

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9335 OF 2016

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Shri Krishna M. Patil
 since deceased through legal heir
 Smt Sharada Patil and Others ..Petitioners

Vs.

City and Industrial Development
 Corporation and Others ..Respondents

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Mr.N. V. Bandivadekar, for the Petitioners.
 Mr. S. N. Patil, for Respondent Nos.1 and 2.
 Smt.Madhubala Kajle, 'B' Panel Counsel for the Respondent No.3.

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CORAM : A.A. SAYED &
S.C.GUPTE, JJ.

DATED : 31 AUGUST 2018

P.C.:

This Petition seeks a mandatory direction against Respondents Nos.1 & 2 to hand over actual and physical possession of Plot No.55 admeasuring 300 sq.mts. situated at Dronagiri Node, Sector No.59, District Raigad, as per the interim allotment letter dated 21 August 2007 and also for allotment and possession of additional developed plot of land of 150 sq. mts. to the Petitioners. These demands are made on account of acquisition of lands purportedly held by the predecessor of the Petitioners. The demands are under a scheme known as "12.5% Scheme", which is declared by the Urban Development Department of the Government of Maharashtra on 6 March 1990 and which applies to lands acquired by the

State Government for Navi Mumbai Project.

2. It is the original Petitioner's case that he was in possession of lands bearing Survey Nos.371/10, 366/1D and 379/5B, all situated at Village Navghar, Taluka Uran, District Raigad, as a tenant. These lands came to be acquired for the Navi Mumbai Project under the provisions of the Land Acquisition Act, 1894 (for short "the said Act"). On 5 August 1986, an award was made under section 11 of the said Act by the Special Land Acquisition Officer determining compensation payable to the Petitioner for acquisition of the said lands. Pursuant to this award, possession of all three lands was taken over by the State. Subsequently, upon survey/measurement of the acquired lands, it was revealed that in fact as against the admeasurement of Survey No.366/1D of 37.5 Ars, the Survey Number described in the award was shown as admeasuring 20 Ars and accordingly an excess land admeasuring 17.4 Ars was taken over by the Special Land Acquisition Officer in pursuance of the acquisition proceedings. The Petitioner thereupon filed a writ petition, being Writ Petition No.2205 of 2004, in this Court, seeking a direction for payment of compensation for this additional area acquired from the Petitioner. This Court, by its order dated 26 August 2004, allowed the writ petition and directed the State Government to forthwith pay to the Petitioner the compensation referable to the excess

area of 17.4 Ars with simple interest at the rate of 6% p.a. from the date of the award. In pursuance of this order, on or about 10 November 2004, the SLAO paid the Petitioner compensation for the additional area of 17.4 Ars. The State Government has framed a Scheme for lands acquired for the Navi Mumbai Project, whereunder the landholders, whose lands are acquired for the Navi Mumbai Project, are, in addition to compensation, entitled to allotment of developed plots of land to the extent of 12.5% of the area of lands acquired from the landholders. Since the Petitioner's lands were acquired for the Navi Mumbai Project, an interim Letter of Intent was issued to him on 21 August 2007 proposing to allot an area admeasuring 300 sq.mtrs. (described as Plot No.55 in Dronagiri Node, Section No.59 of Navi Mumbai). The Petitioner was directed to approach the Assistant Land Survey Officer of CIDCO with documents to claim the allotment. The Petitioner claims to have submitted the requisite documents in compliance with this requisition. It is the Petitioner's grievance that in spite of this compliance, neither the originally proposed land of 300 sq.mts. (which according to the Petitioner corresponds to the original area acquired and for which the original award was passed) nor the additional area corresponding to 17.4 Ars (which was acquired and for which additional compensation was ordered to be paid by this Court), was allotted to him by issuing final allotment letter.

3. It is pointed out by the learned Counsel for CIDCO (Respondent No.1) that under the Scheme framed by the State Government ("12.5% Scheme") the Petitioner is not entitled to allotment of any developed land, since the land which was acquired for Navi Mumbai Project in his case was a "Niyaz Khate" land, which is dedicated for religious purpose. Learned Counsel draws our attention to Clause (J) of the Government Resolution dated 6 March 1990, which provides for categories of persons who are not entitled to get the benefit of the land allotment scheme. One of the categories mentioned in Clause (J) is lands held by Public Trusts and other Institutions. Learned Counsel further points out the original temporary Letter of Intent issued to the Petitioner in respect of this land, which makes it clear as one of the conditions of allotment that if any land was found to be of the category of either Trust or Niyaz Khate, the proposed allotment under 12.5% scheme would be cancelled. Learned Counsel submits that since admittedly this land is of Niyaz Khate, there is no entitlement on the part of the Petitioner to receive any developed land under 12.5% Scheme in lieu of the same.

4. It is clear from the documents on record including the concerned Government Resolution as well as the temporary Lol issued to the Petitioner and record of rights maintained in respect of subject lands that

lands being owned by public trusts or similar Institutions, that is to say, lands dedicated for charitable or religious use and described as Niyaz Khate are not entitled to any benefit under the 12.5% Scheme. The Petitioner was already put to notice when the temporary Lol was issued, that if the land was found to be of such category, the allotment to him would be cancelled. Since, admittedly, the subject land belongs to Niyaz Khate, there is no entitlement of any developed land in lieu thereof under the 12.5% land allotment Scheme. Accordingly, there is no merit in the submission of the learned Counsel for the Petitioner.

5. Learned Counsel for the Petitioner, in the alternative, submits that at least insofar as additional area of 17.4 Ars is concerned, the Special Land Acquisition Officer in the present case be directed to pass a supplementary award. It is seen from the original award passed in respect of the subject land that the entire land acquired by the State was described both by Gat No. and admeasurement. The Petitioner's grievance was that upon actual survey/measurement, the Gat No. acquired by the State admeasured 37.4 Ars, that is to say, 17.4 Ars in excess of the admeasurement of the land described in the award. For claiming additional compensation in lieu of this additional land, the Petitioner filed a writ petition before this Court, namely, Writ Petition No.2205 of 2004. The Petitioner

restricted his relief in that writ petition to additional compensation for the excess area of 17.4 Ars and it was this compensation which was granted by the Division Bench of this Court while disposing of the writ petition. The Petitioner cannot re-agitate this matter now and seek a supplementary award in respect of this additional area for which he has already got compensation in pursuance of the order of the Division Bench. Accordingly, there is no merit even in this submission.

6. The Petition is, accordingly, dismissed. No order as to costs.

(S.C.GUPTE,J.)

(A.A.SAYED, J.)