

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

**CONTEMPT PETITION NO.315 OF 2003
IN
WRIT PETITION NO.3412 OF 1992**

Bhaskar Govind Gavate ... Petitioner
Vs.
State of Maharashtra
And Others ... Respondents

ALONG WITH
WRIT PETITION NO.1098 OF 2006
WITH
INTERIM APPLICATION NO.2837 OF 201
WITH
INTERIM APPLICATION NO.2832 OF 2021
WITH
INTERIM APPLICATION (ST.) NO.8259 OF 2021
WITH
CIVIL APPLICATION NO.1966 OF 2018

Narayan Govind Gavate
And Others ... Petitioners
Vs.
The State of Maharashtra
And Others ... Respondents

WITH
CIVIL APPLICATION NO.1174 OF 2016
IN
WRIT PETITION NO.3412 OF 1992

Maharashtra Industrial Development
Corporation ... Applicant
Vs.
Bhaskar Govind Gavate ... Respondent

Mr. Abad Ponda, Senior Counsel a/w Mr. Pravin Bhoir, Ms. Shweta R. Rathod i/b Elixir Legal Services for the Petitioner in Contempt Petition No.315 of 2003 and Applicants in Interim Application No.2832 of 2021.

Mr. Sandesh Patil a/w Mr. Chintan Shah for the Petitioners in Writ Petition No.1098 of 2006 and for the Applicants in Civil Application No.1966 of 2018.

Mr. Saurabh D. Butala for the Applicants in Interim Application No.2837 of 2021 and Interim Application (St.) No.8259 of 2021.

Dr. Milind Sathe, Senior Counsel a/w Shyamali Gadre i/b Little and Co. for Respondent No.3 in Writ Petition No.1098 of 2006 and for Respondent No.5 in Contempt Petition No.315 of 2003 (MIDC).

Mr. A.I. Patel, Additional Government Pleader a/w Mr. S.B. Kalel, AGP for Respondent Nos.1 to 4-State in Contempt Petition No.315 of 2003 and for Respondent Nos.1 and 2 in Writ Petition No.1098 of 2006.

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

DATE : 26 FEBRUARY 2022

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

. By this Contempt Petition filed by the Petitioner, the Petitioner has alleged the contempt of the Order dated 17 January 2003 passed by the Division Bench of this Court in Writ Petition No. 3412 of 1992 against Shri P .D. Nikumbh, Special Land Acquisition Officer (SLAO), Ulhas Valley Project, Thane. The said Writ Petition No.3412 of 1992 was filed by the

Petitioner *inter alia* praying for a writ of mandamus directing Respondent Nos.1 to 5 to complete the acquisition proceedings under the Land Acquisition Act 1894 and pay compensation to the Petitioner in respect of land at Gat No.78, area 12 Acres 24 gunthas of Village Chinchavali, Taluka and Dist. Thane. The Petitioners has also prayed for a writ of mandamus directing the Respondents to pay the Petitioner Rs.2000/- per acre per annum as compensation from the year 1964 till the Award is passed with 18 per cent interest per annum thereon. The Writ Petition was amended and prayer (aa) was added to the prayer clauses, which is for a writ of mandamus directing the Respondents to hand over clear and vacant possession of the suit land. There were five Petitions on Board on 17 January 2003, which were allowed to withdrawn by the said Order.

2 The contempt is alleged by the petitioner against SLAO for not complying with the directions issued by this Court in para-4(ii), (iv) and of the alleged breach of the statement made by SLAO in para-1 of the said Order.

3 Mr. Ponda, learned Senior Counsel appearing for the Petitioner invited our attention to some of the averments made in the Writ Petition No.3412 of 1992 and would submit that the Petitioner is the owner of the land Gat No.78 situated at Chichvali, Taluka and District Thane, which has not been acquired till date by the State Government. He submits that the State Government has made statement before this Court that Respondent Nos.1 to 4 have no objection to hand over possession of the land as such and which is in possession of the State Government. He submits that the

State Government has neither handed over possession of the suit land nor has offered any compensation to the Petitioner. Contrary to the statement made by said Respondent Nos.1 to 4 before this Court. He submits that in view of the statement made by SLAO, the Petitioner had withdrawn the said Writ Petition.

