

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

WRIT PETITION NO. 6964 OF 2017

City and Industrial Development
Corporation of Maharashtra Limited

...Petitioner

Versus

Surendra Kumar Somany
Constituted Attorney
Abid Kurban Hussain Daruvala & Ors.

...Respondents

.....

Dr.Poornima Advani a/w. Mr.Roopadaksha Baou and Ms.Amrita Joshi
i/b. The Law Point.

Mr.Bhushan Walimbe a/w Mr.Eknath A. Chavan and Mr. Amit E.Chavan
for Respondent No.1.

Ms. Jyoti Jadhav, AGP for the State.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 29, 2017**

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 06.08.2016 passed by the learned Civil Judge, Senior Division, Alibag in Special Darkhast No. 83 of 2000. There is a dispute in respect of calculation of the amount of compensation, which is computed at the rate of Rs. 1725 per square meter as per rate fixed by Division Bench of this Court in **First Appeal No.646 of 1995 (The State of Maharashtra versus Shri**

Trimbak Joma Thakur & Ors.] alongwith group of 20 First Appeals, which were decided on 21.06.2007. Pursuant to this judgment, respondent no.1- land owner approached the Executing Court and got the decree modified and as per calculation of the Executing Court the compensation amount of Rs. 112,47,40,725/- is due and payable as on 30.10.2016. Hence, the petitioner is challenging the calculation of Executing Court in this petition. It is submitted that as per CIDCO calculation, the total compensation payable for the land after applying the valuation factors and including interest till 20.02.2017 comes to Rs. 43,31,69,203/-.

3. The learned counsel for the petitioner submits that petitioner-CIDCO is ready to deposit the entire decretal amount without prejudice to establish its bonafides. However, the petitioner-CIDCO is seriously challenging the method of calculation made by the Executing Court. She further submits that CIDCO was not a party before the Division Bench when the First Appeals were decided in the year 2007. The rate of Rs. 1725/- per square meter was not agreeable to the petitioner-CIDCO and therefore, petitioner-CIDCO approached the Supreme Court by filing SLP. However, it was dismissed on account of delay. Now, the petitioner-CIDCO again wants to file a Review Petition before the Supreme Court within a period of one month, as they have challenged the rate of Rs. 1725/- per square meter.

4. The learned counsel for respondent no.1-land owner submits that the petitioner has not taken any concurrent step challenging the rate decided by Division Bench since last 10 years. In fact, they are acting on behalf of the State of Maharashtra, who was a party before the Division Bench in the year 2007. The State of Maharashtra has not challenged the order passed by Division Bench in the case of ***The State of Maharashtra versus Shri Trimbak Joma Thakur & Ors.*** (supra). Therefore, the petitioner-CIDCO is bound to pay the compensation amount at the rate of Rs.1725/- per square meter fixed by the Division Bench. The petitioner- CIDCO is an agent of the State of Maharashtra. He further submits that the petition is not maintainable and the petitioner raises first objection on this point.

5. After hearing submissions of both the parties, I am of the view that once the rate is fixed by Division Bench, the petitioner-CIDCO is bound to pay the said rate, unless it is altered and modified either by the same Court or by the Supreme Court. I gather that the issue is only in respect of the calculation. It is argued that on this issue submissions were not made before the Executing Court and therefore, the Executing Court did not have an opportunity to deal with these submissions and method of calculation. In one identical matter when the issue was raised before the Division Bench of this Court whether CIDCO is a

necessary party in the execution proceedings, it was held that CIDCO was not a necessary party to the proceeding.

6. The learned counsel for respondent no.1- land owner submits that this issue has no res integra as Division Bench of this Court in the case of **CIDCO Versus Percival Joseph Pareira and Ors**, reported in **2013 SCC online Bom 408** has taken a view that CIDCO is not a necessary party.

7. Perused the judgment **CIDCO Versus Percival Joseph Pareira and Ors**. It is useful to reproduce paragraph no. 18 of the said judgment, which is as under:-

“18. It is to be noted that Government Resolution dated 12th February 2008 does not support the case of CIDCO and in fact goes contrary to the CIDCO's case. The said Government Resolution makes it clear that payment to be made by CIDCO as compensation/enhancement of compensation will be on account of Government. Thus, the payment so made by CIDCO will be in the capacity of agent of the State Government. This position is consistent with the provisions of section 113 (3A) and section 113-A of the Maharashtra Regional And Town Planning Act, 1966. In similar way, the Government Resolution dated 12th August 2010 also supports the contention of respondent no.1 – original claimant. This Resolution shows that the Government has accepted the judgment of the learned Single Judge and has authorized CIDCO to represent the Government in the References under sections 18 and 28A of the Land Acquisition Act, 1894. Therefore, the view taken by the Single Judge is correct.

CIDCO to be entertained as a necessary and proper party in the reference of Land Acquisition has been rejected by the Division Bench of this Court. This order is not challenged before the Supreme Court as on today. It holds the field.

8. Under such circumstances, the petitioner-CIDCO cannot be heard in this matter; however CIDCO can assist the State of Maharashtra. Thus the petitioner- CIDCO has no locus to challenge the order of the Executing Court and the calculation of the amount of compensation. Hence, I am not inclined to entertain this petition. However, the submission was already made before this Court that the petitioner- CIDCO is ready to deposit the entire decretal amount. The statement made by the learned counsel for the petitioner-CIDCO that CIDCO shall deposit the entire decretal amount without prejudice on 03.07.2017 is hereby accepted. Hence, I pass the following order.

ORDER

1. Writ Petition is dismissed.
 2. The petitioner- CIDCO shall deposit the entire decretal amount on or before 03.07.2017 before the Executing Court.
9. In view of the above, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)