

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.9436 OF 2010

Percival Joseph Pereira

.... Petitioner

Vs.

The Commissioner,  
Kokan Division, CBD Belapur,  
Navi Mumbai & Others

.... Respondents

Mr. Shriram S. Kulkarni for the Petitioner.

Mr. V.S. Gokhale, AGP, for Respondent Nos.1 to 6.

Mr.G.S. Hegde i/b M/s. G.S. Hegde & Associates  
for Respondent No.7.

**CORAM:** A.S. OKA &  
REVATI MOHITE DERE, JJ.

**DATED:** JULY 27, 2015

**P.C:**

1. Heard the learned counsel appearing for the petitioner, the learned AGP for the first to sixth respondents and the learned counsel appearing for the seventh respondent.

2. The learned counsel for the petitioner states that prayer clause (b) of this petition will not survive. However, the

prayer clause (a) survives, which reads thus:-

*“(a) That this Hon'ble Court be pleased to issue any appropriate writ, order or direction directing the Respondents to acquire the suit land more particularly described in para 4 of the Petition and pay the compensation in a time bound programme.”*

3. The learned counsel appearing for the petitioner invited our attention to a notification dated 20-3-1971, issued by the State Government in exercise of powers under sub-section (1) of Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”). In this petition, we are concerned with the lands of the petitioner which are more particularly described in paragraph 4 of the petition, which are situated at Village Chanje, Taluka Uran, District Raigad. Under the notification dated 20-3-1971, the area in which the said lands of the petitioner are situated, was included in the site of the proposed new town of New Bombay. The learned counsel appearing for the petitioner invited our attention to the Judgment and Order dated 22-9-1989, passed by a learned

single Judge of this Court in Writ Petition No.4628 of 1988 filed by the petitioner. He pointed out that under the said order, liberty was granted to the State Government to proceed with the acquisition in respect of the said lands. He is relying upon the Judgment and Order dated 8-7-2005, passed by a Division Bench of this Court in Writ Petition No.1191 of 2005, he submits that the said Judgment and Order is in a similar case. Inviting our attention to the affidavits on record, he urged that a direction be issued to the respondents to acquire the said lands.

4. The learned counsel appearing for the Special Planning Authority for Navi Mumbai, the City and Industrial Development Corporation of Maharashtra Limited, relied upon the affidavits on record. His submission is that as far as the acquisition of the said lands is concerned, ultimately the State Government will have to take the decision. The learned AGP states that he has not received any instructions.

5. We have given careful consideration to the

submissions advanced. It is not in dispute that the area in which the said lands are situated has been included in the site of the proposed new town of New Bombay.

6. In the affidavit in reply filed by Shri Anand Ramchandra Jadhav on behalf of the seventh respondent/CIDCO, it is contended that the notification earlier issued in respect of the said lands earlier under the provisions of Section 4(1) of the Land Acquisition Act, 1894 has lapsed. It is stated in the affidavit that the decision regarding the acquisition of the said lands will be taken in accordance with the decision of the State Government on the proposal submitted by the said respondent on 8-3-2010. In the subsequent affidavit filed by Shri Manish Chhaganlal Shirsath on behalf of the seventh respondent, it is contended that the entire land within the Navi Mumbai project is deemed to be a land needed for a public purpose as per the provisions of Section 125 of the MRTP Act.

7. At this stage, it will be necessary to make a reference

to Section 117 of the MRTP Act and which reads thus:-

**“117. Obligation to purchase designated land:-** Where any land within the area designated by a notification under section 113 of this Act as the site of the new towns has not been [acquired by the State Government or a Development Authority constituted under sub-section (2) of section 113] within a period of ten years from the date of the notification, any owner of the land may by notice in writing [served on the State Government or the Development Authority] require it to acquire his interest therein; and thereupon, the provisions of section 127 providing for lapsing of reservations shall apply in relation to such land as they apply in relation to land reserved under any plan under this Act.”

So long as a particular area forms a part of the designated site of the new town, the new town development authority can always apply for acquisition. If the owner or person having interest in any land falling within the area designated by a notification under sub-section (1) of Section 113 of the MRTP Act has a remedy of giving a notice under Section 127 of the MRTP Act.

8. The exercise of development of a new town is normally a huge exercise. Such exercise is carried out in a phase-

wise manner. Therefore, all the lands which form a part of the site of the new town can be acquired in a phase-wise manner. The persons having interest in such lands cannot insist on acquisition within a specified time. In the present case, CIDCO has filed a reply in which a stand has been taken that the said lands fall in the Regional Park Zone (RPZ) which is covered by Category-3. The Category-3 is of the lands of which acquisition is not strongly justified due to various reasons such as difficult terrain, inaccessibility, etc..

9. Considering the extent of exercise of developing a new town like Navi Bombay, we are unable to issue a writ or order directing the respondents to acquire the said lands within the time specified by this Court. However, the petitioner can always take recourse to Section 127 of the MRTP Act.

10. Hence, we pass the following order:

**ORDER**

(i) No relief can be granted to the petitioner in this

petition. The prayer clause (a) is accordingly rejected.

(ii) As stated earlier, the prayer clause (b) does not survive.

(iii) The disposal of this petition will not preclude the petitioner from taking recourse to Section 127 read with Section 117 of the MRTP Act.

(REVATI MOHITE DERE, J.)

(A.S. OKA, J.)

suresh

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**CERTIFICATE**

Certified to be true and correct copy of the original  
signed Order.

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