

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

WRIT PETITION NO. 540 OF 2010

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| 1. | Anwar Hajee Alimohammed Hajee |] | |
| | Cassum Agboatwala (Since deceased) |] | |
| | Through His Legal Heirs |] | |
| 1A. | Faridabai Anwar Agboatwala |] | |
| | Ali Manor, 4th Floor, 8 Little Road, |] | |
| | Malabar Hill, Mumbai-400 006. |] | |
| 1B. | Ateeq Anwar Agboatwala |] | |
| | Ali Manor, 4th Floor, 8 Little Road, |] | |
| | Malabar Hill, Mumbai-400 006. |] | |
| 1C. | Nabila Suhail Kandwani |] | |
| | 22/C, Khandwani House, Dargha Street, |] | |
| | Mahim, Mumbai - 400 016. |] | |
| 1D. | Faheem Anwar Agboatwala |] | Petitioners |
| | Ali Manor, 4th Floor, 8 Little Road, |] | |
| | Malabar Hill, Mumbai-400 006. |] | |
| 2. | Salim Dawood Agboatwala |] | |
| 3. | Humoobai d/o. Hajee Alimohammed |] | |
| | Hajee Cassum Agboatwala (Since Deceased)] | | |
| | Through Her Legal Heirs |] | |
| 3a. | Fuaad A. M. Patka |] | |
| 3b. | Sabiha S. Malbarwale |] | |
| 3c. | Qurratulain M. Javeri |] | |
| 3d. | Tahnaan A. M. Patka |] | |
| | 3a to 3d having their office |] | |
| | at 282, Abdul Rehman Street, |] | |
| | Mumbai - 400 003. |] | |

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| 4. | Yasin Dawood Agboatwala |] | |
| 5. | Zubair Dawood Agboatwala |] | |
| 6. | Mumtaz Dawood Agboatwala |] | |
| 7. | Abdul Latif Mohammed Siddique Patka |] | |
| 8. | Hamidabanu Mohammed Siddique |] | |
| | Patka (Since deceased) Through Her LRs |] | |
| 8a. | Qamar Gulam Killedar |] | |
| 8b. | Kausar Firoz Moosani |] | Petitioners |
| | 8a & 8b having their office |] | |
| | at 282, Abdul Rehman Street, |] | |
| | Mumbai - 400 003. |] | |
| | 2, 4 to 7 having address at |] | |
| | Agboatwala Building, 282, |] | |
| | Abdul Rehman Street, |] | |
| | Mumbai - 400 003. |] | |

Versus

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|----|--|---|-------------|
| 1. | The State of Maharashtra |] | |
| | through Government Pleader, |] | |
| | (Original Side), PWD Building, |] | |
| | High Court Annexe, |] | |
| | Mumbai - 400 023. |] | |
| 2. | The Collector, Mumbai and |] | Respondents |
| | Mumbai Suburban District, |] | |
| | having his office at Old Custom |] | |
| | House, Ballard Estate, |] | |
| | Mumbai - 400 023. |] | |
| 3. | The Special Land Acquisition Officer (3) |] | |

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| | Mumbai and Mumbai Suburban |] | |
| | District, having his office at Old |] | |
| | Custom Hous, Ballard Estate, |] | |
| | Mumbai - 400 023. |] | |
| 4. | The Court Receiver, |] | |
| | High Court, Bombay, having his |] | |
| | office at Bank of India Building, |] | |
| | 2nd Floor, Mahatma Gandhi Road, |] | |
| | Fort, Mumbai - 400 023. |] | |
| 5. | Airport Authority of India |] | |
| | an Authority constituted under |] | |
| | the Airport Authority of India Act, |] | |
| | 1934, having its office at |] | |
| | Chhatrapati Shivaji International |] | |
| | Airport, Mumbai - 400 099. |] | Respondents |
| 6. | Mumbai International Airport Pvt. Ltd. |] | |
| | a company incorporated under the |] | |
| | Companies Act, 1956, and having its |] | |
| | registered office at Chhatrapati Shivaji |] | |
| | International Airport, Mumbai - 400 099. |] | |
| 7. | The Municipal Corporation of Greater |] | |
| | Mumbai, having its office at Mahapalika |] | |
| | Marg, Mumbai - 400 001. |] | |
| 8. | Jankibai Sukut (deceased) |] | |
| | through Vishnu Mangal Gimbal, |] | |
| | Adult, residing at Mangal Chawl, |] | |
| | Dahisar Check Naka, Dahisar, |] | |
| | Mumbai - 400 068. |] | |
| 9. | Kashinath M. Patil (deceased) |] | |

