

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

**WRIT PETITION NO.4152 OF 2018
WITH
INTERIM APPLICATION NO.4173 OF 2021**

Baban Budhaji Koli

And Others

... Petitioners/Applicants

Versus

The State of Maharashtra

Urban Development Department

And Others

... Respondents

Mr. S.P. Thorat a/w Mr. G.B. Walawalkar for the Petitioners.

Mr. Rajan S. Pawar, AGP for Respondent Nos.1 to 3.

Mr. G.S. Hegde a/w Ms. P.M. Bhansali for Respondent No.2-CIDCO.

Mr. Baban B. Koli, Petitioner No.1 is present in Court.

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

DATE : 18 FEBRUARY 2022.

ORAL JUDGMENT (Per R.D. Dhanuka, J.) :-

. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioners have prayed for a declaration that the notice of Deputy Collector dated 29 January 2018 for taking possession of the land of the Petitioners is illegal as the land admeasuring 0.16 R from 74/4A(1), 74/4A/2A, 74/4A/2B, 74/4A/2C in respect of the land admeasuring 550, 400, 420, 230 is alleged to be excluded by the Respondent Authorities by the letter dated 12 January 1990 as described in prayer clause -(b) of the Petition.

2 The Petitioners have impugned Award dated 2 April 2015 passed by the

Deputy Collector (Land Acquisition) under Section 11(2) of Land Acquisition Act 1894.

3 The Petitioners have also prayed that the declaration of consent letter cum affidavit filed by the Petitioners at the instance of the Respondents' Land Acquisition Officer on 29 September 2014 is wrong and illegal and cannot be considered for the purpose of the land acquisition. The Petitioners have prayed for a declaration that the Petitioners are entitled to get alternate premises i.e. 22 % on account of wrong acquisition of the land mentioned in the petition.

4 It is the case of the Petitioners that the Petitioners have received a letter from CIDCO on 12 January 1990 that the land admeasuring 16 R was excluded from the acquisition proceedings and was taken possession by CIDCO. A notification thereby modifying the subject land of Petitioners by the Divisional Commissioner of Kokan Division was published on 12/18 May 2011 which was issued under Section 4 of the Land Acquisition Act 1984 ("Act") for the Navi Mumbai International Airport project and its allied. On 2 April 2015, an Award came to be made under Section 11 of the Act. It is the case of the Respondents that the said Award was also reflected in 7/12 extract. The Petitioners had agreed to accept the compensation as per the G.R. dated 1 March 2014 and under 22% developed plot by CIDCO.

5 It is the case of the Petitioners that the Petitioners have obtained legal heirs certificate from Civil Judge Junior Division on 8 October 2014 as original land was in the name of their father Budhaji Koli. As per the said succession certificate, the names of the Petitioners were recorded in the record of rights with effect from 28 February 2015.

6 Mr. Thorat, learned Counsel appearing for the Petitioners states that no notice was given to the legal heirs though the Petitioners were declared as legal heirs by Civil Judge Junior Division as per its Order 8 October 2014. He submits that when the mutation entry was effected on 28 February 2015, no notice was given to the legal heirs. Learned Counsel submits that the Award was not declared within the time prescribed. There was admittedly delay on the part of the SLAO in declaring the Award and thus, the entire Award is vitiated.

7 The next submission of the learned Counsel is that the consent of all heirs of said Budhaji was not submitted. In any event, the consent was not valid, as the same was not given voluntarily.

8 It is submitted that compensation payable to the Petitioners has not been offered by the Respondents. The Respondents ought to have contacted the Petitioners for payment of compensation. It was not necessary for the Petitioners to approach the Respondents for payment of compensation. In support of this submission, he relied on the judgment in the case of **Aligarh Development Authority Vs. Megh Singh And Others**¹ and in particular para-7.

9 Mr. Pawar, learned AGP states that the Petitioners had given consent for acquisition of the land and for making an Award and to agree with the compensation. It is submitted that when the Notification under Section 4 of the Act was issued, Budhaji Koli was alive. He was given notice and was informed about all the proceedings. Once the notice was issued, no changes thereafter can be considered in the ownership of the land under acquisition.

1 (2016) 12 Supreme Court Cases 504

10 Mr. Hegde, learned Counsel appearing for CIDCO submits that though initially the land admeasuring 16 R was excluded in the year 1990, the State had acquired the entire village for the purpose of International Airport including the said plot of 16 R.

11 The learned Counsel invited our attention to the notice issued by CIDCO. From the affidavit in reply filed by CIDCO in the Writ Petition, it is submitted that the Petitioners had agreed for an alternate land instead of compensation. Learned Counsel invited our attention to various averments made in the affidavit in reply filed by the CIDCO in support of his submission that the two of the Petitioners, i.e. Petitioner Nos.9 and 10 had already agreed to accept the compensation vide correspondence exchanged between them and CIDCO.

