

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

WRIT PETITION NO. 251 of 2018

Tukaram Babu Naik and ors. Petitioners

versus

The City and Industrial Development Corporation
Ltd. and ors. Respondents

Mr. Sachin Suryakant Punde, advocate for the petitioners.

Mr. Hegde along with Mr. Sameer Nakur Patil, advocate for the
respondent No.1.

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

Mr. R. L. Singh i/b. M/s. M. V. Kini and Co., advocate for National Highway
Authority- Intervenor.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 1st FEBRUARY, 2019.

P. C. :

Heard learned counsel and learned AGP appearing for the
respective parties.

2. By this petition filed under Article 226 of the Constitution of
India, the petitioner is challenging the notice dated 13th December, 2017,
issued under Section 55(1) of the Maharashtra Regional and Town
Planning Act, 1966. By the said notice, the petitioner was directed to
demolish the unauthorised structure on the subject land within 15 days
and if it is not done so, the CIDCO will do the same.

3. Mr. Hegde, learned counsel for the CIDCO, submitted that the subject land is already acquired for CIDCO by the State Government by passing an Award on 19th November, 1994 and the possession of the same was also taken. He submitted that, in any case, the said structure is erected without obtaining any permission from CIDCO. He also submitted that the subject structure is affected by National Highway and, therefore, there is no need for interference in the petition by this Court.

4. Mr. Punde, learned counsel for the petitioner, submitted that the petitioner has already filed petition under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for declaration that acquisition has lapsed. He also submitted that the notice structure is old one and in existence since many years.

5. The learned AGP has filed an affidavit dated 22nd June, 2018, of Ashwini Patil, Deputy Collector. The affidavit shows that after acquisition of the subject land by passing an Award in the year 1994, possession was also taken and handed over to CIDCO. So far as compensation is concerned, already notice under Section 12(2) of the Land Acquisition Act, 1894, was given to the petitioner.

6. Having considered the rival submissions and having gone through the petition and the annexures thereto, we find that the petition is devoid of any merit. The Government of Maharashtra by an Act 30 of 2013 has amended Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, thereby inserting the following proviso after sub-section (2) thereof, which reads as follows :

“Provided further that, in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any designated account maintained for this purpose on account of refusal or not coming forward for receiving compensation despite receipt of such notice under sub-section (2) of section 12 of the Land Acquisition Act, 1894, shall be excluded. Also if the said land is mutated within three years after passing the award in the name of acquiring body, it shall be deemed that the possession of the land has been taken.”

7. As stated above, it is the specific case of the State Government that notice under Section 12(2) of the Land Acquisition Act, 1894, was given to the petitioner after passing the Award, which fact, is not disputed by the learned counsel for the petitioner. That apart, the

possession of the land is taken by the State Government on 6th October, 1994 by executing possession receipt, a copy of which is annexed at "Exhibit-3" to the affidavit-in-reply filed by the State. The Government thereafter handed over possession of the subject land to CIDCO on the same date.

8. Merely because the petitioner is running an hotel in the structure in question, does not defeat the claim of the State Government and CIDCO that the land is acquired. Obviously, the petitioner is in unauthorised possession of the subject land. Be that as it may, the subject land is affected by Highway. Except the patch which is in unauthorised possession of the petitioner, the entire Highway is ready. Public Project of such magnitude cannot be stalled at the instance of the petitioner. The petition is devoid of any merit and, therefore, dismissed.

9. At this stage, Mr. Punde, learned counsel for the petitioner, seeks continuation of the ad-interim order which was granted by this Court on 11th January, 2018. The request is strongly opposed by Mr. Hegde, learned counsel for the CIDCO. Mr. Punde, however, submitted that limited protection may be granted and his client would file an undertaking to the effect that immediately after the expiry of this protection, the petitioner himself would demolish the structure. In the

circumstances and in the interest of justice, we continue the ad-interim order for a period of two weeks from today subject to the petitioner filing an undertaking within 5 days from today that he will demolish the subject structure on or before expiry of the said period of two weeks.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]