

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11133 OF 2014**

M/s. Devi Construction Company ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. G.S. Godbole i/by Mr. Rompal Singh Kohli, for the Petitioner.

Mr. V.S. Gokhale, AGP, for the Respondent No.1, 5 to 7.

Mr. G.H. Keluskar, for Respondent Nos.2 to 4.

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

DATE : 4th AUGUST, 2015

PC.

. Heard the learned counsel appearing for the Petitioner and the learned AGP for Respondent Nos.1, 5 to 7. We have heard the learned counsel appearing for the Respondent Nos.3 and 4.

2. This Petition concerns the land bearing Survey No.10 (part) Survey No.11 (part) and 16 (part) of village Wakad, Taluka Mulshi, District Pune which are covered by Reservation No.4/11 for the public purpose of octroi post in the sanctioned Development Plan under the Maharashtra Regional and Town Planning Act, 1966 of the Pimpri-Chinchwad Municipal Corporation.

3. The Petitioner filed Writ Petition No.2970 of 2013 in this Court praying for the following reliefs :-

“(A) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ and/or Order and/or Direction under Article 226 of the Constitution of India, thereby directing the Respondent No.3 Corporation to initiate appropriate steps for the deletion of reservation in regards to the lands of the Petitioners bearing Survey No.10 (part), Survey No.11 (part) and Survey No.160 (part) of village Wakad, Taluka Mulshi, Dist.Pune as prescribed in the provisions of the MR & TP Act, 1966;

(A1) This Hon'ble Court be pleased to issue a writ of mandamus or any other writ in the nature of mandamus or any other appropriate Writ and/or Order and/or Direction under Article 226 of the Constitution of India, thereby directing the Respondent No.6 to pass the award in regards to the lands of the Petitioners bearing Survey No.10 (part), Survey No.11 (part) and Survey No.160 (part) of village Wakad, Taluka Mulshi, Dist. Pune within a fixed time frame as this Hon'ble Court may deem just and proper.”

4. The said Writ Petition was disposed of by Judgment and Order dated 12th June, 2013. In paragraph 1 of the said Judgment and Order, this Court has recorded a statement of the learned counsel appearing for the Petitioner on instructions that the Petitioner was confining the said Petition only to prayer clause (A1). The said order

records that possession of the land subject matter of acquisition was already handed over on the basis of the private negotiations.

5. While disposing of the said Petition, this Court directed the State Government to complete the acquisition proceedings as expeditiously as possible and in any event within a period of 15 months from the date of the Judgment. There was another direction issued based on agreement dated 24th February, 2006 with which we are not concerned in this Petition.

6. Time granted by this Court under the aforesaid order to complete the acquisition proceedings and to pass an Award under Section 11 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”) expired on 12th November, 2014. The Award was made on 22nd January, 2015.

7. The first substantive prayer in this Petition is for a declaration that the acquisition proceedings have lapsed. We must note here that the present Petition was filed in December, 2014 when Award was not made. Lateron, the Petition was permitted to be amended by incorporating additional prayers (A1) and (A2). Prayer (A1) reads thus :-

“(A1) That this Hon'ble Court may be pleased to direct the Respondent Nos.1, 2, 5 to 7 to treat that the acquisition

of land admeasuring 4849 Sq Mtrs. from Survey Nos.10 (part), 11(part) and 160 (part) of Village : Wakad, Tal: Mulshi, Dist : Pune which had been initiated by issuing Declaration dated 29/06/2009 u/s.6 of the Land Acquisition Act, 1894 has lapsed u/s.25 of the Right to Fair Compensation Act, 2013 on account of failure to pass Award within 1 year from the date of the declaration 19 of the said Act r/w. Section 11 of the said Act which must be deemed to be 1/1/2014 which is the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;”

8. As far as prayer clause (B1) is concerned, it seeks a declaration that the entire acquisition proceedings are bad in law and are null and void on account of amendments carried out to the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”) by which the Octroi was abolished. There is another prayer directing the first Respondent – State Government to initiate appropriate proceedings for modification of the sanctioned Development Plan of the Pimpri Chinchwad Municipal Corporation for deleting the reservation for octroi post/naka. The next substantive prayer is for issuing a writ of mandamus directing the Respondent No.3 (Municipal Corporation) to hand over vacant and peaceful possession of the land subject matter of acquisition to the Petitioner.

9. The learned counsel appearing for the Petitioner submitted that the Award under Section 11 of the said Act of 1894 could not have been declared after 12th November, 2014 as the direction of this Court in Writ Petition No.2970 of 2013 was to declare the Award before the said date. He urged that even an application was not made by the State Government for extension of time. He submitted that thus the Award made on 22nd January, 2015 is in breach of the directions issued under the Judgment and Order dated 12th June, 2013 is bad in law.

10. The learned counsel appearing for the Petitioner pointed out that in the earlier Petition, there was a ground taken that the reservation for octroi post will not survive in the light of the fact that by amending the provisions of the said Act of 1949, the octroi was abolished with effect from 1st April, 2013. He submitted that on 12th June, 2013, when the earlier Petition was decided, a challenge to the validity of the amendments made to the said Act of 1949 was pending before this Court in Writ Petitions. His submission is that if the said Writ Petitions would have been allowed, octroi would have been restored. He invited our attention to the Judgment and Order dated 1st October, 2014 passed by this Court by which a group of Writ Petitions challenging the amendment to the said Act of 1949 has been dismissed by a Division Bench of this Court. He submitted that after the Judgment

and Order dated 1st October, 2014, now there is no occasion for the Municipal Corporation to recover the octroi. He urged that the said Judgment and Order brings about a major change in circumstances and, therefore, the Petitioner is seeking a relief of declaration that the acquisition proceedings have lapsed. He pointed out that the acquisition was specifically for the purposes of setting up of octroi posts and, therefore, the very purpose of acquisition has become redundant and that is why prayers have been made in this Petition in relation to the reservation in the sanctioned Development Plan.

