

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7979 of 2012

Thane Parisar Shetkari Sanstha
@ Kisan Kranti Sanghatane, Balkum,
Dhokali, Kolshet, Majiwade
Ghodbunder Area,
Reg. No. 2622/10, having its office
at Shri T.M.Patil House,
Patil Aali, Balkum No.1,
Thane 400 608

.. Petitioner

v/s.

1. The State of Maharashtra
through the Secretary,
Department of Revenue,
Mantralaya, Mumbai 32
2. The Collector, Thane,
Office of Collector, Thane (W).
3. The Municipal Corporation, Thane.
Through its Commissioner, Thane.
4. Clariant Chemical (India) Ltd.
having its office at P.O. Sandoz Baug,
Kolshet Road, Thane 400 607
5. Ananta Landmarks Pvt. Ltd.
having its registered office at
Kalpataru Synergy,
Opp. Grand Hyatt Hotel,
Vakola, Santacruz (E),

Mumbai 400 055

..Respondents

Mr.R.G.Panchal Mr. V.Y.Patil for the Petitioner.

Ms.A.D.Vhatkar, AGP for the Respondent nos.1 and 2.

Mr.N.R.Bubna for the Respondent no.3

Mr.V.V.Tuljapurkar, Sr. Advocate a/w. P.S.Dani, Sr. Advocate, Nikhil Sakhardande, Ms. Jasmine Kachalia, Tanvi Shah I/b. Wadia Gandhi & Co. for the Respondent no.4.

Mr.Asphy Chinoi Sr. Advocate , Mr.G.S.Godbole i/b. Dastur Dadich & Kalambi for the Respondent No.5.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : JULY 07, 2016.**

P.C.:

1. The petitioners have sought directions to the respondent authority to take steps to re-acquire the land from the respondent nos.4 and 5 and to restore the said land to the original owners/tenants since the purpose for which it was acquired by the State and transferred to the respondent no.4 is no longer in existence.

2. Mr. Panchal the learned Counsel for the petitioner, has submitted that the respondent no.4 has handed over 65,935.25 sq.

mtrs. of the acquired land to several authorities without obtaining any permission from the Government. The learned Counsel for the petitioner has submitted that the respondent no.4 could not have been allowed to use the land for any other purpose other than the one for which it was acquired. He has further submitted that the respondent no.4 having breached the condition in the agreement under section 41 of the land acquisition Act, the State Authorities were required to re-acquire the land and to restore the same to the original owners. He has submitted that instead the State Authorities have legalized and perpetuated the said breach by allowing change of user from Industrial zone to Residential or Commercial Zone.

3. The learned Counsel for the respondent has submitted that the land was used for industrial purpose from the date of acquisition till the date the respondent nos.1 to 3 were granted sanction for change of user. He has further submitted that the respondent no.4 company was precluded from expanding the industrial activities utilizing the land for industrial purpose due to expansion and development of residential areas surrounding the said land. He has submitted that the State Authorities have sanctioned to change of

user and permitted transfer of the land in favour of respondent no.5 on payment of 50% unearned income to respondent no.2. The learned counsel submits that the respondent no.4 has not committed any breach of the terms of agreement, but had changed the user and effected transfer after obtaining statutory sanctions in compliance with the statutory requirement of Section 44-A of the Land Acquisition Act.

4. Having considered the submissions made by the learned counsels for the respective parties, we are of the considered view that there is no merit in the submission made by the petitioner. The documents annexed to the petition as well as the affidavit in reply clearly indicates that by notifications dated 6.7.1957 and 14.6.1958 issued under Section 4(1) and Section 6(1) of the Land Acquisition Act, 1982, the State Government had proposed to acquire land admeasuring 1,72,740 sq.mts and 9390 sq. mts of land from village Balkum and Majiwade from Thane District for Indokem Pvt. Ltd. The company had executed agreements dated 1.5.1957, 2.6.1958 and 16.1.1969 under Section 41 of the Land Acquisition Act.

Subsequently award was declared and the acquisition having become final, the lands were vested with M/s. Indokem Pvt. Ltd.

5. It is not in dispute that the respondent no.4 company had constructed a factory and used the land for industrial purpose. The dispute is regarding subsequent change of user and transfer of land, which according to the respondent no.4 was necessitated due to development and expansion of residential areas surrounding the said land. It is pertinent to note that the agreement does not contain any blanket restraint on change of user of the land or transfer of land, but only stipulates that such change of user or transfer will not be effected without prior permission/ sanction of the Government. The records placed before us clearly indicate that the respondent no.4 company had applied for change of user and transfer of the land and the State Authorities had sanctioned change of user and permitted transfer on payment of 50% unearned income to respondent no.2. It is not in dispute that the respondent no.4 has complied with the said condition viz. payment of 50% of unearned income.

6. The respondent no.4 had applied for and had been granted sanction/permission for change of user and transfer in accordance with the statutory provisions. The action of the respondent no.4 is not in breach of the terms of the agreement or the statutory provisions of the Act. Under the circumstances, the land vested in the company over fifty years ago cannot be diverted, re-acquired and allotted to the original owners merely because the company has now ceased to utilize the land for the purpose other than the purpose for which it was acquired.

7. In the light of the above facts and circumstances, the petition has no merit and is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)