

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 3082 OF 2014

Jasuben Raghavji Patel

...Petitioner

Versus

**Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. Bharat Joshi, for the Petitioner.

Mr. J. Carloz and Ms. K.H. Mastakar, for the Respondents No. 1
and 2-BMC.

Mr. Milind More, Addl.G.P., for the Respondent No. 3-State.

Ms. Ritika Jhaveri, i/by Ms. Kiran Bagalia, for the Respondent
No. 4.

Sharayu
Pandurang
Khot

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 18 July 2018

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ORAL JUDGMENT : (Per A.S. Oka, J.)

1. On the earlier dates, the parties were put to notice

that the Petition will be taken up for final disposal.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the orders dated 28th August 2014 and 25th September 2014, which are at Exhibit R and Exhibit S to the Petition.

3. Exhibit R is a letter addressed to the Petitioner stating that the Petitioner's structure described therein is affected by the alignment of 35 meters wide Jogeshwari Road Over Bridge North (for short "*the said ROB*"). By the said notice, the Petitioner was called upon to demolish her existing structure and handover the land below the same to the Assistant Engineer (Maintenance) after removing debris. A sketch is annexed to the said notice. Exhibit "S" is a 72 hours' notice stating that the Petitioner's structure will be demolished within 72 hours without any further notice and the Petitioner will be responsible for the loss which may be caused at the time of demolition.

4. By the order dated 10th October 2014, notice for final disposal was issued by a Division Bench of this Court. Paragraphs 3 to 5 of the said order read thus:-

“3. The statement is made by the learned counsel appearing for the Petitioner, based upon the averments that the Petitioner is owner of the land, as well as, the structure, the issue with regard to the land, admittedly not decided, though in the year 2011 the Petitioner replied to the Corporation notice referring to removal of structure falling within the alignment of proposed Road Over Bridge at Jogeshwari (North) in P/South Ward. The alternate accommodation, as per the Municipal Corporation, is already offered at alternate site. The question is still remained with regard to the land in question.

4. We are inclined to observe that the issue of land is just cannot be overlooked and keep pending, as it is important right of the Petitioner to get the reasonable compensation. Here, as per the policy, the Petitioner is of entitlement of the the facility of “Transferable Development Rights” (TDRs) and an

alternative to compensation under the Land Acquisition Act. Therefore, we are inclined to direct Respondent No.2-Assistant Commissioner to decide the claim, as well as, the right of the Petitioner so far as the land in question is concerned, as early as possible, preferably within 4 weeks from the date of Petitioner filing additional representation.

5. *The Petitioner to file additional representation and/or with supporting material to justify ownership in question within one week from today. We are definitely concerned with the proposed project. Therefore, early disposal of this issue is relevant so that the Petitioner can vacate the premises. If the Corporation finds that the landlord-Petitioner is not the owner of the said premises, they are free to take action as contemplated to vacate the premises in accordance with law after giving prior notice to the Petitioner.”*

5. An Affidavit dated 16th March 2015 was filed of Shri. Mahesh L. Dhiver, Assistant Engineer of the Municipal

Corporation. The said Affidavit records that the land admeasuring 303 sq.meters at Village Goregaon bearing Survey No. 4 Hissa No. 1 (part) and CTS 60(6) is required to be acquired under Section 314 of the Mumbai Municipal Corporation Act, 1888 (for short “*the said Act*”) as the Municipal Corporation is implementing the work of construction of the ROB. Clauses (c) and (d) of paragraph 4 of the said Affidavit read thus:-

- “c) *I say that as per the records maintained the property card shows the name of Jasuben Raghavji Patel. I say that the Respondent herein have verified the documents submitted by the Petitioner and it is found that the ownership of the land under reference stands in the name of the Petitioner subject to the verification of the documents from the City Survey Office. I crave leave to refer to and rely upon the representation made by the Petitioner dated 17.10.2014 & 18.12.2011 alongwith the documents submitted.*
- d) *I say that the Respondent herein have worked out*

the monitory compensation that can be offered to the Petitioner on the basis of the Ready Reconer Rate and the same works out to approximately Rs. 2,75,00,000/- (Rs. Two crores Seventy five lacs only). I say that the said amount can be offered to the Petitioner within 45 days after obtaining due sanction from the competent authority.”

(Underline supplied.)