	through Laxmi M. Patil, Adult	]	
	residing at Raigao, Taluka	]	
	Bhayandr, District - Thane.	]	
10.	Francis K. Rodricks (deceased)	]	
	through Patrick Rodricks, Adult,	]	
	residing at Francis House,	]	
	Kedarpada, Dahisar, Mumbai-	]	
	400 068.	]	
11.	Padman Babaji Purekar (deceased)	]	
12.	Shankar Padman Purekar (deceased)	]	
	through Vanita Kokade, Adult,	]	
	residing at Laxmi Niwas No.1,	]	
	Sudam Nagar, Kajupada, Borivali,	]	
	Mumbai - 400 066.	]	
13.	Gopal Kini (deceased)	]	Respondents
	through Tarabai G. Kini, Adult,	]	
	residing at Dahisar Gaothan,	]	
	Mumbai - 400 068.	]	
14.	Narottam G. Patil (deceased)	]	
	through Vijay N. Patil, Adult,	]	
	residing at Dahisar Gaothan,	]	
	Mumbai - 400 068.	]	
15.	Damodar Dharman Patil (deceased)	]	
	through Mahendra D. Patil, Adult,	]	
	residing at Kandarpada Gaothan,	]	
	Dahisar, Mumbai - 400 068.	]	
16.	M/s. Shaikh Construction,	]	
	having its office at C/o. K. N.	]	
	Shaikh Quarry, Dahisar Check Naka,	]	

	Dahisar, Mumbai - 400 068.	]	
17.	Devku Hari Ravate d/o.	]	
	Kanu Padam Pusekar,	]	
	Adult, Occ.- Agriculture.	]	
18.	Ganesh Hari Ravate s/o.	]	
	Devku Hari Ravate,	]	
	Adult, Occ.- Agriculture.	]	
19.	Suresh Vishnu Kakade s/o.	]	
	Barki Vishnu Kakade	]	
	(since deceased),	]	
	Adult, Occ.- Agriculture.	]	
20.	Baby Vithal Shinde,	]	
	Adult, Occ.- Agriculture.	]	
21.	Ramesh Vithal Shinde s/o.	]	
	Baby Vithal Shinde,	]	Respondents
	Adult, Occ.- Agriculture.	]	
22.	Leela Suresh Naik d/o.	]	
	Baby Vithal Shinde	]	
	Adult, Occ.- Agriculture.	]	
23.	Shyamlal Mahato s/o.	]	
	Smt. Pushpa Babulal Mahato	]	
	(since deceased),	]	
	Adult, Occ.- Agriculture.	]	
24.	Shashi Mahato s/o.	]	
	Smt. Pushpa Babulal Mahato	]	
	(since deceased),	]	
	Adult, Occ.- Agriculture.	]	
25.	Tulsi Mahato d/o.	]	
	Smt. Pushpa Babulal Mahato	]	

	(since deceased),	]	
	Adult, Occ.- Agriculture.	]	
26.	Vanita Eknath Kakade d/o.	]	
	Navsha Padman Pushkar	]	
	(since deceased)	]	
	Adult, Occ.- Agriculture.	]	
27.	Parshuram Eknath Kakade s/o.	]	
	Smt. Vanita Eknath Kakade	]	
	Adult, Occ.- Agriculture.	]	
28.	Harish Eknath Kakade s/o.	]	
	Smt. Vanita Eknath Kakade	]	
	Adult, Occ.- Agriculture.	]	
29.	Vaiju Uttam Shinde d/o.	]	
	Smt. Vanita Eknath Kakade	]	
	Adult, Occ.- Agriculture.	]	Respondents
30.	Nirmala Eknath Kakade d/o.	]	
	Smt. Vanita Eknath Kakade	]	
	Adult, Occ.- Agriculture,	]	
	17 to 30 all r/o. Pushekar Compound,	]	
	Linking Road, Near Wireless Compound,	]	
	Dahisar (East), Mumbai - 400 068 being	]	
	the legal heirs and representatives of	]	
	Kanu Padman Pusekar (since deceased).	]	
31.	Godavari Narottam Patil	]	
	Age-74 years, Occ.- Agriculture.	]	
32.	Vijay Narottam Patil	]	
	Age-40 years, Occ.- Agriculture.	]	
33.	Radha Kishan Patil	]	
	Age-46 years, Occ.- Agriculture.	]	

34.	Taruna Diwakar Patil	]	
	Age-42 years, Occ.- Agriculture.	]	
35.	Rohini Mahendra Thakur	]	
	Age-38 years, Occ.- Agriculture,	]	
36.	Pramila Jagdish Patil	]	
	Age-34 years, Occ.- Agriculture.	]	
37.	Mayuri Jagdish Patil	]	
	Age-20 years, Occ.- Agriculture,	]	
38.	Ketan Jagdish Patil	]	
	Age-23 years, Occ.- Agriculture.	]	
39.	Devan Jagdish Patil	]	
	Age-18 years, Occ.- Agriculture,	]	
31 to 39 r/o. Patil House, Pandurang		]	
Gawand Road, Dahisar Gaothan,		]	
Dahisar (West), Mumbai-400 069, being		]	Respondents
the legal heirs and representatives of		]	
Narottam Ganpat Patil (since deceased)		]	
40.	Anna Mary Francis Rodrigues	]	
	Adult, Occ.- Agriculture.	]	
41.	Marcus Francis Rodrigues	]	
	Adult, Occ.- Agriculture.	]	
42.	Patrick Francis Rodrigues	]	
	Adult, Occ.- Agriculture.	]	
43.	Lily Anselam Rodrigues	]	
	Adult, Occ.- Agriculture.	]	
44.	Sebastian Francis Rodrigues	]	
	Adult, Occ.- Agriculture.	]	
45.	Gregory Francis Rodrigues	]	
	Adult, Occ.- Agriculture.	]	

