh in accordance with law and on its own merits.

6. Now, the High Court to consider the legality and validity of orders dated 02.01.2020 and 17.02.2020 on merits. It will be open for respondent Nos. 2 to 4 (in Civil Appeal arising out of WP No. 9109/2021) to file impleadment application(s) before the High Court and make the submissions before the High Court as they were heard by the Deputy Collector. The Writ Petition Nos. 2876/2022 and 9109/2021 are ordered to be restored on the file of the High Court for a fresh decision on merits as observed hereinabove. The present appeals are accordingly allowed. However, it is made clear that we have not expressed anything on merits in favour of either party on the legality and validity of orders dated 02.01.2020 and 17.02.2020

and the claims made by the rival parties and it is ultimately for the High Court to consider the legality and validity of the aforesaid orders in accordance with law and on its own merits. The present appeals are accordingly allowed to the aforesaid extent. No costs.

.....J.
[M.R. SHAH]

NEW DELHI;
NOVEMBER 04, 2022

.....J.
[M.M. SUNDRESH]