6. Thus, there is a clear admission by the Municipal Corporation that on the basis of the property register card, it is found that the ownership of the land under reference stands in the name of the Petitioner subject to the verification of the documents from the City Survey Office. In fact, clause (d) records that the monitory compensation can be offered to the Petitioner on the basis of the ready reckoner rate which works out to be approximately Rs. 2,75,00,000/-. Further assurance is given that the amount can be offered to the Petitioner within 45 days after obtaining due sanction from the Competent Authority. Clause (e) of the same paragraph records that there

are eight structures on the said land out of which seven are commercial and one is residential. It is stated that if on verification of the documents, it is found that the structures are eligible for rehabilitation, alternate accommodation will be offered. It is stated that two structures are found to be eligible, but the alternate accommodation offered to the Petitioner has not been accepted. What is important is clause (g) of paragraph 4, which reads thus:-

“g) *I say that the Respondent herein are offering all the dues which the Petitioner is legally entitled for and in view of the same the Respondent herein pray to this Hon'ble Court that the Petitioner be directed to hand over the vacant possession of the land and structures to enable the Respondent herein to construct the Road Over Bridge in the interest of the public at large.*”

(Underline supplied.)

7. Thus, the Municipal Corporation accepted the case

of the Petitioner that the Petitioner is the owner of land admeasuring about 303 sq.meters which was required for construction of the ROB.

8. There are subsequent orders passed by this Court. The order dated 7th May 2015 records that by the order dated 12th October 2014 passed by the Assistant Commissioner of "P" South Ward, the Municipal Corporation has accepted the ownership right of the Petitioner and has held that the Petitioner is entitled to Transferable Development Rights. In fact, by the said order, this Court granted liberty to the Mumbai Municipal Corporation to move the Court for modification of the order dated 10th October 2014. Certain modifications were made by a Vacation Bench to the said order by the order dated 22nd May 2015.

9. Thereafter, the most material order is of 14th March 2016. Paragraphs 3 to 6 of the said order read thus:-

- “3. Mr. Ram Apte, the learned Senior Counsel appearing on behalf of the Corporation, has submitted that the experts in the Corporation have valued the land and the Deputy Director of Planning has given the valuation of the said land to the tune of Rs 1,82,10,300/-. He submitted that 50% of the said amount i.e. Rs 91,00,000/- will be deposited in this Court by tomorrow i.e. 15th March, 2016. He submitted that remaining compensation of Rs 56,33,180/- shall be paid to the Petitioner within three weeks, which figure is arrived at after deduction of Rs 34,77,120/- which is supposed to be paid by the Petitioner towards the area over and above the pitch she is entitled to.
4. The learned Counsel for the Petitioner submitted that the Petitioner is entitled to get compensation under the provisions of the Land Acquisition Act which is recently amended in 2013.
5. On the other hand, Mr. Ram Apte, the learned Senior Counsel, submitted that the compensation is payable under section 301 of the MMC Act, 1888. He submitted that since the Corporation

will be depositing 50% of the amount in this Court, Petitioner should handover the vacant possession of the plot of land which is in her possession. He submitted that the monthly cost which is incurred by the Corporation on account of non-completion of the work is Rs 3 crores. This Project connects Western Express High Way in East and S.V. Road in West and also is a Flyover Bridge, over the Western Railway. He submitted that the work of Flyover Bridge is stalled only account of stay which is granted in respect of this small portion of land which is occupied by the Petitioner.

6. The learned Counsel appearing on behalf of the Petitioner, after taking instructions from the Petitioner who is present in Court, submitted that the Petitioner shall vacate the premises within one week from the date on which 50% of the amount i.e. Rs 91,00,000/- is deposited by the Corporation in this Court i.e. from 15th March, 2016. If the Petitioner does not vacate the premises within one week, Corporation shall take forcible possession of the premises, if necessary with the police help.”

(Underline supplied.)

10. It is only in the light of this order that the Petitioner was dispossessed and her privately owned land was taken over.

11. The grievance made by the Petitioner is that without following due process of law and without acquiring the Petitioner's privately own land, the possession thereof has been taken over by the Municipal Corporation. The learned Counsel pointed out that the ready reckoner market value as assured by the Affidavit dated 16th March 2015 has not been paid. He pointed out that the alternate accommodation has been allotted by the Municipal Corporation to the occupants of the structures and certain amount on account of the same has been illegally deducted from the compensation offered to the Petitioner. He submitted that the Petitioner has been deprived of his property without following the due process of law and the Petitioner has not been rehabilitated.

