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

WRIT PETITION NO. 3896 OF 2014

Nakul Shankar Jambhulkar & Ors.

]...Petitioners

VS

Industries, Energy & Labour Department

]

Mantralaya, Mumbai & Ors.

]...Respondents.

.....

Mr Ravindra S. Panchudkar for the Petitioners.

Mr P.G.Sawant, AGP for Respondent Nos.2 and 4.

Mr Prashant Chavan a/w Ms Chaitali Kandare I/b Navdeep Vora
Associates for Respondent No.3.

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**CORAM : K.K.TATED &
B.P.COLABAWALLA, JJ.**

Date: 4 JULY, 2018.

ORAL JUDGMENT [Per B. P. Colabawalla, J.]:

1. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioners seek to challenge the acquisition of their lands bearing Survey Nos. 174, 186, 187, 188, 189, 209, 217 and 218. This acquisition was for the Rajiv Gandhi Infotech Park Hinjewadi, Tal. Mulshi, Dist. Pune Phase-I for construction of an internal road under the MIDC Scheme from Hinjewadi Petrol Pump to Rajiv Gandhi Infotech Park, Hinjewadi. The Petitioners have also

challenged the order dated 5th March, 2013 passed by the Regional Officer (II) Pune in the representation/ application/ appeal filed by the Petitioners dated 31st December, 2012. This representation / application/ appeal of the Petitioners was rejected by an order dated 5th March, 2013.

2. The prayers in the present Writ Petition read thus:

“19) *The Petitioners, therefore, pray that*

(a) *Rule be issued and record and proceedings be called for;*

(b) *This Hon'ble Court be pleased to issue the writ of mandamus or certiorari or any other appropriate writ/direction/order in the nature of writ of mandamus or certiorari under Articles 226 of the Constitution of India,*

(i) *be pleased to direct the Industries, Energy and Labour Department, Mantralaya, Mumbai-400 032 i.e. Respondent No.1 to decide the Petitioner's representation/ written objections dated 31st December, 2012 by affording the hearing to the Petitioners as expeditiously within the period of three weeks by passing the reasoned order and the same may be communicated to the Petitioners;*

(ii) *be pleased to direct the respondents authorities to restore the original old internal M.I.D.C. road from Hinjewadi Petrol Pump to Rajiv Gandhi Infotech Park Hinjewadi as shown in the 1997-1998 old sketch map and old sketch map of MIDC Rajiv Gandhi Pune Infotech Park prepare by Surveyor V.V.Kshemkalyani of MIDC regional office wakedwadi, Pune-3 thereby to cancel and revoke the subsequently new internal M.I.D.C. road from Hinjewadi Petrol Pump to Rajiv Gandhi Infotech Park Hinjewadi as shown in the new sketch map 2009 which is going through the City Survey No. 153, 174, 186, 187, 188, 189, 209, 217 & 218 situated at village Hinjewadi, Tal: Mulshi, District : Pune and further direct to delete the said land from acquisition;*

- (iii) *be pleased to quash and set aside the impugned order bearing application No. MIDC/RO(II) /PUNE/609/2013 dated 05.03.2013 passed by the respondent no.3 i.e. Regional Officer (II) Pune MIDC, "Jog Center" 1st floor, Pune-Mumbai Road, Wakadewadi, Pune and Petitioners representation / written objections dated 31/12/2012 be allowed as prayed;*
- (iv) *be pleased to direct the Respondents authorities not to dispossess the Petitioners from the land bearing Survey No. 174, 186, 187, 188, 189, 209, 217 and 218 situated at Hinjewadi, Tal. Mulshi, Dist. Pune and not to allot the same to the Rajiv Gandhi Infotech Park Hinjewadi, Tal. Mulshi, Dist. Pune Phase-I, for construction of internal road under MIDC Scheme from Hinjewadi Petrol Pump to Rajiv Gandhi Infotech Park Hinjewadi."*

The rest of the prayers are in the nature of the interim reliefs.

3. It is the case of the Petitioners that they are the permanent residents at the address mentioned in the cause title of the petition and are mainly engaged in the agricultural profession. According to the Petitioners they are the owners and possessors of the agricultural lands from Survey Nos. 189 to 218 situated at village Hinjewadi, Tal. Mulshi, Dist. Pune. It is the case of the Petitioners that Respondent No.1 (Industries, Energy and Labour, Department, Mantralaya, Mumbai) by exercising the powers conferred under Section 1(3) of the Maharashtra Industrial Development Act, 1961 (for short "MID Act") have applied the provisions of Chapter VI of the

said Act vide a notification dated 22nd December, 2006 and appointed the Chief Executive Officer, M.I.D.C., and Special Land Acquisition Officer No.13, District Pune, and declared the areas mentioned in the schedule appended to the said notification as an industrial area under Clause "G" of Section 2 of the said Act. By a letter of the same date (22nd December, 2006), the Government of Maharashtra also informed Respondent No.4 i.e. the Collector, Pune that it was necessary to acquire the lands as per the provisions of the M.I.D. Act as it was an industrial area and to issue notices to each land holders/owners calling for their objections following the provisions of the M.I.D. Act.

