

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

WRIT PETITION NO.2087 OF 2021

1. Trimbak Joma Thakur)
Since deceased through his LR & heirs)
Shri Dashrath Trimbak Thakur, Age 64,)
2. Kundalik Tukaram Thakur)
Since deceased through his LR & heirs)
Balaram Tukaram Thakur)
3. Ramchandra Balu Thakur)
Since deceased through his LR & heirs)
Pradeep Kesarinath Thakur)
4. Dattatrey Kashinath Thakur)
Since deceased through his LR & heirs)
Ashok Dattatrey Thakur)
5. Mahadeo Shama Thakur)
Since deceased through his LR & heirs)
Bhau Mahadeo Thakur)
6. Gaurya Narayan Gharat)
7. Shantaram Ambo Bhoir)
Since deceased through his LR & heirs)
Trimbak Shantaram Bhoir)
8. Kashinath Bama Bhoir)
Since deceased through his LR & heirs)

Balaram Kashinath Bhoir)

9. Atmaram Dhondu Mhatre)

Since deceased through his LR & heirs)

Arvind Pundalik Mhatre)

all adults, occ. Agriculturists)

Residing at Roadpali, Tal. Panvel)

District Raigad.) .. Petitioners

Versus

1. Principal Secretary Urban)

Development Department)

2. Divisional Commissioner at Kokan)

division office at Kokan Bhavan)

3. Collector office Raigad Alibaug)

4. Dy. Collector (Acquisition) Metro)

Center No.1, Panvel Special Land)

Acquisition Officer)

5. CIDCO)

through M.D. having office at)

CIDCO Bhavan, CBD Belapur)

6. Chief Land and Land Survey Officer)

CIDCO Bhavan CBD Belapur, New)

7. State of Maharashtra) .. Respondents

**WITH
I. A. NO. 3555 OF 2022
IN
WRIT PETITION NO. 2087 OF 2021**

Shri Budhaji Hine Thakur and another .. Applicant

Mr. Shriram S. Kulkarni along with Mr. Rajendra M. Deshmukh for the petitioner.

Mr. Niketan Nakhawa for the applicant in Interim Application.

Mr. S.B. Kalel, AGP for the respondent nos. 1, 2, 4 and 7 - State.

Mr. Gopal S. Hegde along with Ms. Pinky M. Bhansali for CIDCO for the respondent nos. 5 & 6.

**CORAM : R.D. DHANUKA &
S.M. MODAK, JJ.**

**RESERVED ON : 23rd February, 2022
PRONOUNCED ON : 29th April, 2022**

Judgment :- (per R.D. Dhanuka, J.)

. Rule. Learned AGP for the respondent no. 1, 2, 4 and 7 waives service. Mr. Hegde Learned counsel for the respondent no. 5 and 6 waives service. By consent of parties, petition is heard finally

2. By this petition filed under article 226 of the Constitution of India, the petitioners seek writ of mandamus directing the respondents to deposit the entire decretal amount along with accrued interest till the date of payment in respective Darkhast applications as per chart annexed at Exhibit 'D' to the petition and to permit the petitioners to withdraw the said amount. Some of the relevant facts for deciding this petition are as under:-

3. The State Government had notified around 95 villages by different notifications for setting up a new town under Section 113 of the Maharashtra Regional Town Planning Act, 1966 (for short “the said MRTP Act”) . On or about 2nd/3rd September 1970, the State Government issued different notification for each village under Section 4 of the said MRTP Act. The acquisition proceedings however were not completed. The notification under Section 4 of the MRTP Act thus lapsed. On 24th/26th September 1986, the State Government issued a fresh notification in respect of the lands belonging to the petitioners situated at village Roadpali. It is the case of the petitioners that petitioners accepted meagre compensation awarded to the petitioners under protest. The petitioners filed reference under Section 18 of the Land Acquisition Act, 1894. The said reference was partly allowed against which the State Government filed First Appeal No. 646 of 1995. On 23rd December 1993, the Reference Court determined the market rate between Rs.200 to Rs. 230 per sq. mts. in respect of the lands situated in Village Roadpali.

4. On 21st June 2007, a Division bench of this Court determined market rate at Rs.1725/- per sq.mts. in respect of village Roadpali. The State Government did not challenge the said decision. In the year 2009, the CIDCO however filed Special Leave Petition (SLP) challenging the decision in First Appeal No.646 of 1995 and connected matters before the Hon’ble Supreme Court in respect of Village Roadpali.

5. Some time in the year 1996-97, after the decision given by the District Court in case of Village Roadpali, the reference filed under Section 18 in respect of Village Padghe was heard and disposed of by the Reference Court. The said judgment was challenged by the State Government and also by the claimants in those matters.