40 to 45 r/o. Rodrigues House,	]	
Kander Pada, Waman Bhoir Road,	]	
Dahisar (West), Mumbai-400 068,	]	
being the legal heirs and representatives	]	
of Francis Rodrigues (since deceased)	]	
46. Shankar Mangal Gimbhal	]	
Adult, Occ.- Agriculture.	]	
47. Vishany Mangal Gimbhal	]	
Adult, Occ.- Agriculture.	]	
48. Sunil Rajaram Gimbhal	]	
Adult, Occ.- Agriculture.	]	
46 to 48 r/o. Devkubai Chawl,	]	
Penkar Pada, P. O. Mira Kashmira,	]	
District - Thane - 401 107, being	]	
legal heirs and representatives of	]	Respondents
Smt. Jankibai Sukur Gambhal	]	
(since deceased)	]	
49. Laxmibai Kashinath Patil	]	
Adult, Occ.- Agriculture,	]	
r/o. Shivneri Nagar, At Rai,	]	
P. O. Bhayander, Dist.- Thane.	]	
17 to 49 all through their duly	]	
Constituted Power of Attorney Holder,	]	
Mr. Nalin Pancholi, r/o. Sector No.2,	]	
C-7, 301, Shanti Nagar, Mira Road,	]	
District-Thane.	]	
50. The Metropolitan Commissioner	]	
Mumbai Metropolitan Region	]	
Development Authority,	]	

M.M.R.D.A. Office Building,	]	
Bandra-Kurla Complex,	]	Respondents
C-14 & 15, E Block, Bandra (East),	]	
Mumbai-400 051.	]	

Mr. Kevic Setalwad, Senior Counsel a/w. Mr. Anupam Surve, Mr. Nikhil Mehta & Ms. Priyanka Gidh i/b M/s. Nanu Hormasje & Co. for the Petitioners.

Ms. I. K. Calcuttawala, AGP for Respondent Nos.1 to 3.

Ms. Sneha Tejani for Respondent No.4.

Dr. Abhinav Chandrachud a/w. Mr. Rakesh Singh, Mr. Kunal Chheda i/b M/s. M. V. Kini & Co. for Respondent No.5.

Ms. Sneh Mehta i/b M/s. Wadia Ghandy & Co. for Respondent No.6.

Ms. Kiran Bhagalia for Respondent No.50.

**CORAM : S.C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

Judgment Reserved on : 17.06.2016

Judgment Pronounced on : 29.06.2016

JUDGMENT

1. By this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek to invoke the extraordinary writ jurisdiction of this Court for quashing the entire acquisition proceeding of their lands bearing Survey Nos.321 & 322 (part) totally admeasuring approximately 12 acres located in village Dahisar, Mumbai and further seeking consequential relief of directing respondent Nos.1 to 7 to hand over possession of the said lands thereby taking necessary steps to delete the reservation of the lands for Remote Receiving Station.

2. Brief facts of the petition as are necessary for deciding the same can be stated as follows:

Late Shri Hajee Alimohammed Hajee Cassum Agboatwala was the original owner of several immovable properties, including the subject lands bearing Survey Nos.321 & 322 (part), situated at Dahisar, admeasuring about 12 acres. He died on 07.11.1946, leaving behind him his widow, who filed Suit No. 3415 of 1947 in this Court for administration of the estate of her husband. By an order of this Court dated 30.06.1950, respondent No.4 was appointed as the Receiver of the entire estate of the deceased Shri Hajee Alimohammed Hajee Cassum Agboatwala. On 01.07.1950 respondent No.4 took possession of the estate of the deceased.

3. Subsequent thereto, on 09.07.1958 the State of Maharashtra issued notification under Section 4 of the Land Acquisition Act, 1894 in respect of the petitioners' lands bearing Survey Nos.321 & 322 (part), along with other lands, for the public purpose of Remote Receiving Station. The declaration under Section 6 of the Land Acquisition Act was issued on 07.02.1959. Two separate notifications were accordingly issued on the same day and published in the Government Gazette on 19.02.1959. On 28.03.1974 respondent No.3, Special Land Acquisition Officer published an award in respect of those lands. Sometime in the year 1980, Remote

Receiving Station was duly constructed on some portion of the lands acquired, not belonging to the petitioners. In the final revised development plan of Greater Mumbai sanctioned in 1991, the lands were shown as reserved for the public purpose of the Remote Receiving Station.

4. It is the case of the petitioners that the lands belonging to them were not used for the purpose of installing the Remote Receiving Station and actual possession of the said lands was also not obtained even till the year 2007. Only on 18.04.2007, after a long period of 33 years from making of the award, a letter was addressed by respondent No.3 to respondent No.4 calling upon respondent No.4 to remain present on the said lands to hand over possession of the said lands from the petitioners to respondent No.4, under the said award.

