

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

WRIT PETITION NO. 10439 of 2015

Sadanand Bala Patil
Age -Sr. Citizen, Occ: retired,
Residing at -324, Shrikupa
Niwas,
Sector-5, Navi Mumbai

...Petitioner.

Versus

1. City and Industrial
Development Corporation of
Maharashtra Limited Company
Incorporated under Companies
Act, 1956, having its registered
office at CIDCO Bhavan, CBD
Belapur, Navi Mumbai, District-
Thane 400 714.

2. Chief Land and Survey Officer,
(CIDCO), 7th floor, CIDCO
Bhavan, C.B.D., Belapur, Navi
Mumbai 400714.

3. Municipal Corporation of Navi
Mumbai, through its
Commissioner, CBD Belapur,
Navi Mumbai.

4. State of Maharashtra,
Mantralaya, Mumbai.

...Respondents

...

Mr. R.P. Lote for the Petitioner.

Mr. B.B. Sharma for the Respondent Nos.1 and 2-CIDCO.

Mr. A.A. Garge for the Respondent No.3.

Mrs. M.P. Thakur, AGP for the Respondent-State.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED :13th AUGUST, 2018.

JUDGMENT : (Per : SMT. ANUJA PRABHUDESSAI, J.):-

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks direction to the CIDCO - respondent no.1 to provide land admeasuring 466 sq. meters towards acquisition of the authorized constructed area.

2. The brief facts necessary to decide this petition are as under:-

(a) The Government of Maharashtra had decided to create a new town across Thane Creek and accordingly in exercise of powers under sub section 1 of Section 113 of the Maharashtra Regional and Town Planning Act,1966 had notified the area for the new town Navi Mumbai. The State of Maharashtra in exercise of the powers under sub Section 3A of Section 113 of MRTP Act appointed CIDCO as the new Town Development Authority for Navi Mumbai.

3. The respondent no.1 acquired several properties for development of new township of Navi Mumbai. The property of the petitioner, bearing Survey No.12/4 of Village Sanpada, Navi Mumbai, was also acquired for the said purpose under the Award No.199 dated 29.8.1986. The possession of the said property was taken on 16.2.1996. As per the policy of the Corporation and the direction of the State Government, the petitioner was entitled for allotment of land under 12.5% scheme.

4. The petitioner claims that he had constructed a dwelling house admeasuring 349 sq. meters in the survey No.12/4 after obtaining due permission from the concerned authorities. He had been residing in the said house since 1973. The petitioner claims that though he was entitled for 566 sq. meters of the land under 12.5% scheme, he has been allotted only 100 sq. meters of open plot of land. The structure admeasuring 466 sq. meters has been held to be unauthorized. The said structure has been regularized without giving benefit of 12.5% scheme in respect of the land beneath

structure. Several representations made by him to the concerned authorized have not been considered. By communication dated 05/09/2012, the petitioner was informed that since the agreement for lease has been executed in respect of the said structure he can be granted FSI for the said area. The petitioner claims that no action was taken despite several representations made thereafter and finally by communication dated 24/09/2014 and 05/11/2015, the request of the petitioner has been rejected.

5. Shri Jagdish Laxman Rathod, the Chief Lands and Survey Officer with respondent no.1-Corporation has filed his affidavit. He has stated that the Award was passed in favour of Sadashiv Bala Patil and that the petitioner has played fraud upon the Corporation by claiming plot of land under 12.5% Scheme. He has stated that the petitioner has already been given the land in lieu of acquisition as per the Corporation policy. He has stated that at the time of calculation of the entitlement of the petitioner it was noticed that he had constructed three structures on the subject land measuring 350 sq. meters. The petitioner requested to regularize the said structures

and had agreed to remove the fencing near the said structures. It was proposed by the concerned Officers to regularize the said structures considering 0.75 FSI prescribed in Gavthan expansion scheme which would work out to 466 sq. meters. As against the area of the original survey no.12/4 the eligible land as per the entitlement was 87sq. meter. Thus the total allotment was arrived at 553 sq. meters. The petitioner was informed about the decision of regularization of the unauthorized construction. He was called upon to make necessary application for development permission.

6. On 15th July, 1993 the respondent executed an agreement to lease in respect of the said three structures admeasuring 465 sq. meters and another agreement to lease dated 26th November, 1992 in respect of plot No.209 admeasuring 100 sq. Meters. The respondents have claimed that the respondents have regularized the unauthorized construction of the petitioner admeasuring 466 sq. meters in accordance with Board Resolution No.9949 of 2008. Since the unauthorised construction admeasuring 466 sq. mts. were regularised under “Garjepoti Scheme” and allotted under 12.5.%

scheme to the Petitioner as against the balance eligibility he has been allotted 100 sq. meters in plot no. 209, Sector 5, Sanpada. It has been stated that the petitioner has been allotted total area of 566 sq. meters., which is in excess of the actual entitlement. The respondents therefore claim that the petitioner cannot claim any additional allotment of land in lieu of the area of regularized structures.

