

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (St.) NO.93221 OF 2020

Maharashtra Metro Rail Corporation Limited ... Petitioner
Vs.
State Of Maharashtra & Ors. ... Respondents

AND

WRIT PETITION NO.3813 OF 1996

Dr.F.F.Wadia ... Petitioner
Vs.
State Of Maharashtra & Ors. ... Respondents

AND

WRIT PETITION NO.7465 OF 2012

Shri.Mukund Bhavan Trust & Ors. ... Petitioners
Vs.
State Of Maharashtra & Ors. ... Respondents

Mr.S.K.Mishra, Senior Advocate, with Mr.Kaustubh Deogade i/b.
Mr.Pralhad Paranjape for Petitioner in Writ Petition (St)
No.93221/2020.

Dr.Milind Sathe, Senior Advocate, with Mr.Parimal Shroff and Mr.D.V.
Deokar with Mr.Pinakin Modi, Mr.Dhruvanch Parikh i/b. M/s.Parimal
K.Shroff & Co., for Respondent Nos.5 & 7 in Writ Petition (St)
No.93221/2020, and for petitioners in Writ Petition no.7465/2012 and
for Respondent nos.27 to 29 in Writ Petition no.3813/1996/.

Ms.Kiran Bagalia with Mr.Musharaf Shaikh, for the Petitioner in Writ
Petition no.3813/1996 and for respondent no.4 in Writ Petition (st)
no.93221/2020.

Mr.PPKakade, Government Pleader with Mr.N.M.Mehara, AGP for the
State.

Mr.Dharmesh Jain i/b. Anil Agarwal, for Respondent nos.3 to 43 in Writ Petition no.3813/1996.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- OCTOBER 20, 2020.

PC :-

1. The Maharashtra Metro Rail Corporation Limited (for short '**MMRCL**') has filed this petition (Writ Petition No.93221/2020) *inter alia* praying that respondent no.1-State of Maharashtra, respondent no.2-Collector of Pune and respondent no.3-Deputy Collector (Land Acquisition) be directed to hand over to the MMRCL an area admeasuring 5213.84 sq.meters in Survey no.141(part) and 233 (part) situated at Mouje Yerawada, Pune Civil, District Pune (for short '**the land**') which is stated to be urgently required for the public purpose, namely for the "Pune Metro Project". The Deputy Collector (Land Acquisition) by his letter dated 25 November 2019 has informed the MMRCL, that as per the revenue records this land belongs to the State Government, hence, there was no requirement to acquire the land.

2. Incidentally the land is also subject matter of issues as raised in two earlier writ petitions, which are also before us today. The first writ petition no.3813 of 1996 is filed by Dr. F. F. Wadia (for short "**Dr.Wadia's petition**") assailing an order dated October 26, 1995 passed

by the Hon'ble Minister for Revenue, whereby a revision application filed under Section 79 of the Bombay Hereditary Officers Act, 1874, by one Shri.Bhaginath Fakira Bhingardive and others was allowed. By the said order, the Hon'ble Minister has set aside an old order dated 26 February 1954 passed by the Deputy Collector and another order dated 12 August 1954 passed by the Collector of Pune, both these orders being passed under the Bombay Inferior Village Watan Abolition Act 1958. The Hon'ble Minister *inter alia* declared that lands including (Survey No.141 and 233) be continued as Watan lands. Directions were issued to the Collector, Pune, to initiate action for regrant of the lands as per the Bombay Inferior Village Watan Abolition Act, 1958, including recovery of the occupancy price. One of the significant contentions as raised in the petition, was of the Hon'ble Minister having passed the said order almost after 40 years after the date of the orders being passed by the Collector/Deputy Collector, which also were passed under a different enactment namely the 'Bombay Inferior Village Watan Abolition Act'.

3. A co-ordinate Bench of this Court comprising of H.L.Gokhale and J.H.Bhatia, JJ. (as their Lordships then were) was pleased to pass the following ad-interim order dated 7 June 2006 on Dr.Wadia's petition.

“1. Mr. Shroff who is present, states that he will be applying for intervention and will be opposing this petition on behalf of one Shree Mukund Bhavan Trust. He may move his application in a week and serve the petitioner.

2. The petitioner is basically challenging the Minister's order dated 26 October 1995, whereby he has revoked an order passed by the Collector some 40 years ago, i.e., on 12 August 1954.

3. In the circumstances, there will be ad-interim order in terms of prayer clauses (iii) and (iv) with a further direction that, if at all, the concerned land has been allotted to anybody, those parties will maintain status-quo with respect to the land.”

4. Prayer clauses (iii) and (iv) as granted by the above ad-interim order read thus:-

(iii) During the pendency of the petition, the implementation, operation and enforcement of the order dated 26 October 1995 of the Minister (Revenue) in Case No. BIW 3494/30/CR-54 be ordered to be stayed;

(iv) During the pendency of the petition, the respondents 1 to 3 be restrained from making any allotments in the nature of regrant or otherwise of the lands situate at S.No. 141 and S.No. 233 or changing the status of the said lands in any manner or creating any third party interests therein in any manner whatsoever;

5. Mr.Wadia's petition thereafter came to be admitted by a co-ordinate Bench of this Court by an order dated 24 July 2006 and is pending final hearing. The above ad-interim order passed on Dr.Wadia's petition has continued to operate till date. The effect of this interim order being that the State Government is prohibited from changing the status of the said lands and/or is enjoined from creating any third party

rights, in any manner. According to the petitioner, this order prevents the State Government from handing over the necessary 5213.84 sq.meters land required by MMRCL for the Pune Metro Project.