5. When the petitioners came to know about the same, the petitioners filed Writ Petition No. 1421 of 2007, inter alia, for setting aside and quashing the award under Section 11 and also for quashing of two notifications issued under Section 6 of the Act on the ground that their land was no longer required for the purpose of the Remote Receiving Station, as the said purpose has been achieved long back. An apprehension was also expressed by the petitioners that their land would be now used for resettlement and rehabilitation of the encroachers, which was not the

purpose for which the acquisition proceedings were initiated.

6. In the said Writ Petition No. 1421 of 2007, on behalf of respondent No.5, the Airport Authority of India, an affidavit was filed giving an undertaking that respondent No.5 will be using the said land, only for the purpose of establishing/expanding of the Remote Receiving Station and allied installations. It was also stated in the affidavit-in-reply filed on behalf of respondent No.5 therein that, respondent No.5 shall commence proceeding for removal of encroachments on the said land within a period of 3 months and after getting vacant possession of the entire land will commence the process of expansion of the existing Remote Receiving Station on the said land within a period of 6 months.

7. According to the petitioners, in view of this undertaking given by respondent No.5, Writ Petition No. 1421 of 2007 came to be disposed of on 03.10.2007 in terms of the Minutes of Order tendered by all the parties for the purpose of withdrawal of the said petition. Accordingly on 24.10.2007 the possession of the petitioners' land was handed over by respondent No.3, S.L.A.O. to one Mr. L. R. Singh, Joint General Manager of respondent No.5, the Airport Authority of India. The possession receipt to that effect also came to be executed. Subsequent thereto, on 23.05.2008 Land Acquisition Reference No.1/2008 in LAQ Case No. 300/1/Dahisar in

respect of the said lands was forwarded by Govt. Pleader, High Court to Prothonotary & Senior Master, High Court, Mumbai for apportionment of the amount of compensation awarded to various claimants, including petitioners, under Section 30 of the Act. The entire acquisition proceedings were thus completed and came to an end.

8. Now the grievance of the petitioners is that respondent No.5 has not remained faithful to the undertaking given to the Court. Respondent No.5 has not commenced the proceeding for removal of encroachment within a period of 3 months, as assured, in order to commence the process of extension/expansion of the existing Remote Receiving Station and other allied installations, as assured. It is contended by the petitioners that even after lapse of a period of 2 years from taking possession of the petitioners' land, respondents had failed to act upon their assurance and undertaking given to the Court, which clearly indicates that respondent No.5 no longer requires the said land for the purpose for which it was acquired and thus intends to change the purpose and use of the land for rehabilitation of the slum dwellers. Thus, on the count that the land of the petitioners being not used for the designated public purpose of the Remote Receiving Station, according to the petitioners, their land has become free from acquisition. Hence the petitioners become entitled to get its possession. The petitioners have accordingly sought relief from the

Court of releasing their land from acquisition and handing over the possession to them.

9. When this petition came up for hearing before the Division Bench of this Court on 02.08.2010, petitioners produced on record the copy of resolution No.109, passed by the Board of respondent No.5 on 27.04.2007 indicating that the Board of respondent No.5 has resolved that, principally it had approved transfer of 50% of the land acquired for Remote Receiving Station to M/s. MIAL for rehabilitation of slum dwellers. The copy of resolution No.119 dated 07.04.2008 passed by the Board of the respondent No.5 was also produced by the petitioners and brought to the notice of the Court, by which the Board of respondent No.5 had sought approval of Aviation Ministry of the Government of India for transfer of 50% of the land and for that purpose to appoint a valuer. It was also pointed out that by letter dated 23.04.2008, the Ministry of Civil Aviation of Government of India had conveyed the approval for transfer of 32 acres of land to M/s. MIAL for rehabilitation of slum dwellers, from the land acquired for Remote Receiving Station in Mumbai.

10. When these documents were brought to the notice of this Court, juxtaposed to the undertaking which was given on behalf of respondent No.5 of using the said land for the purpose of expansion of

Remote Receiving Station only, it was found by the Division Bench of this Court that in the affidavit-in-reply filed on behalf of respondent No.5 in Writ Petition No. 1421 of 2007 on 11.09.2007 these facts were not mentioned. It was the duty of respondent No.5 to refer to the resolution of the Board and make a clear statement that this resolution does not include the land of the petitioners. It was further held by the Division Bench of this Court that prima facie, therefore, there was a clear attempt made by respondent No.5 to mislead this Court and the petitioners about the policy decision taken by the Board to transfer 50% of the land to M/s. MIAL for rehabilitation of slum dwellers and, therefore, it was, prima facie, held that respondent No.5 has interfered with the Course of justice by suppressing relevant material from the Court.

11. It was further held that though a solemn statement was made before this Court that encroachers will be removed within a period of 3 months, nothing tangible has been done within that period and thus there has been disobedience of the order passed by the Court in that regard.