12. On earlier two dates, we had called upon the Municipal Corporation to make a statement whether the Municipal Corporation is willing to decide the compensation amount payable to the Petitioner in accordance with law and that also on the basis of the ready reckoner value. But time was sought by its Counsel. Today, time is again sought by the learned Counsel appearing for the Municipal Corporation. Further time cannot be granted in this Petition of the year 2014. Notice for final disposal was issued on 10th October 2014 after hearing the Municipal Corporation. The learned Counsel appearing for the Municipal Corporation produced a copy of the order dated 16th July 2018 passed by the Municipal Commissioner which is taken on record and marked as “*Exh.X*” for identification.

13. The gist of the said order is as under:-

A] On perusal the file, it is clear that this is not an acquisition for a D.P road under MRTTP where

the SLAO is the competent authority;

B] This is an acquisition for a bridge for R.L. where MCGM is the competent authority;

C] The procedure is already finalised at C/101 to C/111;

D] DMC (IV) to coordinate with DP/Bridges/P(South) and defend the case in Court.

14. As indicated in the earlier orders, the Municipal Corporation has accepted that the Petitioner is the owner of the land which is taken over for the construction of the ROB.

15. We may note here that in paragraph 5 of the order dated 14th March 2016, a submission of the learned Senior Counsel for the Mumbai Municipal Corporation has been

recorded that the compensation will be payable in terms of Section 301 of the said Act. Section 301 of the said Act is applicable only in the event, Sections 298 and 299 of the said Act are applicable. Going by the stand taken in the Reply, admittedly, both the sections are not applicable. These two Sections contemplate acquisition of a land for a public street. Section 298 of the said Act is applicable when a part of a building abutting a public street is within the regular line of such street. Section 297 of the said Act lays down a procedure for prescribing regular line of a street. Section 299 of the said Act applies to acquisition of an open land within the regular line of a street. It is not at all the case of the Municipal Corporation that the subject land was within the regular line of a street prescribed by the Municipal Commissioner after following the procedure under Section 297 of the said Act. Hence, Section 301 of the said Act has no application. Therefore, the compensation cannot be fixed under Section 301 of the said Act. Thus, it follows that a land which is admittedly owned by the Petitioner admeasuring about 303 sq.meters which is more particularly

described in the Petition has been taken over by the Municipal Corporation without taking recourse to the provisions of law. Thus, there is a violation of the right of the Petitioner under Article 300A of the Constitution of India. Now that the land has been used for constructing the ROB, the Municipal Corporation has no option but to acquire the same in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "*the said Act of 2013*").

16. As the possession of the land has been taken over without taking recourse to the acquisition proceedings under the said Act of 2013, as per the prevailing policy of the State Government, rental compensation will have to be paid to the Petitioner on account of the loss caused to the Petitioner by taking over the possession of the land without initiating any acquisition proceedings.

17. Needless to add that while determining the

compensation payable as per provisions of the said Act of 2013 and the rental compensation, the amount which is already received by the Petitioner will have to be taken into consideration. As the Petitioner will be heard in the matter of determination of the compensation, we are not deciding the other aspects such as entitlement of the Municipal Corporation to deduct the amount payable on account of alternate accommodation provided to the occupants of the structures on the property of the Petitioner. All these issues will have to be gone into while determining the market value under the said Act of 2013.

18. Accordingly, we dispose of the Writ Petition by passing the following order:-

- (i) We direct the 1st Respondent (the Municipal Corporation of Greater Mumbai) to take recourse to the provisions of the said Act of 2013 by acquiring the subject land and the

structures thereon;

(ii) We direct the 1st Respondent as well as the 3rd Respondent (the State of Maharashtra) to ensure that the acquisition proceedings are commenced and concluded by the determination and the payment of the compensation payable to the Petitioner, if any, as expeditiously as possible and in any event, within a period of one year from the date on which this judgment and order is uploaded;

(iii) As the possession of the acquired land has been taken over by the 1st Respondent without taking recourse to the acquisition proceedings, the State Government shall ensure that the necessary rental compensation is paid to the Petitioner as per policy prevailing on date of taking over the possession. The amount of

compensation shall be determined and paid to the Petitioner within a period of four months from the date on which the Award under the said Act of 2013 is made;

(iv) While computing the rental compensation and the compensation under the said Act of 2013, the amount already paid to the Petitioner shall be taken into consideration;

(v) Writ Petition is disposed of with the above directions.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]