6. The second petition is Writ Petition no.7465 of 2012 which is filed by Shri.Mukund Bhavan Trust and others (for short “**the trust’s petition**”), which also assails the order dated 26 October 1995 passed by the Hon’ble Minister for Revenue. Dr.F.F.Wadia is impleaded as respondent no.5 in this petition. The trust is asserting its rights on a bunch of watan lands and hence has felt aggrieved by the said order passed by the Hon’ble Minister. This petition was filed in July 2010 which was almost 17 years after the order dated 26 October 1995 was passed by the Hon’ble Minister. On 18 September 2012 a co-ordinate Bench of this Court passed the following order on the trust’s petition:-

“ Heard the learned counsel for the petitioners and the learned Assistant Government Pleader for the State.

2. The petitioners in the present writ petition are challenging the order passed by the Minister dated 26.10.1995 and therefore prima facie we are of the view that the doctrine of delay and laches is attracted. The learned counsel for the petitioners has submitted that in writ petition no.3813 of 1996 filed by the respondent no.5 similar challenge is already raised against the said order dated 26.10.1995 passed by the Minister, which is admitted by this Court.

3. It is in these circumstances, we direct office to place the present writ petition for admission alongwith writ petition no.3813 of 1996 on 16.10.2012.

7. As the order of the Hon'ble Minister dated 26 October 1995 was already subject matter of challenge in Dr.Wadia's petition, by an order dated 16 October 2012 this Court issued "Rule" on the trust's petition.

8. Both these writ petitions are accordingly pending for final hearing. The interim order dated 7 June 2006 passed in Dr.Wadia's petition as noted above has continued to operate, by the reason of which, the State Government is not in a position to hand over the land as required by the MMRCL.

9. Mr.Mishra, learned Senior Counsel for the MMRCL would contend that as informed by the District Collector, as on date, the land as required by MMRCL clearly belongs to State Government, hence there is no need to acquire the said land. He would submit that the land is urgently required for the Pune Metro Project as the entire work of the relevant sector is stalled as this land is not being made available. He submits that thus a serious prejudice is caused to the public works in question. Mr.Mishra would submit that Dr.Wadia is not asserting any rights on this land. Ms.Kiran Bagalia, learned Counsel appearing for Dr.F.F.Wadia fairly states that her client would not assert any private right in respect of the land as required by MMRCL.

10. Mr.Mishra next submits that the trust also cannot assert any rights qua the land as required by the MMRCL, as according to him the trust does not have any rights whatsoever in respect of this land. In supporting this contention he would draw our attention to the consent terms as entered between the State of Maharashtra and the trust and others in Civil Appeal No.787 of 2001, before the Court of 11th Additional District Judge at Pune. Mr.Mishra has drawn our attention to the relevant paragraphs of the consent terms to submit that the consent decree clearly sets out that the trust relinquished its rights on land Survey no.141 and Survey no.233 as set out in paragraph 2B and as specifically agreed in paragraph 3(ii) and paragraph 4 of the consent decree dated 10 March 2003.

10A. These paragraphs of the consent terms are required to be noted, which read thus:-

“2 B. The respondents were not entitled to and there is no liability, on the part of State of Maharashtra to hand over possession of any part of the lands described in Schedule A as per the following particulars:

Village	S.No.	Area (A.G.)
Yerwada	14A/1A/1	2.68
	95	13.24
	90	2.13
	160(pt.)	103.00
	191A(pt.)	38.19
	103 (pt.)	0.26
	120(pt.)	5.00
	141	14.14

	233	14.20
	94(pt.)	39.37
	104	8.33
	105	4.04

3(i)

(ii) It is made expressly clear that in the event of State of Maharashtra being unable to hand over possession of the said lands to Mukund Bhavan Trust for any reason whatsoever the respondent shall have no claim and there shall be no liability whatsoever against the State of Maharashtra in this regard. The respondents accept the aforesaid position without any reservation and confirm that this is being provided for by the State of Maharashtra in good faith. They also accept that the same is contingent upon the result of the various proceeding and the State of Maharashtra incurs no liability whatsoever in this behalf if it is unable to give effect to what it has agreed to.

4. In view of the above, the respondents expressly relinquished and abandoned all their claims, rights or alleged entitlement in respect of any of the other lands mentioned in Schedule A of the consent terms dated 16 December 1989 and there shall be no liability on the part of the State of Maharashtra in this behalf of any kind whatsoever.”

Dr.Sathe, learned Senior Counsel for the trust would not dispute the implications as brought about by the consent decree.

11. On the above backdrop we have heard learned Counsel for the parties. It is quite clear to us that neither Dr.Wadia has any claim over the said land nor the trust can have any objection for the land admeasuring 5213.84 sq.meters in Survey no.141 and Survey no.233 to be handed over to the MMRCL as per its requirement. If this be the case, it would be necessary as also in the interest of justice that the ad-interim order dated 7 June 2006 (supra) passed by this Court be modified so as to enable the State Government/Collector, District Pune

to hand over the said land to MMRCL for the Pune Metro Project. Accordingly, the Collector shall hand over the land to the MMRCL within a period of 15 days from today. Ordered accordingly.

12. As the principal relief in the petition filed by the MMRCL was for a direction to hand over possession of the land in Survey No.141 (part) and Survey no.233 (part) to the extent of an area about 5213.84 sq.meters, the writ petition would not warrant any further adjudication. We accordingly dispose of the petition in terms of the above directions with no order as to costs.

13. Needless to observe that we have kept open all other contentions of the parties in the pending Writ Petitions.

14. This order will be digitally signed by the Private Secretary of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

corrected as per speaking to minutes of the order dated October 29, 2020.