

Vidya Amin

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

**WRIT PETITION NO. 2239 OF 2021
WITH
INTERIM APPLICATION NO. 2193 OF 2021**

Narayan Gajanan Thakur	...	Petitioner
vs.		
The Managing Director, City and Industrial Development Corporation(CIDCO) & Ors.	...	Respondents

Mr. A.Y. Sakhare, Senior Advocate a/w. Mr. Rahul Thakur for the petitioner.

Mr. Nitin V. Gangal a/w. Mr. Ashok D. Kadam for respondent nos. 1 to 3/CIDCO.

Mr. P.P. Kakade, Government Pleader a/w. Ms. R.A. Salunkhe, AGP and Ms. G.R. Golatkar, AAGP for the State.

Mr. Saket Mone a/w. Mr. Devansh Shah i/b. Vidhi Partners for the intervenor/MMRDA.

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

DATE :- SEPTEMBER 20, 2021

PC :-

1. The challenge in this petition is to a notice dated 30 December, 2020 under section 55(1) of the Maharashtra Regional and Town Planning Act, 1966 issued by respondent no. 1-City and Industrial Development Corporation Ltd. (for short, "the CIDCO") directing the petitioner to remove unauthorized encroachment of the stone crushing plant and tin sheds on the land bearing survey no. 80/1.

2. The case of the petitioner is that he is the owner and occupier of the land bearing survey no. 80/1 admeasuring 0-76-4R

at village Jasai, Taluka Uran, District Raigad along with stone crushing plant installed on the said land. The petitioner has contended that he is in the business of stone crushing for which he has installed a stone crushing plant and an asphalt plant on the said land. He says that he had obtained requisite permissions including a NA permission which was granted to him in the year 1992.

3. The petitioner contends that in the year 2015 a portion of land admeasuring 0-21-0 R from the total land admeasuring 0-76-4 R came to be acquired by the State Government for the benefit of the MMRDA. A land acquisition award dated 22 April, 2015 was published. The petitioner has stated that the said award was challenged by the petitioner along with other land owners in Writ Petition No. 1712 of 2018 on the ground that the award had lapsed. The said writ petition is stated to be pending. However, during the pendency of the said petition, the impugned notice under section 55(1) of MRTP Act has been issued to the petitioner. The petitioner's contention is that the notice is illegal inasmuch as the petitioner is undertaking the stone crushing business after receiving requisite permissions and it is not an unauthorized activity. The petitioner hence contends that the impugned notice deserves to be quashed and set aside.

4. On the other hand, it is CIDCO's case that the petitioner's

case is wholly untenable for the reason that the impugned notice which has been issued by CIDCO is in respect of land which stood acquired and vested with the CIDCO and as conceded by the petitioner, is subject matter of the land acquisition award dated 22 April, 2015. It is, thus, contended that the crushing equipment and shed installed by the petitioner stands on the acquired land as also clear from the map duly certified by TILR. CIDCO has contended that the unauthorized installation of the equipment and shed on the acquired land falls under the alignment of the Mumbai Trans-Harbour Link Road (for short "**MTHL**"), for which the land was acquired for the MMRDA. It is stated that MTHL is a national project and the ad-interim relief granted by this Court on the present petition on January 22, 2021 has obstructed the execution of such an important public project. Asserting such case on behalf of CIDCO, an affidavit dated 13 March, 2021 of Shri Vishal Dhage, Controller of Unauthorized Construction, is also placed on record. The petitioner has filed a rejoinder affidavit denying the case of CIDCO, which is mostly re-assertion of what has been contended in the writ petition.

