

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 8669 OF 2015**

|                                       |   |               |
|---------------------------------------|---|---------------|
| 1 Dattatraya Shankar Taware           | ) |               |
| 2 Monali Gajanan Bibwe alias          | ) |               |
| Monali Siddhesh Debhashi              | ) |               |
| 3 Sulochana Gajanan Bibwe             | ) |               |
| 4 Shakuntala Aburao Bibwe             | ) |               |
| All adults Occupation Business        | ) |               |
| Residing at 47/1, Taware Colone, Pune | ) | ..Petitioners |

Vs.

|                                           |   |               |
|-------------------------------------------|---|---------------|
| 1 State of Maharashtra                    | ) |               |
| through Hon'ble Minister of State         | ) |               |
| for Revenue having his office at          | ) |               |
| Mantralaya, Mumbai 400 032                | ) |               |
| 2 Pune Municipal Corporation              | ) |               |
| having its office at Shivaji Nagar,       | ) |               |
| Pune through its Commissioner             | ) |               |
| 3 Devidas Dattatraya Kunjir               | ) |               |
| Age 45 years, Occ Business                | ) |               |
| Residing at 283 Shukrawar Peth,           | ) |               |
| Prestige Chambers, 1 <sup>st</sup> floor, | ) |               |
| office No.2, Pune 411 002                 | ) | ..Respondents |

Mr. S. S. Patwardhan for the Petitioners  
Mr. S. H. Kankal AGP for the Respondent No.1  
Mr. S. H. Gangal for the Respondent No.3  
None for the Respondent No.2

CORAM : R. M. SAVANT, J.  
DATE : 21<sup>st</sup> NOVEMBER, 2016

**ORAL JUDGMENT**

1           The above Writ Petition was admitted on 20-6-2016 and ad-interim relief in terms of prayer clause (b) came to be granted. The Respondents have been served with the Rule. The Petition is shown for confirmation of the ad-interim relief. The Learned Counsel for the parties are agreeable to the Petition itself being disposed of.

2           The Writ Jurisdiction of this Court is invoked against the order dated 11-9-2014 passed by the then Hon'ble Minister for Revenue, Government of Maharashtra, by which order, the interim stay came to be granted by the said authority pending consideration of the application being BIDW/3409/519 and also stayed all the applications and the Appeals pending before the Revenue Authorities.

3           It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondent No.3 herein who is the proponent of the application has filed the said proceedings / application under the Bombay Personal Inam Abolition Act 1952 claiming that his predecessors in title one Mr. Subhanji Kunjir was the owner of the part of the Petitioners' property to the extent of 4 Acres and 13 Gunthas and therefore claimed title in respect of 4 Acres and 13 Gunthas of land. It seems that the claim of the Respondent No.3 is based on the extract of the register of the alienated village kept under Section 53 of the Bombay Land Revenue Code 1879 as it stood in

1886-1887. The Petitioners herein claimed to be owners of the land bearing Survey Nos. 660/7A/2 + 7B/2 + 7C/2 + 7E/2/2, 660/7A/2 + 7B/2 + 7C/2 + 7E/2/1, 660/7A/ + 7B/1 + 7C/1 + 7A/1/1 and 660/7A/1 + 7B/1 + 7C/1 + 7D/1/2 all situate at Bibwewadi, Talulka Pune City, District Pune. The said lands are under reservation for bus depot in the development plan of Pune Municipal Corporation in terms of Development Control Rules applicable. The Petitioners can surrender the lands to the Respondent No.2 Pune Municipal Corporation and obtain TDR in lieu of compensation on account of the land being reserved for the purposes of bus depot. The Petitioners have accordingly applied in the prescribed format and also paid an amount of Rs.1 lac as charges for consideration of their proposal for the grant of the Development Rights Certificate (DRC). The Respondent No.2 thereafter issued a public notice inviting the objections. The Respondent No.3 pursuant to the said notice objected to the grant of DRC to the Petitioners. The Respondent No.3 also filed a Civil Suit No.1510 of 2008 for restraining the Respondent No.2 from granting any TDR to the Petitioners. In the said Suit, the Respondent No.3 applied for interim relief by filing application Exhibit-5. The said application Exhibit -5 was rejected by the Learned Judge of the Trial Court against which the Respondent No.3 filed Misc Civil Appeal No.189 of 2009 challenging the order refusing the interim reliefs. The said Misc Appeal also came to be dismissed by the Learned District Judge. It seems that thereafter the Respondent No.3 has filed an application under Order 23 Rule 3 of the

Civil Procedure Code for withdrawal of the Suit to file a fresh Suit. The said application appears to be pending. It also appears that the Respondent No.3 has filed number of applications and proceedings under the Maharashtra Land Revenue Code. However, the said RTS proceedings and/or Appeals have been disposed of in or about July 2012. As indicated above, the Respondent No.3 in the year 2009 filed the instant application under the Bombay Personal Inam Abolition Act 1952 in which application, he moved an application for interim reliefs at the said time it seems that the applications were pending before the Revenue Authorities. The said application as indicated above has been allowed by the impugned order dated 11-9-2014.

4           It is the case of the Petitioners that they were not served with the application filed by the Respondent No.3 under the said Bombay Personal Inam Abolition Act and neither was the application for stay and therefore the order dated 11-9-2014 has been passed without hearing the Petitioners. The Petitioners have also averred in the above Petition in paragraph 8 that no RTS proceedings are pending between the parties as they have all come to an end in or about 30-7-2012.

5           On behalf of the Petitioners, the Learned Counsel Mr. Patwardhan raised a question as regards whether the authority exercising powers under the Bombay Personal Inam Abolition Act could have entertained the application

and granted the relief as granted vide impugned order dated 11-9-2014.

6           In my view, having regard to the aforesaid conspectus of facts, it would be just and proper to set aside the impugned order dated 11-9-2014 and direct the concerned authority to hear and decide the application filed by the Respondent No.3 within a particular time frame. Hence the following directions are issued :

(i)    The impugned order dated 11-9-2014 is quashed and set aside and the concerned authority of the State Government is directed to hear and decide the said application No.BIW-3409/519/P. K. 200/L-4 latest by 31-1-2017.

(ii)   Needless to state that the contentions of the parties are kept open for being urged before the concerned authority.

(iii)   The Respondent No.2 would be at liberty to process the application for grant of TDR but would not issue the DRC till the said application is decided i.e. till 31-1-2017 and the grant of TDR would be contingent upon the decision that would be rendered in the said application.

(iv)   The Learned Counsel appearing for the parties are agreeable to the aforesaid course of action being followed.

(v)    The Learned AGP to inform the aforesaid development to the concerned authority of the State Government. The parties to appear before the concerned authority of the State Government on 29-11-2016. The concerned authority to fix the schedule as per his convenience but decide the application

latest by 31-1-2017.

7           The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear the respective costs of the Petition.

**[R.M.SAVANT, J]**