

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

WRIT PETITION NO. 8004 OF 2010

Janardhan Shivram Taware (since deceased
through legal heirs) :

Sunderabai Janardhan Taware and ors.

.....Petitioners

v/s.

Pune Municipal Corporation

.....Respondent

Mr. S.S. Patwardhan for the Petitioners.

Mr. Abhijit Kulkarni for Respondent.

**CORAM: A.A. SAYED, AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : 14th FEBRUARY, 2020.

P. C. :-

1. Learned Counsel for the Petitioners seeks extension of time for carrying out amendment to the Petition. Time is extended. Amendment be carried out during the course of the day.

2. The Writ Petition is filed seeking the following relief :-

“ A) That this Hon’ble Court be pleased to issue a Writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus thereby directing the respondent herein to award to the petitioner compensation for the illegal occupation of the petitioner’s land admeasuring 17 G in Survey No.47/30-D situated at Parvati, Aranyeshwar Pune 9 or in the alternative Transferable Development Rights as are awardable to the petitioner under the applicable Development Control Regulations of the respondents.

3. The Petitioners had earlier filed Writ Petition being Writ

Petition No.7366/2006 seeking the same reliefs. The said Petition was disposed of by order dated 09/03/2007 which reads as follows :-

“ Based on the public notice dated 10th October, 2001 it is the contention of the petitioner that the respondents are in occupation of the land identified under Survey No.47/30-D in an area of 17 Gunthas. Earlier only 18 Gunthas of the land had been acquired in the year 1961. It will be open to the petitioner to take such steps which in law he is entitled to. At any rate we are not inclined considering the disputed question of facts to interfere in the exercise of our extra ordinary jurisdiction. It will be open to the petitioner to apply to the Survey Authorities to demarcate the portion of his land which is acquired. With the above observation petition disposed of. No order as to costs. ”

4. It is thus seen that this Court had declined to exercise extra-ordinary jurisdiction as the matter involved disputed questions of facts. No liberty was granted to the Petitioner to file a fresh Writ Petition. It was left open to the Petitioner to take such steps in accordance with the law as he is entitled and to apply to the Survey Authorities to demarcate the portion of land which is acquired. In view of the aforesaid order dated 09/03/2007 passed by this Court in Writ Petition No.7366/2006, it is not open to the Petitioners to file the present Petition on the same facts seeking similar reliefs. The mere fact that the subject land was subsequently demarcated pursuant of the Application filed by the

Petitioners, would not give a fresh cause of action to the Petitioners to file the present Writ Petition.

5. Moreover, we note that in Paragraphs 3, 4 and 10 of the Affidavit-in-Reply filed by the Deputy Commissioner (Land Acquisition and Management) of the Respondent – Corporation, it is stated as follows :-

*“ III. Without prejudice to the above, I say that by Sale Deed dated 5th September, 1935 the then Local Board through Shri Jaywantrao Tukaram Sawant, President and S/Shri Dagdu Tukaram Dalvi and Vishnu Shekuji Satav, members purchased Survey No.47/30B, Parvati admeasuring 18 Gunthas from Shri Shivram Krishnaji Taware. Pursuant to this, the necessary Mutation Entry No.336 was certified. Annexed hereto and marked as **Exhibit “1”** is the copy of the said Mutation Entry No.336.*

*IV. I say that the present P.M.C. was constituted on 15th February, 1950. The possession of Survey No. 47/30B, Parvati was handed over by the President, District Local Board, Pune to the Municipal Commissioner of P.M.C. on 1st August, 1950. I say that Engineer, District Local Board, Pune addressed communication dated 11th March, 1952 to the Mamlatdar, Pune City informing that 18 Gunthas of land from Survey No. 47/30B, Parvati vested in P.M.C. limit with the merge of that District Local Board area into Corporation limits since 1st August, 1950. Annexed hereto and marked as **Exhibit “2”** is the copy of the said communication.*

X. I say that the Mamlatdar, Pune replied the Communication dated 8th February, 1962 on 30th June, 1962 informing that in the Village records of Parvati, there wer Hissas bearing Nos. 47/30A, 47/30B and 47/30D. The phalani measurement was carried out and thereafter there were changes in the Hissas. Earlier area admeasuring 18 Gunthas from Survey

*No.47/30B was in possession of P.M.C. which area was under the road from Satara Road to Araneshwar. After the surveyor measurement made by office of the Land Records, Survey No.47/30B was changed to Survey No.47/30D whose area of 35 Gunthas instead of 18 Gunthas was shown against P.M.C. Annexed hereto and marked as **Exhibit "8"** is the copy of the said Communication. Pursuant to that Village Form No. 7/12 in respect of Survey No. 47/ 30(B)D was prepared. Annexed hereto and marked as **Exhibit "9"** is the copy of the said extract. Perusal of this, will indicate that earlier area of 35 Gunthas it would further indicate that right from 1953-54 to 1960-61, the area of Survey No. 47 / 30B was shown as 18 Gunthas. However, from the year 1961-62, the area shown in the possession of P.M.C. was 35 Gunthas. "*

6. It is thus evident that the Petitioners' predecessors in title were awarded compensation in respect of 18 Gunthas. No grievance was raised by the Petitioners' predecessors at the relevant time. The mutation entries were made in the year 1961-62 in respect of the entire area of 35 Gunthas in the name of the Respondent – Corporation in respect of Survey No.47/30D.

7. In the circumstances, we are not inclined to entertain the Petition. The Petition is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

(A.A. SAYED, J.)