6. Some of the claimants filed Civil Application for seeking amendment to the reference which came to be filed in some of the First Appeals by the claimants led by Mr.Ashok Laxman Wani in respect of Land Acquisition Reference in respect of Village Padghe. On 31st July 2008, a Division bench of this Court held that the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) cannot be made applicable to the reference under Section 18 of the Land Acquisition Act. This Court however, held that market rate determined in village Roadpali can be made applicable to the lands situated in Village Padghe. This Court refused to award the same rate on certain grounds.

7. Some time in the year 2008-09, Mr.Ashok Laxman Wani and others filed Special Leave Petition before the Hon'ble Supreme Court challenging the judgment and order passed by this Court whereby the rate made applicable to the Village Roadpali was not awarded to them because amendment applications were dismissed.

8. During the period between 7th November 2009 to 6th March 2013, the CIDCO submitted an application before the District Court in one of the reference for impleading it as a party-defendant during the pendency of the SLP. The said application was allowed by the District Court. The original claimant filed a writ petition bearing No.1211 of 2009 in this Court. Learned Single Judge of this Court allowed the said writ petition and set aside the order passed by the District Court. This Court held that the State Government is the acquiring body and the CIDCO is its agent. The said judgment was challenged before the Division bench by the CIDCO by filing Letters Patent Appeal (LPA).

9. On 10th February 2010, a Full Bench of this Court during the pendency of the SLP reversed the view taken by the Division bench

of this Court holding that the provisions of Order VI Rule 17 of the CPC could not be made applicable to the reference under Section 18 of the Land Acquisition Act and held that the reference can be amended.

10. By order dated 10th March 2015, the Supreme Court dismissed the SLP filed by the CIDCO challenging the judgment and order passed in First Appeal No.646 of 1995 and connected matters as well as in case of Ashok Laxman Wani in First Appeal No.1119 of 1997 and others from Village Padghe on the ground of delay. The Supreme Court however, adjourned the hearing of SLP filed by Ashok Laxman Wani and others who were the claimants from village Padghe.

11. During the pendency of SLP's, on 29th July 2017, one of the claimants in First Appeal No.783 of 1995 filed the execution proceedings. The Executing Court passed various orders in the said execution application. The CIDCO challenged those orders by filing a Writ Petition bearing No. 6964 of 2017. This Court held that once the rate is fixed by the Division bench, the CIDCO is bound to pay the same unless it is altered or modified either by the said Court or by the Supreme Court. This Court also held that the CIDCO had no locus and accordingly dismissed the writ petition filed by the CIDCO. The CIDCO thereafter, released the payment to the said claimants.

12. When the SLP filed by Babibai Baburao Patil, Ashok Laxman Wani and others came up before the Supreme Court on 31st October 2017, it was pointed out that the rates awarded in other cases were not considered by the Reference Court. The Supreme Court accordingly set aside the judgment and order passed by this Court in case of village Padghe and remitted the appeals for fresh hearing. Those appeals in respect of village Padghe are still pending for hearing before the Division bench of this Court.

13. Some time in the year 2019, one of the claimants in First Appeal No.812 of 1995 submitted an application for withdrawal of the amount of Rs.1,06,37,513/- which was deposited by the CIDCO on 19th March 2019. The said claimant was allowed to withdraw the said amount without any objection raised by the CIDCO.

14. It is the case of the petitioners that during the period between 2017 and 2020, the District Court granted Rs.1,725/- per sq.mts. in respect of the land situated at village Bokadvira in different land acquisitions filed in the year 2016 on the basis of the rate granted to the petitioners in this case by this Court in the year 2007.

15. Mr. Kulkarni, learned counsel for the petitioners invited our attention to various Exhibits annexed to the petition and would submit that about 20-22 appeals along with cross-objection of the petitioners and other claimants were decided by this Court vide its judgment and order dated 21st June 2007. The State Government did not challenge the said judgment and accepted the same. The Divisional Commissioner had issued directions to the CIDCO to release the payment. The SLP filed by the CIDCO against the said judgment of the Division bench of this Court dated 21st June 2007 is already dismissed by judgment and order dated 10th March 2015.

16. It is submitted that, the Supreme Court also dismissed the SLP filed against the judgment and order in case of Ashok Laxman Wani and others in respect of the lands at village Padghe. The State Government did not file SLP against the said judgment and order passed by this Court in case of Ashok Laxman Wani and other claimants. He submits that the judgment and order in case of village Roadpali had attained finality. The State Government as well as the CIDCO has

disbursed the payment to the claimants namely Shri Somani in cross-objection in First Appeal No.783 of 1995 and also to Shri Prabhakar Bhiva Patil in cross-objection in First Appeal No.812 of 1995. The State Government has already issued the orders to make the payment to the petitioners who are also part of the same judgment to whom payment is already made by the CIDCO. The CIDCO thus cannot refuse to deposit the amount with the acquiring body.

17. Learned counsel for the petitioners submits that the CIDCO has admitted in its affidavit that they have disbursed the payment to subsequent claimants in subsequent references and has already paid compensation @Rs.1,725/- per sq.mts. in 28 cases. The action on the part of the CIDCO refusing to make payment is thus hit by Articles 14, 19 and 21 of the Constitution of India.

