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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 969 OF 2017
IN
SUIT NO. 166 of 2008

Shilpa Bharat Yadav & Ors ...Plaintiffs
Versus
Municipal Corporation of Greater Mumbai & Ors ...Defendants

Mr RV Pai, *with Akshay R Pai, NN Thakkar & AM Bhat, i/b Ravindra Pachundkar, for the Plaintiffs/Applicants.*
Ms GR Shastri, *Additional GP, for Defendant No. 4.*
Mr Akash Rebello, *i/b Ravi Thankaian, for Defendants No. 5.*
Mr Sean Wassoodew, *for Defendant No. 6.*
Mrs Uma Palsuledesai, *AGP, for Defendants Nos. 9 and 10.*
Mr Javed Shaikh, *with RY Shirsikar & DS Shingade, for MCGM.*
Mr Jehangir Jeejeebhoy, *Amicus Curiae, is present.*

CORAM: G.S. PATEL, J
DATED: 27th February 2019

PC:-

1. Heard. This is the Plaintiffs' Chamber Summons for amendment. The challenge in the suit is to a land acquisition award that the Plaintiffs say is wholly invalid. The Plaintiffs' case is that the land in question has never been validly acquired. The present amendment seeks to add what is essentially a ground of challenge,

and more specifically an alternative plank to the plaint. It proceeds on the footing that assuming the acquisition proceedings resulted in a legally valid award, then that acquisition must be deemed to have lapsed, and must be held to have so lapsed, in view of the provisions of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. The submission is clearly within the frame of Section 24(2) of that Act.

2. Mr Rebello for Defendant No. 5 points out that so far as the section is concerned, there has been some controversy before the Supreme Court and by an order dated 21st February 2018, the Supreme Court has requested High Courts “not to deal with any cases relating to the interpretation of or concerning Section 24”. Indeed I am doing nothing of the kind. I am permitting the Plaintiffs to place a case and I have no manner of doubt that by the time this suit reaches the stage of a final decision, the Supreme Court’s decision on interpretation of Section 24 will be available one way or the other.

3. The submission from the State Government and the MCGM is, however, that having once said that the acquisition is invalid or that there was no acquisition, the Plaintiffs cannot be allowed to take an alternative plea that the acquisition, if held to be valid, has lapsed. There is no substance to this. Indeed I imagine that if this was clarified as a liberty granted to make the argument at the stage of final hearing, no Court would have prevented it. The reason is self-evident. If the Plaintiffs are entitled to demand an order of a Court in accordance with law, then it is clear that the law as it exists

will be applied and no Court will pass an order contrary to a statutory provision.

4. A more substantial defence taken by all the Defendants is that of limitation. The argument is by Mr Rebello in which he is supported by the MCGM and the State Government, is of limitation. Specifically, the case is that had the Plaintiffs filed a Writ Petition or a separate suit, then the Defendants would have been able to not only oppose such a suit as being barred by limitation but would also have been entitled to file an application under Order VII Rule 11 for its rejection. The issue of limitation must necessarily, therefore, have to be kept open. Obviously an amendment of this kind possibly cannot relate back to the date of suit. Apart from anything else, the statute Mr Pai for the Plaintiffs invokes did not exist on the date of institution of the suit. It is only necessary to clarify that all contentions on this additional prayer are specifically kept open, including as to limitation, and this amendment is not to be construed as or deemed to relate back to the date of institution of the suit.

5. With this, the Chamber Summons is made absolute in terms of the Schedule annexed to the Chamber Summons.

6. Amendments are to be carried out on or before 10th March 2019. A copy of the amended Plaint will be served on the Advocates for the Defendants on or before 5th April 2019.

7. Additional Written Statements by those Defendants who have already filed Written Statements, and Written Statements by those who have not filed their Written Statements, will be filed and served on or before 7th June 2019.
8. List the suit for framing issues on 18th June 2019.
9. The Chamber Summons is disposed of in these terms. There will be no order as to costs.
10. I notice that there are several Notices of Motion pending. List all these Notices of Motion for hearing and final disposal on 2nd April 2019.

(G. S. PATEL, J)