

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1382 OF 2006

Samant Property Developers Private Limited .. Petitioner

Vs.

Municipal Corporation of Greater
Mumbai and ors.

.. Respondents

Mr.Y.S.Jahagirdar i/b Ms.Seema Sarnaik, for the Petitioner.

Ms.Geeta Joglekar, for Respondents No. 1 to 4 - BMC.

Mr.Suresh Kumar, for Respondents No. 5 & 6.

Mr.B.B.Sharma, AGP for Respondent No.7 - State.

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.**

DATE : 02nd AUGUST, 2016

P.C. :

. Heard the parties through their Counsel. During the course of hearing, we find that the issue involved in this Petition can be resolved by passing following order.

1. In the affidavit dated 10/03/2016, it has been made clear by the petitioner that the construction of building in question on the plot is complete and Occupation Certificate has also been granted to the petitioner on 18/06/2010 in the light of the letter dated 28/07/2016

issued by the Railways. The said letter is marked 'X' for identification.

2. We also make it clear that in case, the plot/land in question is required by the respondent – Railways for the purpose of railway line, the Railways shall give 2 months prior written notice of their intention to acquire the said land/plot for the said purpose to the petitioner in addition to other statutory notice which the petitioner is entitled to receive.
3. We also make it clear that undertaking given by the petitioner in pursuance to the interim order passed by this Court on 10/10/2006 shall not be enforced by the Railways unless the aforesaid notice/notices are served upon the petitioner. In case, the said notice/notices are issued to the petitioner, it shall be entitled to challenge the same on the ground raised in this Writ Petition and in regard to that, all the contentions raised by the petitioner are kept open.
4. The petitioner shall also be entitled to challenge the authority of the Railways to impose such condition as also the legality, proprietary and rationality of such condition.

5. It is also open for the petitioner to apply for relieving the petitioner from undertaking if the petitioner feels that the Railways are not requiring the land for the purpose of Railway line. In case, such a prayer is made by the petitioner, the Railways are expected to consider and take appropriate decision on it in accordance with law keeping in view their present and future requirement and the policy.

2. Rule is disposed of in the above terms.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)