18. Learned counsel for the petitioners invited our attention to the affidavit filed by the State Government and more particularly paragraphs 6 to 9 of the additional affidavit dated 14th February 2022. He submits that the State Government has already issued Government Resolution dated 12th February 2008 directing the CIDCO to pay compensation including enhanced compensation awarded by the Courts in respect of acquisition of lands required for development of Navi Mumbai on account of the State Government. It is submitted that the CIDCO has not challenged the said Government Resolution/Notification dated 12th February 2008.

19. It is submitted that at this stage, the State Government has placed on record that the First Appeals are restored to file before this Court and have been remanded before this Court for hearing afresh. The State Government has been allowed to file review petitions vide letter

dated 27th September 2019 challenging the judgment dated 21st June 2007 passed in First Appeal No.646 of 1995. He submits that the State Government has accordingly filed review petitions in First Appeal No.646 of 1995 and other connected matters for recall of the common judgment dated 21st June 2007 which are pending for hearing as on date.

20. Learned counsel for the petitioners invited our attention to the affidavit-in-reply notarised on 31st March 2021 filed by the CIDCO and more particularly the averments made in paragraph 20(q) of the said affidavit and submits that the excuse given by the CIDCO that if at this juncture, large amount of land compensation is given to the Project Affected Persons as per the order passed by this Court, it will enormously affect the Cash flow of the CIDCO and financial position of the CIDCO will get deteriorated which may cause a significant impact on development of Navi Mumbai Projects.

21. It is submitted that the CIDCO has been selling or giving on lease large number of plots at exorbitant rates and has no problem of funds. He submits that in any event, the CIDCO cannot refuse to comply with their part of obligation under G. R. dated 12th February 2008. He submits that the Supreme Court has not reversed the rate given in case of village Roadpali. The CIDCO did not file any reply in review petition. He submits that even if the review petition is filed by the State Government, there is no automatic stay on filing review petition under Order XLI Rule 5 of CPC. He submits that even if any observation is made by the Supreme Court in some other matters about the rates granted by the Reference Court, the review petition cannot be filed on such ground. In support of this submission, learned counsel placed reliance on explanation of Order XLVII Rule 1 of CPC.

22. Learned counsel for the petitioners invited our attention to the averments made in paragraph 12 of the writ petition and would submit that the CIDCO has been making payment to various parties selectively whose lands are acquired. He relied upon Exhibit 'H' to the petition in support of his submission.

23. Learned counsel invited our attention to the order dated 29th November 2021 passed by the Division bench of this Court and more particularly in paragraph 7 thereof and would submit that this Court has taken cognizance of the fact that the CIDCO has been making payments or making deposit of various amounts selectively and this action on the part of the CIDCO is discriminatory. This Court also took on record two documents in support of the submission made by the petitioners and marked those documents as 'X-1' and 'X-2' for identification.

24. Learned counsel for the petitioners invited our attention to the affidavit-in-reply filed by the CIDCO notarised on 24th November 2021 pursuant to the directions issued by this Court. He submits that the said chart itself would indicate that the CIDCO has made payment of compensation @Rs.1,725/- per sq.mts. selectively. He submits that the excuse given by the CIDCO that those payments were released to avoid any coercive action against the CIDCO is totally frivolous and in any event indicates arbitrariness by making payment of deposit selectively. He submits that since decree was already passed, unless such decree awarding compensation at a particular rate is modified or altered, the CIDCO is bound to pay at such rate.

25. In support of this submission, learned counsel invited our attention to paragraph 5 of the order dated 29th June 2017 passed by the learned Single Judge of this Court in Writ Petition No.6964 of 2017

filed by the CIDCO against Surendra Kumar Somany at page 91 of the petition. He submits that the directions issued by the State Government to the CIDCO under the provisions of Section 154 of the MRTP Act is binding on CIDCO. He submits that in this case, the respondent no.2-the Divisional Commissioner has exercised the powers of the State Government by virtue of Section 113A of the MRTP Act.

26. Mr. Kale, learned AGP for the State invited our attention to prayer clause (a) of the petition and would submit that the land was acquired by the State Government for CIDCO. He submits that the State Government has already directed the CIDCO to pay various amounts claimed by the petitioners. He submits that the State Government has now filed review petition for recall of the order and judgment granting enhanced compensation by this Court in favour of the petitioners and the same are pending.

27. Learned AGP placed reliance on the averments made in the additional affidavit filed by the respondent nos.3 and 4 on 14th February 2022. He submits that the judgment and award was challenged by the State Government and the claimants in First Appeal No.646 of 1995 and other connected matters which appeals are disposed of vide order dated 21st June 2007. This Court computed the enhanced compensation of Rs.1725/- per sq.mts. by taking the average of two sale instances at Village Kalamboli with deduction of 25%. The said judgment was acquiesced by the State Government in September 2007. The State Government had issued G. R. dated 12th February 2008 directing the CIDCO to pay compensation including enhanced compensation awarded by the Court in respect of acquisition of lands required for development of Navi Mumbai on account of the State Government.

