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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10358 OF 2018

Atlanta Limited	...Petitioner
V/s.	
Thane Municipal Corporation & Ors.	...Respondents

WITH
CIVIL APPLICATION NO.293 OF 2019
IN
WRIT PETITION NO.10358 OF 2018

Atlanta Limited	...Applicant
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IN THE MATTER BETWEEN :

Atlanta Limited	...Petitioner
V/s.	
Thane Municipal Corporation & Ors.	...Respondents

Mr.Mukesh Vashi, Senior Counsel with Ms.Aparna Devkar I/b
M/s.M.P. Vashi & Associates for the Petitioner.

Mr.Mandar Limaye for the Respondent No.1.

Mrs.M.P. Thakur, A.G.P. for the State.

Mr.T.J. Pandian for the Respondent No.3.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.
DATE : 15TH MARCH, 2019.

P.C. :-

1. Heard. Rule. The respondents waive service. By consent

Rule is made returnable forthwith.

2. We have heard both the sides. The challenge is to the stop work notice issued by the Thane Municipal Corporation.

3. This stop work notice informs the petitioner that though the permission to develop an immovable property more particularly described in the commencement certificate, copy of which is at Exhibit "B" to the petition is granted albeit with some conditions, still the development work pursuant thereto cannot proceed. The reason for not allowing the development to proceed is that the Chief Project Officer, National High Speed Rail Corporation Limited, Mumbai has stated that the process of negotiations so as to acquire the private land for the purpose of completion of the Mumbai – Ahmedabad High Speed Rail Project is underway. A public notice has also been issued to that effect. The private property owners or the persons interested therein have been informed that a huge tract of land is required for this project. One of the land identified is at village Shil, Survey No.67, Hissa Nos.2-A, 3-A and 3-B and that is claimed by the petitioners to be its property. In the light of that public notice, the petitioners have been informed not to carry out any construction activity on its private property as the land / property is affected by the above project.

4. The argument of Mr.M.M. Vashi, learned senior counsel is that by a mere announcement of the project or issuance of a public

notice to the above effect, the petitioner's property cannot be taken away. Once the private property cannot be taken away except by voluntary act of the petitioner and a mutual agreement as per the above course or by resorting to power to acquire the land compulsorily under the Land Acquisition Laws, then, such stop work notice is contrary to law. That stop work notice issued at the instance of the Collector of Thane District will not be sustainable in any manner.

5. Mr.Limaye, learned counsel appearing for the Municipal Corporation is fair enough to say that Thane Municipal Corporation has acted at the instance of the Collector of Thane and the respondent no.3, they would not have issued such notice had these authorities not prevailed upon them.

6. Mr.Pandian, learned counsel appearing for the respondent no.3 brings to our notice the contents of a short affidavit and would submit that this project is not only prestigious but necessary in larger public interest. The speedy means of transport so as to meet huge rail traffic between Mumbai and major cities and metro cities is a prime concern and hence the process has begun and it is not mere announcement as is being projected. The project is under implementation.

7. However, on hearing Mr.Pandian, and perusing an affidavit

of the respondent no.3 with his assistance, we find that presently respondent no.3 has no answer to the legal position. That is that the property or the land undisputedly is a private property. After the owner thereof sells voluntarily this property and then there is an agreement for acquiring it, then, absent the voluntary act, can, by a public notice, the third respondent could have called upon the Collector and Thane Municipal Corporation to halt or stop development on this private property ? Mr.Pandian says that if the petitioner comes forward, the third respondent will still negotiate and assures it that a fair rate for the land would be paid. However, if that is not possible, it is conceded that the third respondent will have to take recourse to a law enabling it to acquire the land of the petitioner which is a private property, compulsorily. Presently no notification under such law is issued.

8. Once the above facts appear from the record, then, the petitioner's private property cannot be touched nor can the petitioner's right to develop its own property be adversely affected. Both the rights in the property / land can be taken away only by recourse to law. The present stop work notice is contrary to law. The power of the Municipal Corporation to stop the development which is in terms of its own development permission, cannot be then resorted to. The stop work notice being issued only because of the

intervention of the Collector and the respondent no.3 that is thus unsustainable in law. The writ petition must succeed. However, it is clarified that the petitioner holds its property and develops it but such development activity will not in any manner prevent the respondent nos.2 and 3 from taking recourse to law and particularly a law enabling compulsory acquisition of the petitioner's land. By clarifying this, we allow this writ petition. Rule is made absolute in aforesaid terms. There will be no order as to costs.

9. In the light of the disposal petition, the civil application does not survive and stands disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)