4. Pursuant thereto, M.I.D.C., vide its letter dated 22nd March, 2007 addressed to Respondent No.2 (Special Land Acquisition Officer No.15 Pune) informed him that it was necessary to acquire the lands as per the provisions of the M.I.D. Act for the industrial area and after acquisition handover the same to the M.I.D.C. It is not in dispute that the Petitioners were served with the notices as contemplated under Section 32(2) of the M.I.D. Act calling upon the owners or any other persons interested in the lands being acquired, to show cause why the lands should not be acquired for the internal MIDC road of Rajiv Gandhi Information Technology Hub.

One such notice was issued to the Petitioners was on 15th September, 2009 and the same was also published in the local newspaper on 19th September, 2009. It is also not in dispute that some of the Petitioners never raised any objection pursuant to this notice that was issued under Section 32(2) of the M.I.D. Act. It is also not in dispute that though some of the land holders, including some of the Petitioners, raised objection to the said notice, the same were duly considered by the State Government and thereafter the State Government vide its communication dated 5th April, 2010 informed the decision about rejection of the said objections and further directed that a notification under Section 32(1) be published in respect of the individual lands.

5. Accordingly, in furtherance of the said decision of the Government, a notification dated 8th April, 2010 under Section 32(1) of the M.I.D. Act was published in the Official Gazette dated 22nd April, 2010. What is clear from this is that once this notification was published as contemplated in Section 32(1), the acquisition stood complete and the lands vested in the Government. In fact, since there was a discrepancy in the actual area of the land, an addendum dated 3rd November, 2010 was also issued specifying the correct area in accordance with the joint measurement in respect of the said

lands.

6. Thereafter, the process of determination of compensation to the land owners was initiated and a meeting was called upon by agreement / consent as provided under Section 33(2) of the M.I.D. Act. This meeting was called by the Collector Pune on 15th September, 2010 for deciding the rate of compensation by negotiations with the land owners. This meeting was attended by a large number of land owners and the rate of Rs.91/- Lakhs per hectare was finalized. It was also decided that if the land owners were not interested in monetary compensation, then a certificate sanctioning FSI as per rules would be issued to the land owners.

7. Despite this meeting it appears that the land owners or the persons interested have thereafter not executed any agreement as contemplated under Section 33(2) of the M.I.D. Act. Only four persons have given their consent in writing for getting the benefit of FSI. Accordingly, the Land Acquisition Officer has passed an order for compensation, which of course has not been accepted by the land owners.

8. Once this entire process was complete, the Petitioners

have thereafter filed representations dated 31st December, 2012 before Respondent Nos.1 to 3 contending therein that the old internal MIDC road as shown in the old sketch map of 1998 be restored and to cancel the subsequent MIDC road shown in the sketch map dated 07.02.2009 which is going through Survey Nos. 153, 174, 186, 187, 189, 209, 217 and 218 of village Hinjewadi, Tal. Mulshi, Dist. Pune. This representation was replied to by Respondent No.3 vide its communication dated 5th March, 2013 by pointing out that the land acquisition process had already been completed and it was not possible to change the road as per the wishes of the Petitioners.

9. In these undisputed facts, we fail to understand how the prayers in this Writ Petition can be granted. It is not in dispute that the entire land acquisition process was initiated in 2006 and was completed as per the provisions of the M.I.D. Act in 2010. It is the Petitioners' own case that they never objected to this acquisition. It is only once the entire acquisition process was complete, that the Petitioners filed representation on 31st December, 2012 for changing the alignment of the internal road.

10. The learned counsel appearing on behalf of the Petitioners was unable to point out to us and in fact fairly conceded

before us that he has not challenged the decision making process which relates to the acquisition of the lands of the Petitioners. It is the Petitioners' grievance that according to the old map of 1998 the road was running around the boundary of their land, whereas as per the map of 2009 the road runs right through their lands and which have been acquired. We fail to see how this can be the ground to challenge the acquisition proceedings.

11. As narrated above, the entire acquisition proceedings have been carried out by following the procedure laid down under the M.I.D. Act. These details have been set out in the affidavit filed on behalf of Respondent No.3 dated 5th June, 2017 from paragraph 5 onwards. There is no denial of what is stated in this affidavit and correctly so. This being the case, we find that this Petition is wholly misconceived. The prayers asked for in this Writ Petition cannot be granted in view of the fact that the so called representation filed by the Petitioners was dated 31st December, 2012 was way after of the acquisition of the Petitioners land and that too as far back as in the year 2010. We, therefore, find that Respondent No.3 vide its communication dated 5th March, 2013 correctly rejected the representation of the Petitioners. We find that in the facts of this case, the Petitioners would only be entitled to the compensation of

the lands that have been acquired and which shall be paid to them by following the due process of law.

12. In view of our discussion earlier, we find no merit in this Writ Petition as it is wholly misconceived and it is, accordingly, dismissed. In the facts of the present case, we would have been justified in imposing costs on each of the Petitioners, but considering that they are the poor farmers, purely out of mercy and sympathy, we refrain from doing so.

(B.P.COLABAWALLA, J.)

(K.K.TATED, J.)

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