28. It is submitted that by judgment dated 31st July 2008, First Appeal No.1119 of 1997 and other connected matters pertaining to Village Padghe were disposed of enhancing compensation of the acquired lands to Rs.500/- and Rs.400/- in the said references. The said judgment was challenged by the claimant claiming enhanced compensation on the basis of the judgment passed in First Appeal No.646 of 1995 and other connected matters. The CIDCO also filed SLP(C) Nos.21303-21329 of 2009 challenging the judgment dated 21st June 2007 passed in First Appeal No.646 of 1995 and other connected matters. Interim relief was granted in SLP(C) Nos.21303-21329 of 2009.

29. It is submitted that several SLPs filed in cases of Trimbak Joma Thakur, Ashok Laxman Wani and Babibai Patil & Ors. were tagged together on the ground that the petitions were pertaining to the same villages or nearby villages. On 10th March 2015, Supreme Court heard SLPs Nos.21331-22370 of 2009 and SLP (C) Nos.21303-21329 of 2009 filed by the CIDCO and dismissed the same on the ground of delay and other SLPs were directed to be placed for hearing separately.

30. It is submitted that other SLPs filed by the claimants were heard by the Supreme Court on 16th February 2016 when the Supreme Court was pleased to pass an order condoning the delay and granted leave to the said petitioners with further directions that the amount awarded by this Court has not been paid to the appellant land owners and the same should be paid preferably within four weeks from the date of the said order.

31. SLP (C) Nos.21303-21329 of 2009 and other connected appeals were converted in to Civil Appeal Nos.1564-1565 of 2016 and

others. By judgment dated 31st October 2017, Supreme Court was pleased to set aside the impugned judgment of this Court and remanded the said matters to this Court for deciding afresh. He submits that in the said judgment, Supreme Court perused the award of Village Roadpali in First Appeal No.646 of 1995 and other connected matters and held that the value of commercial plots cannot provide for a safe criteria for determination of compensation, that too without adequate deduction.

32. It is submitted by the learned AGP that the State Government had filed SLPs against the judgment of this Court enhancing compensation for lands in Villages – Roadpali, Vadghar, Bokadvira etc. passed on the basis of the judgment passed in First Appeal No. 646 of 1995 and other connected matters by this Court. He submits that vide orders dated 20th July 2018, 30th July 2018, 6th August 2018, 27th August 2018, 31st August 2018 and 7th September 2018, SLPs were disposed of by setting aside the judgment of this Court and remanding the said matters to this Court for hearing afresh.

33. It is submitted that State Government took decision to file review petitions for seeking review of the judgment dated 21st June 2007 passed in First Appeal No.646 of 1995 and other connected matters and has already filed review petitions in First Appeal No.646 of 1995 and other connected matters for recall of the common judgment dated 21st June 2007 which review petitions are pending before this Court. He submits that 17 such review petitions which are recently filed are pending. List of such review petitions is annexed at Exhibit 'H' to the said affidavit.

34. Mr. Hegde, learned counsel for the CIDCO, on the other hand, submits that since the execution applications are already filed by

the petitioners for seeking enforcement of the order passed by the Reference Court enhancing the compensation, this Writ petition is not maintainable. He submits that reliefs sought by the petitioners in this petition against the respondents are to take steps towards execution. If the petitioners are not able to recover any amount from the Government directed to be paid by the Reference Court, writ petition cannot be filed for recovery of such amount in law. Writ petition before this Court is a Court of equity. No such relief can be granted against the CIDCO. The CIDCO was not a party to the reference application before the Reference Court. Though the CIDCO had applied for impleadment in the said proceedings, the same was opposed by the petitioners on the ground that the CIDCO was not concerned with acquisition.

35. Learned counsel for the CIDCO invited our attention to prayer clause (a) of the writ petition and would submit that prayer against the CIDCO to deposit the amount awarded by the Reference Court amounts to prayer for payment which is not permissible. He submits that there is gross delay on the part of the petitioners to file this writ petition. The execution applications were filed in the year 2019. Some of the execution applications are already time barred, since the Reference Court had passed order enhancing the compensation on 21st June 2007 having been filed after 12 years. He submits that the CIDCO has no objection if the execution applications filed by the petitioners are expedited. The petitioners could apply for an action against the Collector and not against the CIDCO. He submits that the petitioners have not furnished date of filing execution application.

36. It is submitted by the learned counsel that there are several public projects with CIDCO. 70% of the acquired lands are being used for commercial purposes. The CIDCO has no funds. He submits that in

so far as the compensation awarded by the Special Land Acquisition Officer are concerned, the CIDCO has admittedly deposited such amount. The CIDCO shall not be directed to deposit the amount of enhanced compensation awarded by the Reference Court since the Supreme Court has remanded some of the matters to this Court after setting aside the order of enhancement for reconsideration. The question of the CIDCO depositing any amount thus does not arise. If in those First Appeals which are remanded back, the order of the Reference Court is set aside, the CIDCO would not be liable to deposit the amount. The CIDCO has to ensure that only amount of compensation which is rightly payable should be deposited or paid.

