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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5159 OF 2016

Tulsidas Tarachand Gajwani and Ors. ... Petitioners
Vs.
The State of Maharashtra and Ors. ... Respondents

Mr. Anoop V. Patil for the Petitioners.
Ms. Aparna Vhatkar, AGP for the Respondent Nos.1 to 5.

CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.

DATE : 27th FEBRUARY, 2017

PC.

1 Rule. The learned AGP waives service for the first to fifth Respondents. Considering the order which we propose to pass, it is not necessary to serve notice to the other Respondents.

2 The petitioners claim that on behalf of the Shri Saikurpa Gruha Rachna Maryadit (Proposed), they purchased a plot of land admeasuring 60 Ares out of the larger land bearing survey no.26 totally admeasuring 2 Hectares and 71 Ares situated at village Rahatni, Taluka Haveli, District Pune. The petitioners made an application before the Hon'ble Minister of Revenue and Forest Department describing the same as an Appeal but seeking directions under Sub-Section (1) of Section 48

of the Land Acquisition Act, 1894 (for short “Land Acquisition Act”) for release of the said plot of land from acquisition. The Hon'ble Minister of Revenue and Forest Department on 29th December, 2015 passed an order in the said Appeal directing the District Collector to submit certain documents.

3 The grievance in this Petition under Article 226 of the Constitution of India is that the said Appeal is kept pending for inordinately long time.

4 The learned AGP on instructions states that on 17th January, 2017 the Divisional Commissioner was called upon to submit certain documents and as the same were not received, the Appeal is still pending.

5 We have carefully considered the submissions. Perusal of the Memorandum of Appeal shows that the plot of land claimed by the petitioner was acquired under the Land Acquisition Act, 1894 for the benefit of the Pimpri Chinchwad New Town Development Authority. The Memorandum of Appeal/Application contains a specific averment that the land in question was purchased by the petitioners on behalf of a proposed Co-operative Society. In the Appeal, there are averments

indicating that there was an earlier application made before the Divisional Commissioner, Pune under Sub-Section (1) of Section 48 of the Land Acquisition Act, 1894 for release of the land for acquisition.

6 It will be necessary to make a reference to Section 48 of the Land Acquisition Act, 1894 which reads thus :-

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed. -

- (1) Except in the case provided for in section 36, the Government or the Commissioner shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.
- (2) Whenever the Government, withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.
- (3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

7 In its application to the State of Maharashtra, by Act No.38 of 1964, an amendment was carried out by inserting the words “or the Commissioner” after the word “Government” in Sub-Sections (2) and (3). The said amendment shows that the power to withdraw from acquisition can be exercised both by the State Government and the

Commissioner. In view of the said amendment, the State Government and the Commissioner exercise concurrent jurisdiction as far as the power under Sub-Section (1) of Section 48 is concerned. If the Commissioner has already considered the prayer for release of land from acquisition in exercise of powers under Sub-Section (1) of Section 48 of the Land Acquisition Act, the said power cannot be exercised by the State Government (by Hon'ble Minister) by sitting over in Appeal against the order of the Divisional Commissioner. The State Government does not have such Appellate Power.

8 In the light of this legal position that the pending Appeal/Application will have to be decided by the Hon'ble Minister.

9 Accordingly, we pass the following order :-

ORDER

- (i) The Divisional Commissioner, Pune and District Commissioner, Pune shall ensure that the documents requisitioned by the State Government are produced before the State Government within a period of one month from today;
- (ii) We direct the authority before which the said Appeal is pending to decide the same in accordance with law as

expeditiously as possible and preferably within a period of three months from today;

- (iii) We make it clear that before deciding the Appeal, the State Government will examine the question whether at the instance of the petitioners or the proposed Society, the prayer under Section 48 of the Land Acquisition Act, 1894 has been already considered by the Divisional Commissioner. If the prayer has been already considered by the Divisional Commissioner, the State Government will not be entitled to exercise the said power;
- (iv) Needless to add that no order shall be passed on the Appeal without giving an opportunity of being heard to all persons/authorities for whose benefit the land subject matter of this Petition has been acquired;
- (v) The Petition is disposed of on above terms;
- (vi) All concerned to act upon an authenticated copy of this order;
- (vii) We make it clear that no adjudication is made on merits on the request made by the petitioners.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)