5. A further affidavit (sur-rejoinder) of Shri Vishal Dhage, Controller of Unauthorized Construction dated 17 August, 2021 is placed on record on behalf of the CIDCO inter alia contending that it is of utmost urgency that the petitioner removes his installation of

the machinery and the shed constructed on the notice land. By such affidavit, material is placed on record to show that the petitioner's structure is obstructing the national project as shown from the Google map indicating the exact location of the temporary structure and the conveyor belt of the crusher machine. It is stated that as per the land acquisition award dated 22 April, 2015 declared under section 11 of the Land Acquisition Act (for short "L.A. Act"), the amount of compensation to be paid to the petitioner was Rs.79,32,263/- for the 21.5 gunthas of land, which was made available to be withdrawn by the petitioner. It is also stated that if the petitioner was to be dissatisfied by the quantum of compensation, the petitioner had a remedy to approach the Court of learned District Judge in a reference under section 18 of the L.A. Act. It is further contended that the petitioner has raised disputed questions of fact to contend that the notice land is not the exact land as acquired by the petitioner, knowing well that such disputed contentions cannot be urged before the writ court. It is next contended that in the proceedings of Writ Petition No. 1712 of 2018, a co-ordinate bench of this Court had passed an order on 26 November, 2018 directing that the petitioner shall forthwith handover possession of the said land subject to the issue regarding lapsing of the award being kept open. CIDCO's affidavit further contends that as per the information provided by the MMRDA, the MTHL project is a project being undertaken at the cost of

Rs.18,000 crores. The project has already received CRZ clearance on 25 January, 2016 as also the other statutory clearances. It is stated that this Court had also granted permission for cutting mangroves and for which the Forest Department had also granted permission. MMRDA had also obtained permission from Railways, CIDCO, National Highways Authority of India, Mumbai Port Trust, Jawaharlal Nehru Port Trust, Bhabha Atomic Research Centre, Maharashtra Maritime Board etc. as also international contractors, namely, M/s. AECOM Asia Co. Ltd., PADECO Co. Ltd., Dar Al-Handasah TY Lin International Consortium were appointed as contractors to undertake the project work. It is stated that the project has progressed to a substantial extent and now pillars would be laid on the land in question.

6. Mr. Gangal, learned counsel for CIDCO has also placed on record the recent photograph of the pillars which have been laid down on the landward portion as also in the sea to show that substantial work is completed of the MTHL bridge which would connect Sewri, Mumbai to Jawaharlal Nehru Port Trust at Uran.

7. We have heard learned counsel for the parties. We have also perused the record. A co-ordinate Bench of this Court on 22 January, 2021 while issuing notice to the respondents had granted ad-interim relief to the petitioner in terms of prayer clause (c), which was to the effect that the operation and implementation of

the impugned notice dated 30 December, 2020 was stayed. The said order reads thus:

"1. Leave to amend is granted to add additional documents and to amend the pleadings. Amendment to be carried out within one week from today.

2. CIDCO has issued notice under Section 55 (1) of the Maharashtra Regional and Town Planning Act, 1966 to the petitioner in respect of his stone crushing plant and asphalt plant on the land described in prayer clauses (a) and (b) of the petition.

3. The petitioner has replied to the said notice under Section 55 (1). No order has been passed by the authority on the said notice dated 30th December, 2020 till date.

4. Hence, issue notice to the respondents, returnable on 15th February, 2021. Humdast is permitted.

5. The learned AGP waives service of notice on behalf of respondent Nos. 4 to 8.

6. There shall be ad-interim relief in terms of prayer clause (c) till the next date.

7. Amended copy shall be filed in the office so as to enable the office to serve upon respondents' advocate.

8. Parties to act on the copy of this order duly authenticated by the Court Sheristedar/ Court Associate of this Court."

(emphasis supplied)

8. The above ad-interim order has continued to operate till date. By an order dated September 13, 2021 passed by this Court, we directed CIDCO to carry out a survey to ascertain the exact area occupied by the petitioner while operating his stone crushing plant. The survey was to be conducted on September 15, 2021 at 12.00