37. Learned counsel for the CIDCO invited our attention to the averments made in the affidavit-in-reply regarding 12.5% scheme. Learned counsel for the CIDCO relied upon the averments made by the State Government and more particularly in respect of review petitions filed by the State Government in 17 First Appeals. He submits that all the judgments of this Court granting enhanced compensation based on the judgment in case of Trimbak Joma Thakur are set aside. He submits that the CIDCO had paid the amount in case of Mr. Surendra Kumar Somani before the judgment of the Supreme Court. He does not dispute that in few cases, payment of compensation have been deposited or paid by the CIDCO after the Supreme Court judgment.

38. In brief written submissions of CIDCO on the point of effect of filling of review applications, it is contended that since the identical issues are pending in this Court which are remanded back, subject matter of present petitioner may also be directed to be heard along with those pending matters. It is contended that if in those review petitions, the orders passed by the Reference Court are set aside, the execution

application filed by the petitioners together with present petition will become infructuous. If this Court directs the CIDCO to deposit the said amount, the same would be liable to be refunded to the CIDCO in that event. The amount of compensation if deposited by the CIDCO, in these circumstances, will amount to blocking the said amount for the long period, only to be refunded back to the CIDCO. It would be an exercise in futility if any order is passed by this Court in the petition directing the CIDCO to deposit the amount when the review petitions are pending.

39. In his rejoinder arguments, Mr.Kulkarni, learned counsel for the petitioners submits that under Section 15 of the Limitation Act while computing the period of limitation for any application for execution of a decree, the period of stay or injunction for execution is liable to be excluded from computation of limitation. He relied upon Article 136 of the Indian Limitation Act contemplating 12 years period for execution of any decree (other than decree for mandatory injunction) or order of any civil court. The period of 12 years is computed from the date on which the decree becomes enforceable or the date when the order directs any payment of money. In this case, limitation for filling the execution will commence w.e.f. 21st June 2007 and will expire on or about 21st June 2009 and the stay period of around 4 years and 7 months is liable to be excluded in addition to the copying period of decree. The execution application thus filed in the year 2019 is within the period of limitation.

40. In so far as issue of pendency of review petitions filed by the State Government as well as the CIDCO in 17 matters is concerned, it is submitted that the judgment and order passed by this Court has attained finality by passage of time and cannot be reopened. State Government

had taken a conscious decision on 3rd September 2007 and also on 7th December 2008 not to file appeal and acquiesced the rate. State Government thus cannot be allowed to now contend that the payment should not be disbursed or deposited in view of the pendency of review petitions. He submits that once the rate determined by this Court in favour of the petitioners is acquiesced by the State Government in the year 2007, the same cannot be reopened on any ground.

41. The Divisional Commissioner who is exercising the powers of the State Government under the Land Acquisition Act had also issued the orders on that basis on 14th October 2019. The State Government has also filed reply in this petition stating that they are ready to deposit money with the Court as and when they receive the compensation amount from CIDCO. The State Government thus is estopped by their conduct from pleading contrary to the consistent stand taken in this case and the judgment and order passed in favour of the petitioners.

42. It is submitted that the judgment delivered by this Court in favour of the petitioners on 21st June 2007 has attained finality because the SLP filed by the CIDCO is already dismissed on 10th March 2015. The CIDCO is held to be agent of the State Government.

43. It is submitted by the learned counsel that the CIDCO has already made payment in respect of 3 claimants. Out of that, one of the claimant's decree is satisfied upon making a statement in Writ Petition No.9694 of 2017 and other 2 claimants are paid in the year 2019 without any objection raised by the CIDCO. The CIDCO as well as the State Government thus can not refuse to pay the petitioners or to deposit the money in Court. This action on the part of the CIDCO is hit by Article 14 read with Articles 21 and 300A of the Constitution of India.

The State Government being a welfare state cannot give unequal and discriminatory treatment by paying compensation for 3 claimants and file review in respect of other claimants and oppose the payment.

44. It is submitted by the learned counsel that the CIDCO has also paid compensation to one of the claimant's though there is no execution application filed and paid compensation voluntarily in the year 2019 after order of remand passed by the Supreme Court in Babibai Wani's case. Refusal of deposit of amount by the CIDCO is discriminatory and in breach of Article 14 of the Constitution of India. It is submitted that the CIDCO is making selective payment. The Review petitions are filed at a belated stage only to circumvent the payment to the petitioners. He submits that those review petitions are even not maintainable and are even otherwise filed after 15 years just to deprive the petitioners to receive compensation.

