

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5184 OF 2015

Mr.S.S.Punde for the Petitioner
Mr.V.P.Malvankar, AGP `A' Panel for the respondent
Nos.1 to 4.
Mr.Vijay Patil for respondent No.5

2 The acquisition of the land bearing Gat No.209 (part) admeasuring 59.1R (for short 'the said land') situated at Village Dongargaon, Taluka Maval, District Pune was made at the instance of the respondent No.5. The petitioner filed a writ petition being Writ Petition No.1836 of 1998 for challenging the acquisition proceedings. Prayer clauses (a) and (b) of the said writ petition read thus:

"(a) that this Honourable Court be pleased to issue a writ of certiorari or any other writ, order or a direction in the nature of certiorari calling for the records and proceedings pertaining to the notice dated 25.5.1997 issued by the Respondent No.2 and after going through the legality and propriety of the same, this Honourable Court be pleased to quash and set aside the same as being arbitrary and illegal;

(b) that the declaration of public purpose under Section 6 of the Acquisition of the lands of the petitioner being part of GAT No.209 admeasuring 59.1 Are, if any, be quashed and set aside."

3 By Judgment and Order dated 10th September 2004, Rule issued in the said writ petition was made absolute in terms of the prayer clauses (a) and (b). Therefore, the acquisition proceedings in respect of the said land at the instance of the respondent No.5 were set aside. It appears that the petitioner filed an application under sub-section (1) of section 48 of the Land Acquisition Act, 1894 (for short 'the said Act') before the Divisional Commissioner on the basis of the aforesaid Judgment and Order dated 10th September 2004. The Additional Commissioner by his order dated 19th April 2012 directed the State Government to issue a notification declaring the deletion of the said land subject matter of this petition from acquisition. The first substantive prayer in this petition is for

issuing a writ of mandamus directing the respondent Nos.1 to 4 to publish a notification in Government Gazette. The second prayer is for directing the respondent Nos.2 and 3 to delete the name of the respondent No.5 from the revenue record and mutate the name of the petitioner in place of the respondent No.5.

4 As of today, the Judgment and Order dated 10th September 2004 of this Court as well as the Judgment and Order dated 9th April 2010 passed by the Additional Commissioner, Pune Division, Pune has become final. The direction to publish the notification declaring the deletion of the said land from acquisition was issued by the Additional Divisional Commissioner in terms of what is held by the Apex Court in the case of Larsen and Toubro Limited Vs. State of Gujrat and others¹. We are of the view that the State Government ought to have issued a notification in the Government Gazette as directed by the Additional Divisional Commissioner.

5 Though the learned counsel for the respondent No.5 does not dispute that the aforesaid orders have become final, he submitted that the said orders and the directions which may be issued by this Court in the present petition should not come in the way of the respondent No.5 acquiring the said land in accordance with law if due to the subsequent events, the said respondent needs the said land for public purpose.

1 AIR 1998 SC 1608

6 Hence, we dispose of the petition by passing the following order:

- (I) We direct the respondent Nos.1 to 4 to issue a Gazette Notification in terms of the order dated 19th April 2010 passed by the Additional Divisional Commissioner, Pune Division, Pune (Exhibit-J to the petition) as expeditiously as possible and in any event within a period of three months from today;
- (II) After such notification is published in Government Gazette, the respondent Nos.2 and 3 shall direct that necessary mutation entry shall be made in the revenue record for giving effect to the Gazette notification. This action shall be completed within a period of two months from the date on which the Gazette notification is published;
- (III) We make it clear that it will be open for the respondent No.5 to initiate a fresh acquisition proceedings in accordance with law in the event that the said land is required for a public purpose. However, all contentions in that behalf of the petitioner are kept open;
- (IV) Rule is made absolute on above terms;
- (V) All concerned to act upon an authenticated copy of this order.

(C.V.BHADANG, J.)

(A.S.OKA, J.)