

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

WRIT PETITION NO.2376 OF 2021

Nitin D. Mhatre .. Petitioner.
v/s.
State of Maharashtra & Others .. Respondents.

Mr. Rajesh S.Datar, for the Petitioner.
Smt. A. A. Purav, AGP for the Respondent-State.
Ms. Akansha Helaskar with Mr. Ashutosh M. Kulkarni, for the CIDCO.

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**CORAM: S.V. GANGAPURWALA &
VINAY JOSHI, JJ.
DATED : 7th APRIL, 2022.**

PC:-

The Petitioner seeks possession of land Gat No.108 to the extent of 33 Ars and 12 Pratis situated at Village Talavali, Taluka and District Thane. He further seeks directions to mutate his name in the Revenue record of the said land.

2 The learned Counsel for the Petitioner submits that though the possession of the Petitioner's land was taken by the Respondents on or about 6th June, 1986. The award has not been passed under Section 11 of the Land Acquisition Act, 1894 (the 'said Act') till today. The learned Counsel submits that the Petitioner had approached Civil Court, thereby, seeking a declaration that Defendant No.2/ State has not declared award under Section 11 of the said Act. The said suit bearing No. RCS No. 415 of 1994 was dismissed. The Petitioner filed an appeal before the District Court bearing Civil Appeal No.172 of 1997. The said appeal also came to be dismissed. The Petitioner filed Second Appeal bearing No. 105 of 2013

before this Court. The learned Single Judge of this Court under its judgment and order dated 15th March, 1990 allowed the Second Appeal and held that Defendant No.2/ Special Land Acquisition Officer has not made an award in respect of the suit land under Section 11 of the said Act and the suit property does not vest with the Government. The learned Counsel submits that the judgment has become final. The State had filed the Review. The Review is also dismissed for non-prosecution. The said judgment has become final.

3 The learned Counsel submits that Respondents do not have any authority to retain the possession of the land.

4 The learned Counsel for Respondent No.4 – CIDCO submits that the Respondent No.4 was placed in possession of the writ land by the State authority. The possession is taken by the State authority under Panchanama and the Kabja Pavti.

5 The learned Counsel further submits that the acquisition was for the public purpose.

6 The learned AGP submits that the award was passed in the year 1986. Pursuant to the award, the notice under Section 12(2) of the said Act was also issued. The wife of the Petitioner applied for the Project Affected Person (PAP) certificate. The learned AGP submits that unless the land was acquired, Petitioner would not have applied for grant of PAP certificate. The procedure contemplated under the statute for passing award, as adhered to and followed.

7 We have considered the submissions. The finding of the

learned Single Judge of this Court in Second Appeal No.105 of 2013 under the Judgment dated 15th March, 2019 that the award has not been declared in respect of the writ property as on date has become final. The operative part of the order passed in Second Appeal No.105 of 2013 reads thus:-

“(1) Appeal is allowed and the judgment and the decree dated 18th August, 1997 passed in Regular Civil Suit No.415 of 1994 by the II Joint Civil Judge, Senior Division, Thane and judgment and decree passed by the learned District Judge, Thane in Civil Appeal No.172 of 1997 are set aside.

(2) It is declared that the defendant No.2 has not made an award in respect of the suit land under Section 11 of the Land Acquisition Act (Amended 1984) and the suit property has not vested in the Government.

(3) Appeal is allowed in the aforesaid terms with cost and disposed of accordingly.”

8 As the said findings has become final, the same is binding upon the parties. The said finding would operate as *res judicata* for further proceedings.

9 In view of the said findings of this Court, the Respondents cannot contend otherwise. It is submitted that against the dismissal of review for non-prosecution, the State has filed restoration application. It is for the State to take step. As on the date, the said judgment has become final. Almost three years have lapsed, the judgment has been delivered by this Court.

10 In light of the above, we pass the following order:-

- (i) The Respondents, if they so choose to, may initiate fresh proceedings under the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the Act of 2013) within six months.

- (ii) If within a period of six months the Respondents do not initiate the proceedings for acquisition under the Act of 2013 and/or the judgment of the learned Single Judge of this Court, dated 15th March, 2003 in Second Appeal No. 105 of 2013 is not reviewed, then the Respondents shall hand over the possession of the writ land, taken into possession pursuant to the Panchanama dated 6th June, 1986 to the Petitioner.

11 With the aforesaid directions, Writ Petition is disposed of. No costs.

(VINAY JOSHI,J.)

(S.V.GANGAPURWALA,J.)