45. It is submitted that the policy of CIDCO for allotment of land under policy of 12.5% land has no bearing on the matter in issue. The said policy contemplates that double the amount of compensation received by the claimant along with accrued interest till date for the double area of 12.5 % is liable to be refunded. It is submitted that writ of mandamus is always maintainable in case of violation of constitutional, fundamental and statutory rights and for directing the authorities to comply with their statutory obligations. It is submitted that even if the review petitions are filed, it does not operate as a stay unless a decree passed by this Court is expressly stayed.

46. Learned counsel placed reliance on the order dated 13th August 2009 passed by the Hon'ble Supreme Court granting stay of enhancement granted by this Court and submits that the said order was

continued till those petitions were allowed by the Supreme Court.

47. Learned counsel placed reliance on the following judgments :-

- (i) State of West Bengal & Ors. Vs. Kamal Sengupta & Anr., (2008) 8 SCC 612,
- (ii) Shanti Devi Vs. State of Haryana & Ors., (1999) 5 SCC 703,
- (iii) State of Nagaland & Anr. Vs. Toulvi Kibami & Anr., (2003) 8 SCC 671,
- (iv) Meera Bhanja Vs. Nirmala Kumari Choudhari, (1995) 1 SCC 170.

and would submit that the subsequent facts/judgments delivered by this Court cannot be a ground of review. He relied upon the judgment in case of *Meera Bhanja (supra)* in support of the submission that writ of mandamus is maintainable for seeking the reliefs sought by the petitioners in this petition.

REASONS AND CONCLUSIONS

48. We shall first decide the issue of maintainability of this Writ Petition raised by the learned counsel for CIDCO. A perusal of prayers in the Writ Petition indicates that, the petitioners have prayed for Writ of Mandamus directing the respondents including CIDCO to deposit the entire decretal amount alongwith accrued interest till the date of payment in respective Darkhast applications and to permit the petitioners to withdraw the said amount. The respondents had raised similar issue about the maintainability of the Writ Petition in identical **Writ Petition bearing No.2085/2021** in a case of **Mrs. Varsha Moreshwar Gharat and others** including CIDCO. This Court by judgment delivered on 24.03.2022 has rejected these contentions on the ground that CIDCO

being a public undertaking and being an implementing agency is bound to comply with its obligation under the Government Resolution. The refusal to comply with its obligations frustrates the crystallized claims of the petitioners for compensation whose lands are acquired 25 years ago. The petitioners have prayed for enforcement of obligation of CIDCO to comply with their obligation under the Government Resolution dated 12th August, 2010, which the CIDCO cannot be allowed to refuse to comply with. This Court held that, it is not the case of the CIDCO that it is not amenable to writ jurisdiction. This Court held that, even if an alternate remedy exists, it would not be a bar for a Writ Court to exercise jurisdiction under Article 226 of the Constitution of India, if a Government undertaking or the State Government refuses to comply with its part of duty or obligation and commits a breach of Government Resolution and has acted illegally. The said principles laid down by this Court in the said judgment in case of **Mrs. Varsha Moreshwar Gharat and others** (supra) would apply to the facts of this case. There is thus no merit in the issue of maintainability raised by the respondents in this petition also.

49. In the facts of this case, the petitioner have brought on record the undisputed position that the CIDCO had paid number of claimants without such claimants even filing execution applications. The CIDCO has thus acted arbitrarily and have discriminated the petitioners by not paying the amount of compensation which is already crystallized by directly depositing the amount with the State Government, though repeatedly called upon by the State Government. Out of three claimants, one of the decree obtained by one of the claimant was satisfied upon making a statement in the in Writ Petition No.9694/2017 and two other claimants were paid in the year 2019 without any objection raised by the CIDCO.

50. The State Government has placed on record various correspondence and has also averred in the affidavit-in-reply and urged across the bar that, though the State Government had called upon CIDCO to deposit the amount of compensation to enable the State Government to pay the amount of compensation to the petitioners, CIDCO had not complied with the said requisition though were under an obligation to deposit under the said Government Resolution.

51. However, during the course of argument the State Government as well as CIDCO strongly placed reliance upon the factum of filing 17 review petitions by the State Government in various First Appeals filed before this Court to oppose any direction to pay against the State Government or against the CIDCO to deposit any amount before the Executing Court.

52. In so far as issue of maintainability of review petitions of State Government is concerned, we do not propose to express any view on the maintainability of the review petitions filed belatedly by the State Government. However, filing of those review petitions by the State Government after more than 15 years or even otherwise would not operate as a stay automatically. It is not in dispute that, even in these review petitions filed by the State Government belatedly, this Court has not stayed the execution of various decrees passed in favour of the petitioners. The respondents thus cannot be allowed to refused to comply with their respective obligations under the said Government Resolution on the ground that, review petitions filed by the State Government are pending. The State Government has not even taken any efforts to get those review petitions heard in last few years. We are thus not required to go into the applicability of the various judgment referred to and relied

upon by the learned counsel for the petitioners described in paragraph no.47 of this judgment.

