

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1515 OF 2014**

Indian Institute of Technology, Mumbai and ors. ..Petitioner
Versus
The State of Maharashtra and ors. ..Respondents

Mr. Vikas Y. Murudkar, advocate for the petitioner.
Mr. A. L. Patki, "B Panel" Counsel for the respondent No.1-State.
Mr. Sagar Patil, advocate for the MCGM.
Mr. Birendra Saraf i/b. Mr. Nikhil Arvind Ranadive, advocate for the respondent No.4.
Mr. Jaydeep Deo, advocate for the respondent No.5.

**CORAM : RANJIT MORE &
NITIN W. SAMBRE, JJ.**

DATE : 20th FEBRUARY, 2018.

P. C. :

Heard learned counsel appearing for the respective parties.

2. The petitioner has approached this Court invoking jurisdiction under Article 226 of the Constitution of India seeking directions to the respondent Nos. 1, 2 and 3 to acquire the land bearing CTS No.292 (pt) Survey No.273 (pt) of Kanjur Village, Taluka Kurla, District BSD admeasuring about 40425 sq.meters (for short "the said land") under Section 6 of the Land Acquisition Act, 1894 and hand over the same to the petitioner for its educational activities.

3. The petitioner is a well-known Government educational institution functioning under the Human Resources Development Ministry of the Government of India. Between the years 1953-1955, vast landed properties at Paspoli, Tirandaz and Powai Village of Mumbai were acquired by the Government for the petitioner for its educational activities and, awards were passed in the year 1967 and ever since then, the petitioner is running the educational institution after constructing various buildings thereon for hostels and colleges.

In the Development Plan of the respondent No.3- Municipal Corporation, which came into force in the year 1993, the property bearing CTS No.292(pt) Survey No.273 (pt) of Kanjur Village, Taluka Kurla, District BSK admeasuring about 40425 sq.meters is reserved/designated for the petitioner for its educational activities. It is the case of the petitioner that it came to know the fact that the said land is reserved for its purpose in the year 1999 and, since then, it is persuading respondent Nos. 1 to 3 as well as the Human Resources Development Department of the Union of India to acquire the said land for the petitioner in view of the petitioner's inability to pay huge amount of compensation towards acquisition of the same. The petitioner, in this regard, has relied upon various correspondence referred in the petition.

It is also stated in the petition that respondent No.4 is claiming ownership of the said property by virtue of deed of conveyance dated 25th April, 2012 and has issued purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") on 13th January, 2014 to the petitioner as well as the planning authority-respondent No.3. The petitioner expressed apprehension that if the said land is not acquired either by the respondent Nos. 1 to 3, the respondent No.4 may take advantage of the said purchase notice and thereby, deprive the petitioner of the said land which is required for its educational activities.

4. Shri Vijay E. Patil, Executive Engineer (DP), Eastern Suburb of the respondent No.3-planning authority has filed an affidavit-in-reply dated 10th December, 2014 on behalf of the respondent No.3. In paragraph 4(a), an averment is made that the respondent No.4 has served purchase notice dated 13th January, 2014, under Section 127 of the MRTP Act, 1966 on the respondent No.3. It is further averred that the said notice was also served upon the petitioner. In paragraph 4(b), an averment is made that the said land is affected by designation of Indian Institute of Technology. In this affidavit, the respondent No.3 has referred the relevant provision of the Development Control Rules 1991 and maintained that the development of the said property is not

the responsibility of the Corporation. The respondent No.3 also made reference to the letter dated 31st July, 2014 received from the Under Secretary, UD Department, State of Maharashtra, under which, the petitioner is instructed to take necessary steps to process the purchase notice.

