

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5712 OF 2014

Chandravilas Babu Bharnuke .. Petitioner
V/s
The City & Industrial Development Corporation
of Maharashtra Ltd. & Ors. .. Respondents

Mr. R.D. Soni with Mr. S.N. Gawde i/b Shree & Co. for the petitioner.
Mr. B.B. Sharma for respondent nos.1 and 2.
Mr. P.P. Kakade, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, C.J. &
G.S. KULKARNI, J.**

DATE : 22nd FEBRUARY 2017

P.C.:

The petitioner is before this Court in the present writ petition mainly seeking the allotment of developed land under 12.5% scheme of the Government being the person affected by the acquisition in question.

2. In order to understand and appreciate the stand of the petitioner, it is necessary to narrate certain relevant facts how from the date of alleged registered agreement of sale, the parties have conducted themselves. Apparently one Balshet Babu Bharnuke, father of the present petitioner, was the owner of certain lands measuring 6 acres and 8.99 ares situated at Village Nerul, Taluka

and District Thane in Navi Mumbai. According to the petitioner, on 14th August 1967 there was an agreement of sale with one Nandanvan Co-operative Housing Society Ltd. for sale of part of the said land. According to him, the society did not pay the requisite consideration under the said agreement. Therefore, the said agreement was not acted upon. Consequently the petitioner claims that the ownership rights over the said land remained with the petitioner's predecessor in title and after his death, it has passed on to the petitioner.

3. With this state of affairs, as stated above, on 5th September 1970 the State Government issued a notification under section 4 of the Land Acquisition Act, 1894 (for short “the Act”) proposing to acquire the said land for the development of new township of Navi Mumbai. This was followed by a declaration under section 6 of the Act on 3rd May 1972. An award came to be passed on 31st December 1981 by the Special Land Acquisition Officer for compensation of Rs.1,84,194.74 and Rs.2,45,507.75 in two different cases.

4. According to the petitioner, he raised an objection before the Land Acquisition Officer stating that the entire compensation must be paid to him since the society failed to comply with the terms of agreement of sale.

5. What we notice from the records is that the housing society also raised a dispute as regards payment of compensation to the petitioner's predecessor in title. Therefore, the matter was referred for resolution under section 30 of the Act. On 20th February 1985, the Joint District Judge, Thane passed a common award for apportioning the amount of compensation amongst the petitioner's predecessor in title and the society. We also notice from the award of the Joint District Judge, Thane, that there is a reference with regard to the counter-claim made by the petitioner in respect the land measuring 13 gunthas in Survey No.152/5 when the area to be taken into account for the purpose of counter-claim is about 13.5 sq.mtrs. Para 10 of the award refers to entitlement of the counter-claimant, i.e. the petitioner, for a compensation of Rs.7561.25. However, the petitioner not being satisfied with this apportionment filed First Appeal No. 6433 of 2012 wherein different turn of events occurred. On reading the order passed on the said First Appeal (at page 60), what we notice is that the said appeal came to be disposed of on the lines of consent terms entered into between the so-called society and the present petitioner.

6. With the above facts, one has to see whether the petitioner is entitled for allotment of 12.5% of developed land in terms of the Government Resolution dated 6th March 1990 which came to be modified by Government Resolution dated 28th October

1994. On going through the above Government Policies of 1990 and 1994, one can understand that for the purpose of rehabilitating the land loser, who is an agriculturist and who was making his livelihood by cultivating the land, the State Government came out with the policy of 12.5% of developed land being allotted apart from compensation to this category of persons referred to in the Government Policies of 1990 and 1994. The issue raised before us is whether the present petitioner, having entered into an agreement of sale with the society and the society being the *kabjedar*, as shown in 7/12 extract as on the date of acquisition notice in the year 1970 and later on, has come to the Court with clean hands seeking implementation of the Government Policy of allotment of 12.5% of developed land to the petitioner.

7. It is seen till the settlement or consent terms came to be filed in First Appeal No. 6433 of 2012, there is nothing on record to show that the petitioner or his predecessor in title had cancelled the agreement of sale in accordance with the procedure contemplated and has established such cancellation so as to make him absolute owner exercising rights over the property including receipt of compensation for the land in question. Apparently in the orders under section 30 of the Act, there is no discussion with regard to entitlement of the petitioner based on the ground of cancellation of agreement of sale. We do not understand under what circumstances there was apportionment of such amount of compensation

amounting to Rs.7,000/- and odd. This was the position in 1995. By this time, both the Government Policies of 1990 and 1994 were in existence. By the time first appeal came to be filed in 2012, the entire scenario was changed and even the society seems to have agreed to the terms of settlement by incorporating clause (g) in the consent terms.

8. What made the society to give up the compensation amount seems to be that in terms of the Government Policies of 1990 and 1994, the society would not be able to get 12.5% of developed land since it was not meant for the society and, on the other hand, there is a clear bar in giving such developed land to the cooperative society. In order to overcome such procedure, in all probability, the consent terms seems to have come into existence. Therefore, neither the society nor the petitioner seems to have withdrawn the money deposited towards compensation. The petitioner voluntarily seems to have returned the consideration received under the agreement of sale. If really the petitioner intended to have benefit of 12.5% of developed land, since the Government Policies were in existence from 1990 and 1994, we fail to understand why the petitioner did not chose to do so at the earliest point of time and why he is before this Court only in the year 2013. This clearly indicate that all along the petitioner was aware that whatever right, interest and title in the property in question he had, was already the subject matter of the registered agreement of sale. Therefore, he was not entitled for such

benefit and the society in terms of the Government Policies was also not entitled to such benefit.

9. Under these circumstances, to overcome the procedural obstacles, the consent terms seems to have come into existence. Since we are considering the matter while exercising our jurisdiction under Article 226 of Constitution of India, we decline to intervene and extend the relief to the petitioner as the petitioner has not come to this Court with clean hands. Accordingly the writ petition is dismissed.

(G.S. KULKARNI, J.)

CHIEF JUSTICE