

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

WRIT PETITION NO.3741 OF 2014

Malini Hari Joshi
(Since deceased through
her legal heir and representative
Mr. Arun Hari Joshi) ... Petitioner.

Versus

The State of Maharashtra
and another. ... Respondents.

....

Mr. Sham V. Walve for the the Petitioner.
Mr. N.C. Walime AGP for State.

....

***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 1st November, 2017.

P.C. :

By this writ petition the petitioner seeks a direction against the respondents to grant the benefit of the scheme under which the petitioner would be entitled to 12.5% of the land that was acquired in the year 1981, in the CIDCO project of Navi Mumbai.

According to the petitioner, the land of the predecessor in title of the petitioner was acquired in the year 1981 and the predecessor in title of the petitioner had accepted the compensation determined by the land acquisition officer under protest. It is stated that an appeal was filed for the enhancement of the compensation. It is submitted that as per the scheme framed by the Government, the persons whose lands were acquired were entitled to 12.5% of the land that was acquired, in the project of

CIDCO. The petitioner, being a legal heir of the person whose land was acquired, applied under the 12.5 scheme. However, on making enquiry it was informed by the respondent authorities that one Malibai had secured the benefit under the 12.5% scheme on the basis of the acquisition of the land of the predecessor in title of the petitioner in the year 1991. It is the case of the petitioner that on making enquiry, the petitioner became aware that there is no woman by named Malibai and that a fraud is practiced on the petitioner. The petitioner has therefore sought a direction against the respondent to grant the benefit under the scheme to the petitioner.

We are afraid that the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction. It is the case of the petitioner that some other lady falsely represented that she was the owner of the land of the predecessor in title of the petitioner that was acquired in the year 1981. The issue whether a fraud has been practiced on the petitioner or not cannot be decided in exercise of the writ jurisdiction. It would be necessary for the petitioner to avail appropriate proceedings, wherein the petitioner can prove the disputed facts that are involved in this writ petition by tendering evidence, both oral and documentary.

Since, in the circumstances of the case, the relief sought by the petitioner cannot be granted, the writ petition is liable to be dismissed. Hence, we dismiss the writ petition with no order as to costs. The points raised in the writ petition are kept open.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)