

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6581 OF 2014

Mr. Dashrath Arjun Bata

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Hanmant Govind Wakshe, for the Petitioner.

Mrs. M. P Thakur, AGP for the Respondent Nos.1, 2 & 5.

Dr. Poornima Advani & Mr. Roopadaksha Basu i/by the Law Point, for the Respondent No.3.

CORAM : A.S. OKA & G.S. PATEL, JJ

DATED : 19TH NOVEMBER 2015

P.C.

1. Heard the Learned Counsel appearing for the Petitioner.

The case of the Petitioner is that one Mr. Padu Patil who admittedly was the owner of the acquired land bearing Survey No.35, Hissa No.1 at Taloja Pachnand, Taluka Panvel, District Raigad executed an agreement for sale dated 13th February 1969 in his favour.

2. The land subject matter of agreement for sale was notified under Section 4 of Land Acquisition Act, 1894 on 3rd February 1970 for the purposes of New Bombay project. An Award under Section 11 of the Land Acquisition Act, 1894 (For short "the said Act of 1894") was made by the Special Land Acquisition Officer. The compensation was made payable thereunder to the said Mr. Padu Patil.

3. The case of the Petitioner is that he is entitled to an allotment of a developed plot under a scheme formulated by the Government Resolution dated 6th March 1990 which is popularly known as “12.5% scheme”. His contention is that as he was in possession when the acquisition proceedings commenced, he is entitled to allotment of a plot under the 12.5% scheme.

4. The claim made by the Petitioner for allotment of a plot under the said scheme has been rejected by the the City and Industrial Development Corporation of Maharashtra Ltd. (For short “CIDCO”) which is the Special Planning Authority for Navi Mumbai. When the Petition appeared before this Court on 1st July 2015, time was sought by the learned Counsel appearing for the Petitioner to produce the relevant Government Resolutions or orders under which the Petitioner is entitled to the benefit of the 12.5% scheme. Today, the Learned Counsel appearing for the Petitioner relied upon the Government Resolution dated 6th March 1990. He submits that as the possession of the land subject matter of the acquisition was handed over to him under the agreement for sale, in view of provisions of Article 25 of the Maharashtra Stamp Act, 1958, the agreement will have to be treated as a deemed conveyance. He placed reliance on a decision of the Division Bench of this Court in the case of *Kotak Mahindra Finance Ltd. Vs. State of Maharashtra*¹.

1 2002(2) Mh.L.J. 486

5. We have considered the submissions of the Learned Counsel appearing for the Petitioner. Admittedly, on the date on which the notification under Section 4 of the said Act of 1894 was issued, there was no conveyance executed in favour of the Petitioner. Till the date of the completion of acquisition proceedings, no such conveyance was executed. In view of Section 54 of the Transfer of Property Act, 1882, an agreement for sale creates no interest in respect of the immovable property which is its subject matter.

6. As far as the provisions of the Maharashtra Stamp Act, 1958 are concerned, it deals with the payment of stamp duty on instruments. The provision regarding Deemed Conveyance on which the Petitioner is relying was not on the statute book when the agreement for sale was executed. In any event, the provisions of Maharashtra Stamps Act, 1958 do not deal with the rights created by the instruments subject to payment of stamp duty. The deeming provision introduced in Article 25 of the schedule to the Maharashtra Stamp Act, 1958 is only for the limited purpose of the determination of the stamp duty payable on certain types of agreements.

7. The Learned Counsel appearing for the Petitioner is unable to point out the entitlement of the Petitioner on the basis of any of the Government Resolutions. Moreover, the affidavit filed by the CIDCO shows that the possession of the acquired land was taken over from the

original owner Mr. Padu Patil in accordance with the provisions of the said Act of 1894. A photocopy of the certified copy of the possession receipt is annexed to the affidavit.

8. The Learned Counsel appearing for the Petitioner tries to submit that the Petitioner was an absentee landlord. If that be so, in any event, the case of the Petitioner is not covered by the Government Resolution dated 6th March 1990 as clause (J) thereof excludes the absentee landlords from the benefit of 12.5% scheme. The Petitioner had no right, title or interest in the acquired land. Hence, no case for interference is made out. The Writ Petition is rejected.

(G.S. PATEL, J)

(A.S. OKA, J)