12. In this view of the matter, the Division Bench of this Court by order dated 02.08.2010, was pleased to issue notice to respondent No.5 and its Chairman to show cause why the proceedings for having committed criminal contempt of Court should not be initiated against them.

13. Respondent No.5 challenged this show cause notice order of the Division Bench of this Court by preferring Special Leave Petition No. 24787 of 2010 in the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its order dated 16.12.2014 dismissed the said Special Leave Petition, reserving liberty for the parties to urge all their contentions as may be open to them before this Court at the appropriate stage, further clarifying that prima facie conclusion drawn by this Court shall not be treated as the final opinion on the subject and this Court, after a reply is filed by respondent No.5 to the show cause notice, deal with the matter on its merit, having regard to all the aspects, that may be projected before this Court.

14. The petitioners, thereafter have, with the leave of the Court, carried out necessary amendments in the petition, challenging the entire acquisition proceeding, further on the grounds that respondent No.5 has played deception and fraud on this Court, by concealing from this Court the resolutions dated 27.04.2007 and 07.04.2008. The petitioners have then submitted that as the possession of their lands was acquired on the basis of the order of this Court, passed in pursuance of the undertaking given by respondent No.5, suppressing the material facts about the resolutions passed by its board, any act of acquiring possession of the petitioners' lands on the basis of the order dated 03.10.2007 passed by this

Court, is a nullity and *non est* in the eyes of the law, being *void ab initio*. It is submitted by the petitioners that, as respondent No.5 has not received the lawful possession of the said land, petitioners are entitled to get back the same.

15. To substantiate these submissions, learned Senior Counsel for the petitioners has placed reliance on the various documents; some of which were produced by respondent No.5 in the Special Leave Petition filed before the Hon'ble Supreme Court of India and some of which the petitioners had obtained under Right to Information Act. Much reliance is placed by learned counsel for the petitioners on the resolutions dated 27.04.2007 and 07.04.2008 and also the memorandum of 74th Board meeting containing a proposal of respondent No.5 to drop acquisition of the petitioners' lands bearing Survey Nos.321 and 322 (part). The reliance is also placed on the memorandum of 117th board meeting of respondent No.5 reflecting that in a meeting held in January, 2007, a decision was taken to transfer 50% of Dahisar Remote Receiving Station land to respondent No.6, Mumbai International Airport Authority Ltd. for rehabilitation of slum dwellers. Further reliance is placed on the memorandum of respondent No.5 passed in 2008 showing that even after the order dated 03.10.2007 and obtaining possession of the petitioners' lands, respondent No.5 was deliberating on the transfer of 32 acres out of

64 acres of the Remote Receiving Station land to builders for commercial use.

16. It is submitted that these documents are more than sufficient to prove that none of these facts were disclosed before the Division Bench of this Court in earlier Writ Petition No. 1421 of 2007 and false undertaking was given that the land was still required for expansion of Remote Receiving Station. According to the petitioners, it is a matter on record that in reality the old Dahisar Remote Receiving Station has already become non functioning and defunct in view of the construction of new ATC tower near the International Airport. Thus, it is submitted that as respondent No.5 has obtained possession of the lands of the petitioners by playing fraud on the Court and on the petitioners, by giving false undertaking, the entire acquisition proceeding stands at naught and, therefore, required to be quashed.

17. By way of further amendment in the petition, it is submitted that the petitioners have now come across the Government notification dated 07.07.2015 published in the Official Gazette, under which the reservation of the Remote Receiving Station on the petitioners' land is sought to be changed for Metro/Mono Car Depot. Copy of the said notification is also filed on record at Exhibit EE to the petition. In view

thereof, it is submitted that respondent No.5 has not implemented the order dated 03.10.2007 under which it has acquired the possession of the petitioner's land, that too, in breach of the solemn undertaking given to the Court and this is also one more ground for the petitioners to seek the relief of directing respondent No.5 to pay the monetary compensation for the said land, as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

18. On behalf of respondent No.5 an affidavit of one Mr. Anil Kumar Narula, Assistant General Manager of Airports Authority of India is filed on record to the petitioners' application for amendment of the petition, denying all the adverse allegations of deception and fraud and contending, inter alia, that the alleged proposal of withdrawal of the acquisition of 50% of land was never finalized; conversely, it was dropped and withdrawn at the government level. Hence there was no question of respondent No.5 playing any fraud or deception. It was contended that the land was yet required for the purpose of expansion of Remote Receiving Station and there is no substance in the contention that the Remote Receiving Station has become defunct or dis-functional. Reliance is placed by respondent No.5 on the letter dated 01.12.2011 issued by its Executive Director to the Airport Authority of India, withdrawing its request of the allotment of land at Dahisar for slum dwellers rehabilitation of Airport. In the said letter, it was also assured that regular guarding and routine

inspection would be taken of the said land to protect it from encroachment. On behalf of respondent No.8, the MMRDA, it is submitted that the petition suffers from delay and laches and on this very ground is required to be quashed and dismissed. On merits, it is submitted that once possession of the acquired land is taken over by the Government, it vests in the Government and original owner then cannot challenge any change of user of the said land.