11. The learned counsel appearing for the Petitioner invited our attention to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the said Act of 2013”). By pointing out Section 25 of the said Act of 2013, he pointed out that the Award has been made after the expiry of the period provided therein. He submitted that by a deeming fiction, 1st January, 2014 will have to be taken as the date of declaration under Section 19 and, therefore, Award ought to have been made on or before 31st December, 2014. He would, therefore, urge that the acquisition has lapsed.

12. We have given careful consideration to the submissions. It

will be necessary to make a reference to the averments made in the said earlier Writ Petition No.2970 of 2013 filed by the Petitioner. There is no dispute that in the sanctioned Development Plan for the City of Pimpri Chinchwad, the land in question has been reserved for octroi posts. A declaration under Sub-section (4) of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) was issued on 29th June, 2009. One of the grounds of challenge in the said Petition incorporated in Ground B was based on amendment to the said Act of 1949 which came into force on 1st April, 2013. The specific ground taken in the said Writ petition is that as there could be no recovery of octroi after 1st April, 2013, there could not be a reservation for octroi post. In paragraph 4, it is specifically contended that the purpose for which the said land was reserved ceased to exist from 1st April, 2013. Based on the said grounds, prayer clause (a) was made in the said Writ Petition directing the Municipal Corporation to initiate appropriate steps for deletion of reservation in respect of the said lands of the Petitioner. A similar prayer has been incorporated even in the present Petition. It is not the case of the Petitioner that the relevant amendment made to the said Act of 1949 was stayed by any Court of law. It is not the case that even after 1st April, 2013 recovery of octroi by the Pimpri Chinchwad Municipal Corporation continued. The earlier Writ Petition was disposed of on 12th June, 2013. On that

day, the recovery of octroi was already stopped. Therefore, the case of a change in circumstances cannot be accepted.

13. It is true that under the Judgment and Order dated 12th June, 2013 in Writ Petition No.2970 of 2013, a direction was issued by this Court to the State Government to declare the Award under Section 11 within a period of 15 months and the Award was made few months after the expiry of 15 months. Only on the ground that the Award was not made within the stipulated period of 15 months, the acquisition will not vitiate unless it is contrary to the provisions of the said Act of 1894 or the said Act of 2013. The failure to make Award within the time fixed by this Court will not make the Award bad in law. Thus, the argument that the Award stands vitiated as it was not made within the stipulated period of 15 months cannot be accepted.

14. As far as the argument of lapsing of acquisition is concerned, it will be necessary to advert to Sections 24 and 25 of the said Act of 2013. The said Act of 1894 was repealed with effect from 1st January, 2014. The said Act of 2013 became applicable from 1st January, 2014. Clause (a) of Sub-section (1) of Section 24 provides that when no Award under Section 11 of the said Act of 1894 has been made, all provisions of the said Act of 2013 relating to the determination of compensation shall apply. Sub-section (2) of Section

24 provides for specific cases in which the proceedings of acquisition under the said Act of 1894 shall stand lapsed on coming into force of the said Act of 2013. Admittedly, the case of the Petitioner is not covered by Sub-section (2) of Section 24. Therefore, the legal effect of clause (a) of Sub-Section (1) of Section 24 is that acquisition initiated under the said Act of 1894 could continue subject to a rider that all provisions of the said Act of 2013 relating to the determination of compensation shall apply. Thus, by virtue of clause (a) of Sub-section (1) of Section 24 that the impugned Award was validly made on 22nd January, 2015. The issue whether the provisions of the said Act of 2013 relating to determination of compensation were applied or not need not be gone into inasmuch as it is an admitted position that the Petitioner has applied for a reference to the Civil Court in which the issue of adequate compensation will be gone into.

15. At this stage, it is pointed out that there is a separate Petition filed under Article 226 of the Constitution of India by the Petitioner raising the issue regarding failure to apply the provisions of the said Act of 2013 for the determination of compensation while making an Award. In view of the pendency of the said Petition and pendency of a reference application, we are not dealing with the issue whether the compensation has been determined in accordance with the provisions of the said Act of 2013.

16. Section 25 of the said Act of 2013 will have no application inasmuch as the said Section will apply when there is a declaration issued under Section 19 of the said Act of 2013. Admittedly no such declaration has been issued.

17. Therefore, we are unable to accept the submission that the Award made on 22nd January, 2015 is illegal on the grounds agitated in this Writ Petition.

18. Now, coming to the prayers made in this Petition for the reasons which we have recorded earlier, prayer clause (A1) has no substance. As far as prayer clause (B1) is concerned, the challenge made therein was available to the Petitioner when earlier Writ Petition was filed. As stated earlier, earlier Writ Petition was confined to prayer (A1) wherein a writ of mandamus was sought directing the State Government to pass an Award within the time frame fixed by this Court. Therefore, prayer (A1) and (B1) cannot be granted. As far as prayer clause (C) is concerned, prayer clause (A) was made in the earlier Petition in which more or less similar relief was sought which was given up. Prayer clause (D) is based on the contention that the acquisition is bad in law.

19. In the circumstances, the Petition is devoid of any merit and the same is accordingly rejected.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)