53. In our view, the State Government cannot be allowed to take stand contrary to the stand taken in the correspondence between the State Government and CIDCO and also the stand taken in the affidavit-in-reply filed before this Court in this Writ Petition and also in the initial argument made across the bar. The CIDCO has not disputed the fact that, CIDCO has been making payments to various parties selectively whose lands are acquired. This Court in the order dated 29th November, 2021 passed in this Writ Petition has taken a cognizance of the fact that the CIDCO has been making payments or making deposit to various amounts selectively and this action on the part of the CIDCO is discriminatory.

54. The petitioners have placed reliance on the chart produced by the CIDCO before this court pursuant to the order passed by this Court showing that the CIDCO had made payment of compensation at the rate of Rs.1725/- per sq.mts. selectively. In our view, CIDCO cannot be allowed now to give excuse that those payments were released to avoid any coercive action against the CIDCO. Be that as it may, CIDCO cannot refuse to make payment to the petitioners or to deposit the amount before the Executing Court on the ground that, no coercive steps have been taken by the petitioners against the CIDCO which was taken by some of the other claimants in whose case payments were released by CIDCO to avoid any coercive action.

55. In our view, directions issued by the State Government are binding upon the CIDCO under Section 154 of the MRTP Act. The Divisional Commissioner has exercised the powers of the State Government by virtue of Section 113A of the MRTP Act. The learned

A.G.P. for the State urged before this Court during the course of his argument that the land was acquired by the State Government for CIDCO and accordingly the State Government has already directed the CIDCO to pay various amounts claimed by the petitioners.

56. It is not disputed by the State Government or by the CIDCO that, the judgment and award was challenged by the State Government and the claimants in First Appeal No.646/1995 and other connected matters which appeals are disposed of vide order dated 21st June 2007. This Court computed the enhanced compensation of Rs.1725/- per sq.mts by taking the average of two sale instances at Village Kalamboli with deduction of 25%. The said judgment was acquiesced by the State Government in September 2007. The State Government had issued Government Resolution dated 12th February 2008 directing the CIDCO to pay compensation including enhanced compensation awarded by the Court in respect of acquisition of lands acquired development of Navi Mumbai on account of the State Government. The Special Leave Petition filed by the CIDCO bearing No.21303-21329 of 2009 challenging the judgment dated 21st June 2007 passed in First Appeal No.646 of 1995 and other connected matters came to be dismissed on the ground of delay.

57. In our view, there is no substance in the submission of Mr. Hegde, learned counsel for the CIDCO that, if the petitioners are not able to recover the amount from the Government directed to be paid by the Reference Court, Writ Petition cannot be filed for recovery of such amount in law, in view of the fact that, the Writ Petition filed by the petitioners against the State Government as well as CIDCO is for enforcement of their respective obligation under the Government Resolution.

58. In our view prima facie view, there is no substance in the

submissions made by the learned counsel for the CIDCO on the issue of limitation of the execution application. Be that as it may, the said issue would be finally decided by the Executing Court if any such issue is raised by the State of Maharashtra.

59. In our view, the excuse now given by CIDCO that there are several public projects with CIDCO and 70% of the acquired lands are being used for commercial purpose and thus CIDCO has not funds is totally frivolous. It is not disputed by the CIDCO that, in so far as the compensation awarded by the Special Land Acquisition Officer are concerned, CIDCO has admittedly deposited such amount. Merely because review petitions filed by the State Government are pending for last several years, that cannot be ground for CIDCO for non-compliance of their respective obligation under the Government Resolution. The stand taken by the CIDCO is totally unreasonable and arbitrary. Whether the petitioners shall be allowed to withdraw any amount if deposited by the CIDCO before the Executing Court or not, the said issue would be decided by the Executing Court. The apprehension of the CIDCO that, if the State Government succeeds in the review petitions, the amount directed to be deposited against CIDCO would be blocked is totally frivolous. As on today there is no stay granted by this Court in the review petitions or by Executing Court or by this Court in First Appeals thereby staying the execution of the decree passed in favour of the petitioners.

60. In so far as issue of 12.5% scheme of the State Government raised by the learned counsel for CIDCO is concerned, in our view, Mr. Kulkarni, learned counsel for the petitioners is right in his submission that the policy of CIDCO for allotment of land under 12.5% scheme has no bearing on the matter in issue. The said policy contemplates that double the amount of compensation received by the claimant alongwith

accrued interest till date for the double area of 12.5% is liable to be refunded. The CIDCO cannot refuse to comply with its obligation under the said Government Resolution on this ground.