19. Having heard learned counsel for the petitioners and respondent No.5, we are of the opinion that the present petition does not hold any merit and substance for the simple reason that both on facts and law, petitioners have no case at all.

20. It need not be stated that the law relating to the acquisition of lands is, by now, fairly well settled. In the authorities relied upon by learned counsel for the petitioners also that of **Special Land Acquisition Officer, Bombay & Ors. Vs. M/s. Godrej and Boyce, (1988) 1 SCC 50** and **Amarnath Ashram Trust Society & Anr. Vs. Governor of U. P & Ors., (1988) 1 SCC 591** it is categorically held that, under the scheme of the Act once the possession of the land sought to be acquired is taken over by the government, the acquisition proceeding comes to an end. Till that point of time only, the land continues to be with original owner so long as possession is not taken over. Neither the notification under Section 4 nor

the declaration under Section 6 nor notice under Section 9 can divest the original owner or other person interested in the land of his right therein. However once the possession of the land is taken over by the government under Section 16 of the Act, owner's interest in the land comes to an end. Thereafter the government is free to use the land even for the purpose other than the one designated in the acquisition proposal, provided the said purpose is a public purpose.

21. In the authority relied upon by the learned counsel for the petitioners, **Union of India Vs. Shri Nand Kishore**, ILR (1982) II Delhi 741, L. P. A. No. 126/1976 decided on 21.05.1982, also this legal position is reiterated by stating that "once the possession of the acquired land is taken over by the Government, the land vests in the Government and once the land is vested in the Government, the Government has right to put the land to such use as it thinks proper." The reliance placed upon this Judgment is entirely misplaced as there, on facts it was found that the purpose was sought to be altered during the course of acquisition and much prior to finalisation thereof.

22. This legal position is made further clear by the Hon'ble Supreme Court in its judgment of **Gulam Mustafa Vs. The State of Maharashtra**, (1976) 1 SCC 800, relied upon by the learned counsel for respondent No.5, by observing that "once the acquisition is valid and the

possession of the land is taken over by the Government, how it uses the land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which the valid compulsory acquisition stands voided because long latter the acquiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration."

23. In the instant case, the entire process of acquisition, like issuance of notifications under Section 4 and under Section 6 and further even the making of the award under Section 11 is completed and the said process is not challenged. Even the amount of compensation is also deposited in the High Court for apportion to the original claimants, including the petitioners. Not only that, the possession of the land acquired is also taken over and handed over to the Government by respondent No.3 on 24.10.2007. Thus the entire acquisition proceedings have come to an end. Once the possession of the land is also handed over to the Government, petitioners' right, interest or claim in the said land has legally come to an end. As the land now legally vests in the Government, the Government has right to put the land to such public use as it thinks proper. Therefore, whatever change of purpose occurs that cannot be challenged, subsequent to Government acquiring possession of the land, even by the original owner. Thereby meaning that whether the land of the

petitioners is now being acquired for the purpose of Metro/Mono project or otherwise for rehabilitation of the slum dwellers, cannot be and need not be of any concern to the petitioners.

24. Learned counsel for the petitioners is also not disputing the legal position that after the possession of their land is handed over to the Government, subsequent change of public purpose cannot give rise to any cause of action for the petitioners in the normal circumstances. The only grievance raised by the learned counsel for the petitioners is that in the instant case on account of deception and fraud played by respondent No.5, the order of granting possession of the land to respondent No.5 was passed. According to learned counsel for the petitioners, once it is found that possession was given due to the undertaking given by the respondent No.5, which undertaking was found to be subsequently false and not complied with, everything comes to a naught and, therefore, the petitioners still carry the right to challenge the acquisition proceeding so as to get back possession of their land.

25. To substantiate this submission, learned counsel for the petitioners has relied upon the observations made by the Apex Court in the case of **State of A. P. Vs. T. Suryachandra Rao (2005) 6 SCC 149** to elaborate the effect of the fraud so as to vitiate every solemn act and to

submit that it is a fraud in law if a party makes representation, which he knows to be false, and injury enures therefrom. It is submitted that even misrepresentation itself may amount to fraud and the fraud and justice cannot dwell together. Herein in the case, learned counsel for the petitioners submits that, there is deliberate deception on the part of respondent No.5. It is urged that, the petitioners had, when they received the notice that possession of the land will be handed over to respondent No.3, filed Writ Petition No. 1421 of 2007 raising specific contention that their land was no more required for the purpose of Remote Receiving Station as the said purpose was already satisfied in view of erection of Remote Receiving Station. In the said Writ Petition, by way of affidavit, respondent No.5 has made it clear that they require the land for the expansion of Remote Receiving Station and undertaking was also given that, after receiving possession of the said land, respondent No.5 shall commence the proceeding for removing encroachments on the said land within a period of 3 months and subsequent thereto, commence the process of extension/expansion of existing Remote Receiving Station within a period of 6 months subject to their usual formalities and in a phased manner. It is urged that in view of this specific undertaking given by respondent No.5, the Minutes of Order was passed in the said Writ Petition and the Writ Petition came to be disposed of as withdrawn.

