

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6189 OF 2014

Bhalchandra Shravan Patil.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. S. B. Deshmukh for the Petitioner.

Mr. A. M. Kulkarni for Respondent No.2.

Coram : Ranjit More &
A. S. Gadkari, JJ.

Date : **July 14, 2016.**

P. C. :

1. Heard Mr. Deshmukh, the learned Counsel appearing for the Petitioner and Mr. Kulkarni, the learned Counsel appearing for Respondent No.2-CIDCO. By this petition, the Petitioner is seeking following reliefs :

"[A] That this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, declare that the Land Acquisition proceeding initiated by the Respondent in respect of the suit property land bearing Survey No. 135, Hissa No.6, admeasuring 17.4 Gunthas situated at Karave, Taluka & District : Thane and the Award dt. 13th July 1982 is deemed to have been lapsed in the light of provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

[B] That this Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of

mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, thereby directing the Respondents not to interfere the possession of the Respondent over the suit property land bearing Survey No. 135, Hiss. No.6 admeasuring 17.4 Gunthas situated at Karave, Taluka & District : Thane as Land Acquisition proceeding and the Award passed on 13th July 1982 have been lapsed in respect of the suit property."

2. The land bearing Survey No. 135, Hissa No. 6 admeasuring 17.4 gunthas situated at village Karave, Taluka and District Thane was belonging to the Petitioner. The same was acquired by CIDCO after following the procedure under the Land Acquisition Act, 1894. Accordingly award under section 11 of the Land Acquisition Act, 1894 was passed on 3rd July 1982. In the year 2003, the Petitioner made an application to the CIDCO for the benefit under 12.5% scheme. Accordingly, the Petitioner was allotted plot of land bearing No.21 at Nerul admeasuring 450.14. sq.mtrs. The Petitioner developed this property and constructed 5 storey building and created third party interest therein.

3. Despite above position, the Petitioner filed an application under section 48 of the Land Acquisition Act, 1894 for deletion of the land from acquisition. Initially, orders favourable

to the Petitioner came to be passed by the Commissioner. Subsequently it was transpired that the Petitioner had fraudulently, by concealing the allotment of land under 12.5% scheme, obtained the said orders. Hence, the order made under section 48 of the Land Acquisition Act, 1894 was revoked. The Petitioner challenged this order by filing a writ petition before this Court. The same was dismissed. The Petitioner thereafter filed an SLP before the Supreme Court. the Petitioner ultimately withdrew the said SLP with liberty to file review before this Court. The Petitioner did file review. But the review also came to be dismissed.

4. The Petitioner is now by filing this writ petition wants to take advantage of the provisions of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Petitioner claims that neither the possession of the land in question is taken by the Respondent nor the compensation for the same is paid to him. This statement of the Petitioner is strongly objected by the CIDCO. The CIDCO claims that not only the possession of the land in question is taken by the CIDCO from the the Petitioner,

but the said land has been allotted to Navi Mumbai Municipal Corporation and at present the said land is in possession of Navi Mumbai Municipal Corporation. Regarding the payment of compensation, the learned Counsel appearing for CIDCO submitted that the same is already deposited, however, the Petitioner has not withdrawn the same.

5. Mr. Deshmukh, learned Counsel appearing for the Petitioner does not dispute that the Petitioner has taken the benefit of 12.5% scheme. He also does not dispute that this benefit is taken by the Petitioner by way of additional compensation.

6. Having taken said benefit of allotment of land by way of additional compensation, the Petitioner cannot now claim that the acquisition has lapsed under section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

7. Be that as it may, Mr. Kulkarni invited our attention to the deposition of the Petitioner annexed at Exhibit-"F" page 30. The said deposition is recorded on 25th March 1997. In this deposition, the Petitioner has categorically admitted that "said

land was in his possession". It is clear from this deposition that before 25th March 1997 the Petitioner had lost possession of the land in question. Mr. Deshmukh, learned Counsel appearing for the Petitioner does not dispute the statement made on behalf of CIDCO that the compensation for the land is already deposited by the CIDCO. Merely because this compensation is not withdrawn by the Petitioner, he is not entitled to claim that the acquisition has lapsed.

8. In above circumstances, we are of the view that the claim of the Petitioner is not only dishonest but it is fraudulent too. We are therefore not inclined to entertain this writ petition and the same is accordingly dismissed.

[A. S. GADKARI, J.]

[RANJIT MORE, J.]