61. This Court in the said judgment in case of **Mrs. Varsha Moreshwar Gharat and others** (supra) has considered the order passed by the Division Bench of this Court in Letters Patent Appeal filed by the CIDCO and has held that, the stand of CIDCO now raised in this petition is contrary to their stand taken before this Court in Letters Patent Appeal that they were the beneficiaries of the acquisition and on the basis of the agreement made by them with the State of Maharashtra, compensation would be payable by the CIDCO. The CIDCO had pressed in service Section 50(2) of the Land Acquisition Act in the said proceedings before this Court. This Court in the said judgment held that under the Government Resolution, the payment has to be made by the CIDCO as compensation/enhancement of compensation on account of Government. Neither the State Government nor the CIDCO has disputed the quantification as determined by the Reference Court in most of the matters where no appeals are filed. The State Government has also not disputed its liability where conditional orders are passed by this Court in some of the appeals for grant of stay of the orders passed by the Reference Court.

62. In our view, CIDCO being a public undertaking and being an implementing agency is bound to comply with its obligation under the Government Resolution. The refusal to comply with its obligations frustrates the crystallized claims of the petitioners for compensation whose lands are acquired 25 years ago. CIDCO cannot be allowed to refuse to comply with their part of obligation under the said Government Resolution which would frustrate the decrees already passed in favour of

the petitioners-farmers. In the execution proceedings, the Executing Court will not be empowered to pass any order of deposit against CIDCO or to comply with its obligations under the said Government Resolution dated 12th August, 2010.

63. The Hon'ble Supreme Court in the case of Bhusawal Municipal Council (Supra) has held that in case the person aggrieved is deprived of the land without making the payment of compensation as determined by the Collector/Court, it would tantamount to forcing the said uprooted persons to become vagabond or to indulge in anti-social activities as such sentiments would be born in them on account of such ill-treatment. It is not permissible for any State/authority to uproot a person and deprive him of his human rights, without ensuring compliance with the statutory requirement under the garb of development. A delayed payment may lose the charm and utility of the compensation. Thus, the compensation must be determined and paid without loss of time.

64. The Hon'ble Supreme Court has held that the fundamental right of a farmer to cultivate his land is a part of right to livelihood. Agricultural land is the foundation for a sense of security and freedom from fear. It is held that the excuse that the authority has paucity of funds cannot be accepted as a justified cause to entertain the petition. If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person aggrieved becomes entitled to get the land restored. Payment of compensation as per award under Section 11 of the Land Acquisition Act cannot be sufficient security to serve the interest of the person interested pending adjudication of appeal against the award of Reference Court.

65. The Hon'ble Supreme Court held that the Court cannot sit limply and allow the defaulter to go scot-free and force the person seeking protection to lose hope. The Court cannot adopt an indifferent and passive attitude in such circumstances. The Hon'ble Supreme Court directed Bhusawal Municipal Council to make the payment of the enhanced amount of compensation within a period of ten weeks from the said order and made it clear that in case of failure to pay the enhanced compensation, the Bhusawal Municipal Council shall restore the possession of the suit land to the persons aggrieved who in turn would refund the entire amount received as compensation.

66. In our view, the principles laid down by the Hon'ble Supreme Court would squarely apply to the facts of this case. The respondents having acquired the lands of the petitioners long back are bent upon to delay the payment of compensation on one or other flimsy grounds. CIDCO cannot be allowed to raise a plea that it has no funds available for making deposit with the SLAO after obtaining lands from SLAO long back and utilizing those lands for various purposes.

67. Learned counsel for the CIDCO could not dispute that the CIDCO has been already utilizing those plots after possession thereof has been handed over by the State Government to CIDCO for implementing the projects in Navi Mumbai.

68. There is no substance in the submissions of CIDCO that there is a shortage of funds or that the funds are required for several projects and on that ground CIDCO is unable to deposit any amount insofar as these petitioners are concerned. In our view, the CIDCO has selected certain claimants and has deposited the compensation only in respect of those selected cases and have ignored the claims of these poor

farmers for the reasons best known to CIDCO. All the claimants were awarded compensation and have not been treated equally by CIDCO while depositing the amount. The entire action on the part of CIDCO for not depositing the amount is in gross violation of Article 14 and 300A of the Constitution of India.

69. We accordingly pass the following order :-

(a) Respondent nos. 5 and 6 are directed to deposit the decretal amount with interest due and payable under the Land Acquisition Act, with all consequential benefit with the respondent nos. 4 and 7 within four weeks from today as particularly prescribed in chart at Exhibit 'D' without fail. Respondent Nos. 4 and 7 to deposit such amount with the Reference Court within two weeks thereafter with intimation to the petitioners within one week from the date of such deposit.

(b) The petitioners would be at liberty to apply for withdrawal of the said amount before the Reference Court. If any such application is made, the Reference Court to dispose of the said application within six weeks from the date of the petitioners' applying for withdrawal of the said amount.

(c) Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

(d) Parties to act on an authenticated copy of this order.

(S. M. MODAK)
JUDGE

(R. D. DHANUKA)
JUDGE

VASANT
ANANDRAO
IDHOL

Digitally signed by
VASANT ANANDRAO
IDHOL
Date: 2022.04.30
13:17:47 +0530