26. As per the petitioners, till today the process of expansion of existing Remote Receiving Station has not commenced. Not only that, earlier to the filing of the affidavit of respondent No.5 in the said Writ Petition itself, there were resolutions passed by respondent No.5 to the effect that the subject land will be surrendered to the Government by transferring the same to M/s. MIAL as it was not found viable to remove the encroachments thereon. According to learned counsel for the petitioners, the two resolutions dated 27.04.2007 and 28.04.2008 to that effect passed by the Board of respondent No.5, the copies of which are produced in this case, make it abundantly clear that respondent No.5 never intended to act on the undertaking given to the Court in Writ Petition No. 1421 of 2007. Conversely, respondent No.5 suppressed material fact and this is a fraud played on petitioners and on this Court. Therefore, acquisition proceedings themselves become vitiated, whether the possession of the land is given to the Government or otherwise.

27. To appreciate this submission, it is essential to see whether the statements made in the affidavit filed by respondent No.5 in Writ Petition No. 1421 of 2007 were false to their own knowledge and were made with any deliberate attempt to mislead the petitioners or the Court. It is pertinent to note that the resolutions, on which the petitioners are relying, are merely in the nature of the proposals made by respondent No.5 to the

board for the transfer of 50% of land at Dahisar Remote Receiving Station to M/s. MIAL for the purpose of rehabilitation of slum dwellers from CSI Airport. The said proposals had not received the approval of the Civil Aviation Ministry till the affidavit was filed in the Court in 2007. The alleged approval of the Ministry for surrender of transfer of 50% of the land was received only subsequently on 23.04.2008.

28. Apart from that, and more importantly the said proposal was never implemented, as may be seen from the letter dated 01.12.2011, issued by Executive Director of Airport Authority. The said letter reveals that M/s. MIAL has withdrawn its request for allotment of land for rehabilitation of slum dwellers and hence the proposal of the transfer of land was withdrawn and dropped. It would be useful to reproduce the specific contents of the letter as follows:

"Sub : AAI land at Dahisar Remote Receiving Station, Mumbai - Proposal for transfer of 50% of AAI land at Dahisar to M/s. MIAL for rehabilitation of slum dwellers of CSI Airport.

Sir,

On th subject issue, reference is invited to correspondence exchanged between AAI Hqrs. and RHQ. Western Region.

In this regard it is stated that M/s. MIAL has withdrawn its request for allotment of AAI land at Dahisar for slum dwellers rehabilitation of CSI Airport.

In view of the above, proposal to transfer any land to M/s. MIAL

at Dahisar stand withdrawn and dropped.

It may be ensured that AAI land at Dahisar is protected. Regular guarding and routine inspection may be ensured so that no further encroachment takes place.

Please acknowledge receipt."

29. This letter therefore makes the things very clear that whatever proposals were principally made in Board Resolutions, which was purely on internal affair of the Board of respondent No.5, were not finally accepted but withdrawn. Hence no question arises of respondent No.5 or its Chairman committing any deception or fraud on the petitioners or the Court or committing breach of the undertaking given to the Court.

30. Subsequent thereto, it may be true that the government notification/gazette is issued to use the said land for Metro/Mono Car Depot, however that notification is dated 07.07.2015, that is much after the acquisition of possession of the said land by the Government in the year 2008. As per the settled position of law, enunciated in various decisions of the Apex Court, including the decision in **Union of India Vs. Jaswant Rai Kochhar (1996) 3 SCC 491**, relied upon by learned counsel for respondent No.50, MMRDA, the land sought to be acquired for one public purpose may be used for another public purpose. Mere change of purpose of the land after its acquisition by the Government cannot give any ground to the

original owner to seek quashing of acquisition.

31. Therefore, it can hardly be said that there was any concrete proposal which was in the realm of implementation, of not using the petitioners' land for the designated purpose of expansion of Remote Receiving Station, when the affidavit-in-reply was filed in Writ Petition No. 1421 of 2007, so as to infer that it was done to mislead the Court or the petitioners. A fraud or deception can take place only when there is willful statement or misrepresentation made to the other party or to the Court. In the facts of the present case we do not find that any such willful misrepresentation or deception was made, so as to mislead the petitioners or the Court.

32. As to the undertaking given to the Court by respondent No.5 of using the land for the designated purpose within particular period of time after removal of its encroachment; there is nothing on record to show that respondent No.5 had not made any sincere efforts for removal of the encroachments on the said land. Conversely, the record shows that the encroachments were difficult to be removed though the efforts were made in that direction. Hence there does not arise question of willful disobedience of the undertaking given to the Court.

33. As to the authority relied upon by the learned counsel for the petitioners, that of **Keshrimal Jivji Shah Vs. Bank of Maharashtra, 2004(3) Mh.L.J. 893**, the issue therein pertained to the transfer of property despite the order of status quo, passed by the Court under Order 39 Rule 1 of the Code of Civil Procedure. Hence, it was held that the transfer of immovable properties in violation of an order of injunction or prohibition issued by Court of Law confers no right, title and interest in the transferee as it is no transfer at all. Herein in the case, there was no such order of status quo or injunction or prohibition issued by this Court and hence there is no question of holding the handing over of possession is no possession in law at all in the eye of law.

