

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

WRIT PETITION NO.12045 OF 2017

Khoja Shia Insha Ahri Jamaat	..Petitioner
vs.	
Union Territory of	
Dadra & Nagar Haveli & Ors.	..Respondents

Mr.G.S. Godbole with Mr.Aditya Pimple with Mr.Yogesh Gaikwad
I/by M/s. Bilawala & Co. for the Petitioner.

Mr.Shrishailya S. Deshmukh for Respondent Nos.1 to 6.

Mr.Mohamedali M. Chunawalawith D. Kumar I/by A.A. Ansari for
Respondent No.7.

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

DATE : 12TH JULY, 2018

ORDER (Per J. B.P. Colabawalla) :

1 By this Writ Petition the Petitioners have challenged the acquisition of 575 square meters land out of Survey No.499/P of Village Amli, Silvassa, on various grounds. This acquisition was done by Respondent No.1 for the purpose of the construction of a Ring Road around Silvassa.

2 We have heard this matter at length. On the last occasion,

when we were not inclined to entertain the Writ Petition, the learned Counsel appearing on behalf of the Petitioners sought leave to withdraw the present Writ Petition.

3 Thereafter, today Petitioners have filed an Affidavit-cum-Undertaking dated 7th July 2018 in which they have inter-alia stated that in order to enable the Petitioners to shift the graves and tombstones which are situated on the acquired property, they require four months time and in any event they would hand over physical possession of the acquired land to the Respondent Nos.1 to 6 on or before 31st October 2018. Paragraph Nos.3 and 4 of this Affidavit-cum-Undertaking reads as under :

“3 We declare and say that in order to facilitate the widening of the Ring Road, we have agreed to shift the graves and tombstones and the other structures from the present location to the other portion of the said land admeasuring 925 ssq. mtr. bearing Survey No.499/P of Village Amli, Silvassa and to receive the awarded compensation to enable the Petitioner to reconstruct the graves or tombstones and other structures as stated above.

4 We declare and agree and undertake to this Hon'ble Court in order to enable the Petitioner to shift the graves and tombstones and other structures, we require 4 months times on account of the present rainy season which will last in the second week of October, 2018. Furthermore, the Petitioner will have to give separate notices to the family members of the dead bodies which are now laid buried in the Petitioner's land and we agree and undertake to hand over to the Respondents vacant possession of the portion of the land admeasuring 575 sq. mtrs. On or before 31st October, 2018.”

4 The learned Counsel appearing on behalf of the first Respondent has brought to our notice and which is not disputed, that the symbolic possession of the acquired property was taken by the first Respondent and is still with them. However, physical possession is with the Petitioners. He very fairly submitted that considering Monsoon is going on, they have no objection if the Petitioners hand over physical possession of the acquired property on or before 31st October 2018.

5 This being the case, we accept the Undertaking given by the Petitioners that physical possession of the acquired property shall be handed over to the first Respondent on or before 31st October 2018, without asking for any further extension.

6 Once the possession is handed over to the first Respondent by the Petitioners, the first Respondent shall pay the awarded compensation of Rs.20,59,000/- to the Petitioners within a period of one week from the date of receiving physical possession of the acquired property. It is needless to clarify that it will be open to the Petitioners to take recourse through any proceedings that they may choose for the purpose of enhancing the compensation awarded under the Award dated 17th October 2014 and the same shall be decided on its own merits and in accordance with law.

7 Considering that this undertaking has been made by the Petitioners through all its Trustees and coupled with the fact that the

Petitioners had given in writing that they want to withdraw the Petition, which is taken on record and marked 'X' for identification, same is accepted.

8 The Petition is disposed of as withdrawn.

(a) The Undertakings given by the Petitioners, more particularly paragraph No.4 of Affidavit-cum-Undertaking dated 7th July 2018 are accepted by this Court.

(b) In view of withdrawal of Petition, nothing survives in Civil Application No.971 of 2018 and the same is disposed off as infructuous.

(B.P.COLABAWALLA, J.)

(K. K. TATED, J.)