7. The Respondent No.1 has claimed that the award was drawn in the name of Sadashiv Bala Patil and that the Petitioner has played fraud on the Respondent-Corporation by claiming benefit under 12/5% scheme. It is not in dispute that the land under Survey No.12/4 admeasuring 1039 sq. meters was acquired by the respondent no.1 under Award No.199 dated 29/08/1986. It is also not in dispute that the compensation in respect of the acquired land was paid to the petitioner. As per the statement at Exhibit-II annexed to the affidavit of Jagdish Rathod, the petitioner is held to be entitled for land under 12.5% scheme. Furthermore, the respondent no.1 has already executed two agreements to lease in favour of the petitioner. It is not the case of the Respondent No.1-Corporation that any other

person by name Sadashiv Patil has raised any claim or dispute in respect of the acquired land. In the light of these facts there is no merit in the contention of the respondent no.1 that the petitioner has played fraud upon the respondent no.1 and/or he is not entitled for benefit under 12.5% scheme.

8. Now coming to the question of eligibility, the statement at Exhibit-II indicates that the petitioner is entitled for 553 sq. meters under 12.5% scheme. The said statement further indicates that the petitioner had constructed 3 structures admeasuring about 350 sq. meters in Survey No.12/4 and that he had requested to regularize the said structures and had agreed to remove fencing near the said structures. By letter/notice dated 26/11/1992, the petitioner was informed that the decision was taken to regularize the unauthorized construction carried out in the acquired land (plot no. 320, 323, and 324) under Gaothan Expansion Scheme (GES) against his eligibility for allotment of land under 12.5% Scheme. The petitioner was informed that the said plots no.320, 323 and 324 admeasuring 466 sq. meters were being allotted to him under 12.5% Scheme as to

avoid demolition of the structures in the acquired land and consequent loss thereof to the petitioner. The petitioner was also called upon to remove the fence around the said structures in the acquired land. Subsequently, the respondents executed lease agreement for allotment of plot nos.323,324 and 320 admeasuring 465 sq. meters and lease agreement dated 26/11/1992 in respect of plot no.209 admeasuring 100 sq. meters at Sector 5, Sanpada. The petitioner has thus been allotted total land admeasuring 565 sq. meters under 12.5% scheme.

9. The learned counsel for the petitioner does not dispute execution of lease agreements and allotment of 566 sq. meters of land under 12.5% Scheme. She claims that the said structures were existing in the acquired land prior to the acquisition and were constructed after taking due permission from the concerned authorities. She, therefore, claims that the area of 446 sq. meters of land which is towards the structures in plot no.320, 323 and 324, allotted by lease agreement dated 15/07/1993, should be excluded from entitlement under 12.5% Scheme.

10. The Award indicates that there were no structures in the acquired land as on the date of the acquisition. The petitioner was not paid any compensation nor had he filed any reference under the Land Acquisition Act in respect of the said structures. Shri.Jagdish Laxman Rathod, who has filed his affidavit on behalf of Respondent no.1-Corporation has categorically stated that there were no structures in the acquired land at the time of passing of the Award. This being the case, the claim of the petitioner, which is based on disputed question of fact, cannot be adjudicated in Writ jurisdiction.

11. Be that as it may, the Respondent No.1 has not deducted any area but has allotted to the Petitioner an area of 566 sq. mts. as against his entitlement of 553 sq mts. under 12.5% scheme. The area allotted under scheme 12.5% includes area of 446 sq. mts covered by the three structures in plot Nos. 320, 323 and 324. The Petitioner contends that the area covered by the said structures, which are authorised/regularised, needs to be excluded from the area of entitlement under 12.5% scheme.

12. It is to be noted that the Petitioner's right to continue to be in possession of the structures in the acquired land ceases with acquirement of the land. Nonetheless, instead of demolishing the structures, the Respondent No.1 have regularised the same under Gaothan Expansion Scheme (GES) and allotted the said structures to the Petitioner against his entitlement of 12.5% scheme. It is only in view of this allotment that the Petitioner can continue to be in possession of the structures in Plot Nos. 320, 323 and 324, which form part of the acquired land. Thus, the area of 446 sq mts. Cannot be excluded from the area of entitlement under 12.5.% scheme.

13. The area allotted to the Petitioner under 12.5% scheme is not less than his entitlement. The Petitioner is not entitled for any additional area over and above the area of 566 sq. mts. allotted to him under 12.5% scheme. Hence, the petition has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)