12 Learned Counsel submits that there are 2633 project affected persons spread in 10 villages whose various structures are affected due to the said Navi Mumbai International Airport. Out of them, 2628 PAPs have self-demolished the structures and accepted the compensation benefits. Out of remaining 5 PAPs, 1 is in the process of handing over vacant and peaceful possession of structure in terms of statement made before this Court. The Petitioner is one out of last 4 PAPs, who have refused to accept the compensation.

13 Insofar as the compensation is concerned, it is submitted by the learned Counsel that the Deputy Collector has already determined eligibility of Budhaji Koli and others for grant of 2270 sq. meters and other benefits as per G.R. dated 1 March 2014 and 28 May 2014. As per the said G.Rs., Rs.1000/-

sq ft can be given as compensation cost, Rs.62,30,798/- as one time amount, Rs.50,000/- as transport charges and Rs.1,24,500/- as a financial assistance Agricultural Labour Charges of 750 days, which were conferred on the Airport project affected persons.

14 A perusal of the record clearly indicates that the Petitioners had given consent for acquisition of the land and for making award. The only grievance made in the petition is that the consent was not voluntarily given. Though the consent even according to the Petitioners was given on 29 September 2014, the Petitioners had not applied for cancellation of any such consent letter at any point of time prior to date of filing of this petition.

15 Insofar as the submission of Mr. Thorat, learned Counsel for the Petitioners that the Respondents had initially declared that 16 R plot was excluded from the acquisition and thus no award could not have been made in respect of that land is concerned, we are inclined to accept the submission made by Mr. Hegde, learned Counsel appearing for the CIDCO that the entire village including 16 R was required by Navi Mumbai International Airport, though initially in the year 1990, it was excluded. The entire village was acquired for the purpose of said Navi Mumbai International Airport. There is no substance in the submissions of learned Counsel for the Petitioners.

16 Insofar as the submission of the Petitioners that there was delay in making the award and thus the award should be vitiated, on that count is concerned, we have perused the Order passed by the State Government during the pendency of certain proceedings before the Aurangabad Bench of this court granting stay from making any award. The said stay was in operation for quite some time. No sooner the said stay was vacated, the SLAO

made Award. The stay for acquisition proceedings granted by any Court has to be excluded for computation of period for making award. There is no substance in the submission of the learned Counsel for the Petitioners that there being delay in declaring the award by SLAO, or that the award is vitiated on this ground.

17 Insofar as the Petitioners' submission that the Respondents ought to have approached the Petitioners for payment of compensation and the Petitioners were not required to approach the Respondents for reasonable compensation is concerned, it is not in dispute that the Respondent-CIDCO had agreed to provide such compensation by way of alternate land according to the existing policy submitted by CIDCO as stated in the affidavit in reply. The judgement relied upon by Mr. Thorat, learned Counsel is squarely distinguishable in the facts of this case. The facts before the Hon'ble Supreme Court were that SLAO can be acquiring body and deposit 50 per cent of the compensation of the said land acquisition. In the facts and circumstances of that case, the Supreme Court held that there was no question of compensation concerning the acquired land. In this case, since the Respondents have offered the land in lieu of monetary compensation, the Petitioners who given the consent for acquisition of land and making the award ought to have approached the Respondents in furtherance of the consent given.

18 The perusal of the records indicates that except the existing structures, the other structures are already demolished by the occupiers. The land is required by CIDCO for Navi Mumbai International Airport and is being delayed in view of the Petitioners not having been vacated their respective structures. In our view the Petitioners cannot be allowed to continue their

occupation in respect of the structures. The Petitioners would be entitled to compensation according to the existing policy of the State Government and CIDCO. The compensation has been already offered in the affidavit in reply filed by the CIDCO. The Petitioners are at liberty to approach CIDCO for compensation in terms of the existing policy. If the Petitioners approach CIDCO, CIDCO shall consider the representation not later than four weeks from the date of the Petitioners completing the requisition as made by the CIDCO.

19 In our view there is no merit in the Petition and accordingly it is dismissed. The Petitioners and other occupants occupying the impugned structures shall hand over peaceful and vacant possession to CIDCO within two weeks from today. It is made clear if the Petitioners and other occupants do not give peaceful and vacant possession to CIDCO within the time prescribed, CIDCO will take forcible possession, with the assistance of local police. CIDCO shall demolish the impugned structures as per the existing policy and in accordance with law.

20 Writ Petition is dismissed in the aforesaid terms.

21 The parties to act on an authenticated copy of this Order.

22 In view of the dismissal of the Petition, Interim Application No.4173 of 2021 does not survive and is disposed of.