34. The facts of the authority **Satyabrata Biswas Vs. Kalyan Kumar Kisku, (1994) 2 SCC 266**, relied upon by learned counsel for the petitioners, also reveal that in view of violation of status quo order passed by the Court, the possession was obtained and hence the parties were relegated to the original position. Therefore, that authority also cannot be made applicable to the present case.

35. On behalf of respondent No.50, MMRDA, learned counsel has relied upon two authorities of the Apex Court, that of **Municipal Council, Ahmednagar & Anr. Vs. Shah Hyder Beig & Ors. (2000) 2 SCC 48** and

Tamil Nadu Housing Board, Chennai Vs. M. Meiyappan & Ors., (2010) 14 SCC 309, to submit that the petition in the instant case suffers from delay and laches and hence on this very ground itself the petition is liable to be dismissed. It is urged by the learned counsel for the respondent No.50 that the acquisition proceedings in the instant case were initiated in the year 1958 i.e. more than 52 years prior to the filing of this petition. The possession of the land was also acquired on 24.10.2007 i.e. 3 years before filing of this petition. In such a situation, the delay itself defeats the equity, as held by the Apex Court in the case of **Municipal Council, Ahmednagar** (supra) in following words:

"It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor. While it is true that this extraordinary jurisdiction is available to mitigate the sufferings of the people in general but it is not out of place to mention that this extraordinary jurisdiction has been conferred on to the law courts under Article 226 of the Constitution on a very sound equitable principle. Hence, the equitable doctrine, namely, "delay defeats equity" has its fullest application in the matter of grant of relief under Article 226 of the Constitution. The discretionary relief can be had provided one has not by his act or conduct given a go-by to his rights. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of grant of an order as has been passed in the matter as regards restoration of possession upon cancellation of the notification does not and cannot arise."

36. By relying on the observations of the Apex Court in **Tamil Nadu Housing Board, Chennai** (supra), it is submitted that in relation to the acquisition proceedings, this Court should be loath to encourage the stale litigation as the same might hinder projects of public importance. It is submitted that the Courts are expected to be very cautious and circumspect about exercising their discretionary jurisdiction under Article 226 or Article 32 of the Constitution, if there has been inordinate unexplained delay in questioning the validity of acquisition of land. According to learned counsel for respondent No.50, MMRDA, now the land is required for the project of Metro/Mono Car Depot and allied leases. Therefore, at this stage if this Court invokes its extraordinary jurisdiction in favour of petitioners, who has earlier conceded respondent No.5 to take possession and after a long delay has challenged the acquisition proceeding itself, the public project of Metro/Mono Rail will be hindered and on this ground also the Writ Petition is liable to be dismissed.

37. In our considered opinion, apart from, and in addition to the delay in filing of this petition, on merits we have already found that there is absolutely no case made out by the petitioners. We find that this belated attempt on the part of the petitioners to recover possession of the land, which was acquired long ago in the year 1958 itself and the possession of

which was given in the year 2007, must fail in the absence of any sufficient material produced on record to challenge the said acquisition.

38. As to the show cause notice issued by this Court to respondent No.5 for committing criminal contempt of Court, we are of the view that having come to the conclusion that there is no material produced on record to prove that there was any deception or fraud played by respondent No.5 in getting possession of the land through the order of this Court dated 24.10.2007 and in the absence of any material produced that there was any willful disobedience on the part of respondent No.5 in fulfilling the obligation given in the undertaking to this Court, the proceeding of contempt of Court prima facie also cannot be tenable against respondent No.5, or its Chairman.

39. At this stage, it may be stated that, we are aware of the observations made by the Supreme Court in SLP No. 24787 of 2010 as follows:

"We may also at this stage suggest that the High Court would do well to split the proceedings up into two distinct proceedings one dealing with the writ petition on merits and the other that may deal with the question whether the petitioners are in contempt, to avoid any confusion. It is evident that even without issuing notice in the writ petition the High Court has proceeded to issue a show cause notice in exercise of its contempt jurisdiction. The High Court may examine

whether separating the two proceedings will help it avoid a possible confusion."

40. We are also aware that respondent No.5 or its Chairman has not filed any affidavit-in-reply in response to the show cause notice issued to them.

41. However, as while arriving at the decision of dismissing this Writ Petition, we have clearly come to conclusion that, neither willful disobedience nor any fraud and deception is played by respondent No.5 or its Chairman either on the Court or on the petitioners, we are of the opinion that there is no purpose or point in keeping alive the contempt proceedings; especially when the petitioners themselves have not taken any steps to separate the said proceedings from this Writ Petition. It would amount to abuse of the process of law.

42. To conclude, it is ordered that, the Writ Petition stands dismissed.

43. Similarly, the show cause notice issued to respondent No.5 and its Chairman for having committed criminal contempt of Court also stands discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [S.C. DHARMADHIKARI, J.]