5. Shri Dattaprasad Nade, Sub-Divisional Officer, Eastern Suburban, Mumbai Suburban District, has also filed an affidavit dated 29th January, 2015. The stand of the Land Acquisition Officer is that, despite repeated requests, the petitioner has not complied with his directions viz. depositing 2/3rd amount in advance towards the proposed compensation to be paid as per the Ready Reckoner Value and an undertaking on Rs.100 stamp paper stating to the effect that the petitioner is prepared to take up the said land on "as it is where it is" basis. In paragraph 6, an averment is made that the SLAO(2) by its letter dated 31st August, 2006, addressed to the Additional Collector, MSD, Mumbai, informed the later by referring to various correspondence in the above matter to give his report to the effect that the petitioner was not interested in getting the subject land acquired and, therefore, the said proposal of acquisition be sent back to the petitioner. This affidavit shows that the Additional Collector, MSD, Mumbai by his letter dated 26th September, 2006 addressed to the

petitioner returned back the proposal for acquisition of the subject land for non-compliance of the above referred directions.

6. The respondent No.4 has also filed an affidavit dated 1st August, 2014. The respondent No.4 claims to be the owner of the said land under the deed of conveyance dated 25th April, 2012. The respondent No.4 reiterated that the purchase notice is given on 13th January, 2014 to the planning authority, appropriate authorities and land acquisition officer and, despite receipt of the same, no steps are taken as contemplated under Section 127 of the MRTP Act till date.

The case of the respondent No.4 is that either the petitioner must acquire the subject land under Section 126 of the MRTP Act read with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Land Acquisition Act, 2013") and pay compensation to them or else the respondent No.4 be entitled to develop the same in accordance with law.

7. Having considered the rival submissions and having gone through the petition along with the annexures thereto and affidavits-in-reply, we do not find any merit in the petition. Admittedly, the subject land is reserved in the Development Plan of the respondent No.3-

planning authority, which came into force in the year 1993, for educational activities of the petitioner. There is also no dispute that the period of ten years from the coming into force of the development plan has elapsed. The petitioner is the appropriate authority within the meaning of the Section 2(3) of the MRTP Act and, therefore, it is for the petitioner to initiate the proceedings for acquisition of the said land. It is very clear from the records, that the petitioner was aware of this position and, therefore, it made several correspondence with the respondent Nos.1 to 3 and even with the Human Resources Development Department of the Union of India. This was done by the petitioner in view of its inability to raise funds for the acquisition of the subject land. The fact remained that, despite the expiry of the statutory period of ten years, the petitioner could not succeed in convincing the respondent Nos.1, 2 and 3 to acquire the said land. The respondent No.1 also through its Urban Development Department has instructed the petitioner to proceed with the acquisition. It is the case of the respondent No.3 that they are not responsible for acquisition. Thus it is clear that the respondent Nos. 1 to 3 are not interested in acquisition of the said land. It is true that the petitioner has expressed its inability to raise funds for acquisition of the said land. However, the respondent No.4 cannot be compelled to forgo the land free of cost. If the said land is to be acquired, compensation must be paid in accordance with the

Ready Recknor Value under the provisions of the Land Acquisition Act, 2013.

8. There is no dispute that the respondent No.4 gave purchase notice on 13th January, 2014, after the expiry of the period of ten years from the date on which the Development Plan came into force. The respondent No.4 requested the petitioner as well as the respondent No.3-planning authority and SLAO to acquire the said land in accordance with the Land Acquisition Act, 2013 or else the same would be deleted from reservation. It is admitted fact that, despite receipt of purchase notice, no steps are taken either by the petitioner, the respondent Nos. 1 to 3 or the Human Resources Development Department of the respondent No.5-Union of India till today. As stated above, the learned counsel for the Corporation as well as for the State flatly refused their responsibility to acquire the said land for the petitioner.

9. The law in this regard is fairly settled by a decision of the **Apex Court in Girnar Traders versus State of Maharashtra and ors.** **(2007) 7 SCC 555**. The Apex Court in paragraph 58 observed as follows:

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for

comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced."

If the facts of the present case are examined in the light of the relevant law coupled with the above decision of the Apex Court, then, it is clear that the reservation/designation of the land bearing CTS

No.292(pt) Survey No.273 (pt) of Kanjur Village, Taluka Kurla, District BSK admeasuring about 40425 sq.meters stands lapsed and the said land has become available to the respondent No.4 for development in accordance with law.

10. In the light of the above discussion made hereinabove, the petition is devoid of any merit and the same is, accordingly, dismissed.

[NITIN W. SAMBRE, J.]

[RANJIT MORE, J.]