noon and report of the survey to be placed on record of this petition on September 20, 2021. In our order, we also observed that since CIDCO had issued the impugned notice for the purpose of facilitating construction of a bridge by MMRDA, which is a public project, we also permitted MMRDA to intervene. In pursuance of the said order, a survey was undertaken on September 15, 2021 which was attended by the officers of CIDCO, MMRDA and the Deputy Collector (Land Acquisition) Metro Center-1, Uran and Deputy Superintendent Land Records, Uran. The petitioner was also present at the time of survey. The survey was undertaken of the acquired portion of survey no. 80/1 within which fell, the Trans-Harbour Link alignment. The outcome of the survey is to the effect that land admeasuring 0-21-50 Ha.R. out of survey no. 80/1 was the acquired land and on such land, an area admeasuring 0-18-0 Ha.R was found to be under the stone crushing activity of the petitioner. The survey recorded that stone crusher machine was in fact falling on the acquired portion of survey no. 80/1 which was the MTHL Alignment. Mr. Gangal has also drawn our attention to a map which was prepared by the Surveyor on the site, which points out the said acquired area out of Survey No. 80/1, there were two stone crusher machines and two sheds.

9. On behalf of the petitioner, not only on the earlier occasion but even today the half-hearted submission is to assert ownership

of the petitioner on the said land, at the same time, conceding that an area of 0-21-50 Ha.R. was acquired, under the award dated 22 April, 2015. It is clear that such assertion was not raised earlier. However, what is interesting is that the real claim of the petitioner as argued today is to claim compensation which the petitioner states that he should receive for the stone crushing equipment and the shed, as before us, it is a vehement submission on behalf of the petitioner that a valuation is required to be undertaken of such machinery and shed, so that the petitioner can be compensated of such movable property, as such equipment and shed would be required to be removed from the acquired land. It is thus clear that the petitioner is not disputing that the portion of land admeasuring 0-21 R as demarcated in the survey as also marked in the plan actually stood acquired and was under the land acquisition proceedings and subject matter of the award dated 22 April, 2015. Thus, to continue to operate a stone crusher plant on a land which does not belong to the petitioner cannot be said to be an authorized activity, so as to not justify a notice under section 55(1) of the MRTP Act. The primary concern of the petitioner, however, is merely on compensation for such equipment/shed. It is, on such premise, that the petitioner has approached this Court in assailing the impugned notice issued by the CIDCO under Section 55(1) of the MRTP Act.

10. At the outset, we are quite surprised that whatsoever may be the petitioner's claim for compensation qua the machinery or the tinshed, the petitioner was not entitled for any ad-interim stay on the impugned notice for the reason that on a untenable ground, the petitioner was occupying the land in question which stood vested in the State and also was obstructing the national project like the construction of the Trans-Harbour Link Road. Be that as it may, it is quite clear to us that the petitioner had an alternate remedy available to him to assert that the compensation which was offered to him under the award is inadequate and could have initiated proceedings to that effect. However, learned counsel for the petitioner is unable to point out that any proceedings for enhancement of compensation were filed by the petitioner. Suffice it to observe that the petitioner had joined some other persons whose lands were also acquired, by filing writ petition before this Court, assailing the award and such proceedings are pending.

11. In the above circumstances, we are quite clear that the petitioner has not made out any case so as to restrain CIDCO to act under impugned notice issued under section 55(1) of the MRTP Act to remove unauthorized construction from the acquired portion of the land, so as to stall the project of a national importance being undertaken by MMRDA of the Trans-Harbour Link Road connecting Sewri to JNPT at Uran. We are hence not inclined to grant any

relief to the petitioner.

12. However, while dismissing the petition, in the interest of justice, we intend to pass the following order:

(i) The petitioner within 10 days from today shall remove its stone crushing machine/installation and the temporary tinshed and clear the notice land;

(ii) In the event, the petitioner fails to clear the land as directed above, the Court Receiver, High Court, Mumbai is appointed as receiver only for the purpose of clearing the said machinery. The Court Receiver under his supervision shall permit CIDCO to clear the said machinery at the cost of the petitioner. In that event, the State shall be entitled to recover the costs of such removal from the petitioner as arrears of land revenue payable to the CIDCO;

(iii) The Court receiver shall be entitled to avail of police assistance from the local police station in the event the directions in paragraph (ii) above are required to implemented;

13. Needless to observe that we have not examined any of the petitioner's contention in pending Writ Petition.

14. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)