4 Learned Senior Counsel invited our attention to some of the averments made by SLAO and also MIDC in the affidavits filed in this Contempt Petition and would submit that SLAO was required to hand over possession of the suit land to the Petitioner and MIDC was required to pay compensation in terms of the statement made before this Court in paragraph-2 of the said Order.

5 Dr Sathe, learned Senior Counsel appearing for MIDC, on the other hand, submits that there was no adjudication of the case of the Petitioner in the Writ Petition. By the said common Order dated 17 January 2003, five Writ Petition including the Writ Petition filed by the Petitioner were disposed of by issuing various directions.

6 It is submitted that so far MIDC is concerned, learned Senior Counsel appearing for MIDC who appeared before this Court on 17 January 2003, made three folds submissions that (i) some of the land which is not being used for public purpose and which still remain with the MIDC shall be immediately handed over to the Special Land Acquisition Officer for delivery of possession thereof to the Petitioners; (ii) land of which possession has not been given to State Government or for that matter Special Land Acquisition Officer for handing over to the Petitioners,

which is being used for public purpose, steps have been initiated for acquisition thereof; and (iii) compensation shall be paid to the Petitioner for the portion of the land which continues to be in possession of the Corporation or the assignee Industries until acquisition of such land is complete and the possession of which continues with the Corporation which may be mutually agreed between the Petitioners and them or as may be determined by the competent forum.

7 Learned Senior Counsel invited our attention to the averments made in the affidavit-in-reply affirmed on 14 October 2003 and more particularly, paragraphs-2, 3 to 5 and would submit that the land bearing Gat No.78, which is claimed by the Petitioner had been handed over to Respondent No.5 as far back on 31 December 1963 and compensation of Rs.41,266.99 had been already paid to Anant P. Patil on 25 May 1971 itself. He submits that since the date of handing over possession, MIDC has been using the said plot for public purposes. In the additional affidavit filed by Respondent No.5-MIDC, MIDC has once again placed on record that possession of the suit land was handed over to MIDC on 31 December 31 December 1963, a copy of the possession receipt is also annexed to the additional reply.

8 It is submitted by Senior Counsel that the Petitioner has not demonstrated before this Court as to which category of the 3 situations recorded in paragraph-2 of the Order of the Division Bench, the Petitioner would fall.

9 It is submitted that the State Government has already handed over

possession of 80 acres of land since the date of Order to the persons from whom possession was taken by SLAO either under Section 17 of the Act or afterwards. He submits that though in the Order of the Supreme Court it was held that SLAO should not have exercised power under Section 17 of the Act, SLAO was allowed to continue with the acquisition proceedings already initiated under Section 4 and 6 of the Act.

10 Learned Senior Counsel placed reliance on the judgments of the Supreme Court in case of the **State of Bihar Vs. Rani Sonabati Kumari**¹, in particular para-2, **Tamilnad Mercantile Bank Shareholders Welfare Association (1) Vs. Tamilnad Mercantile Bank Ltd.**² in particular para-9 and **T.C. Gupta Vs. Bimal Kumar Dutta And Others**³ in particular para-10 and would submit that if the Order which is alleged to be violated in the Contempt Petition is capable of two interpretations and is ambiguous, no contempt proceeding can be initiated on the basis of the alleged violation of such Order.

11 Mr Patel, learned Additional Government Pleader invited our attention to some of the averments made by SLAO in two affidavits filed before this Court and also compilation filed by SLAO and would submit that 80 Acres of land has been already hand over pursuant to the said Order in question to various land owners after passing of the said Order by this Court. He submits that insofar as the suit land is concerned, possession was already taken much prior to the date of the said Order passed by this Court and was already handed over to MIDC as far back as

1 AIR 1961 Supreme Court 221 (V 48 C 35)

2 (2008) 15 Supreme Court Cases 529

3 (2014) 14 Supreme Court Cases 446

in 1963. He relied upon various possession receipts to show that possession of the suit and various other lands were already handed over to various parties.

12 Learned Additional G.P. also relied upon the affidavit of Collector recording that the possession of the suit land was already handed over to MIDC and Award was made on 7 October 2019 followed by payment of compensation to the original owners.

13 Mr. Ponda, learned Senior Counsel, in his rejoinder arguments, invited our attention to the Order dated 8 July 2009 passed by the learned Single Judge of this Court referring to the Order dated 20 April 2004 thereby directing SLAO to preserve the Award and would submit that in fact there is no Award declared by SLAO in respect of this land. He distinguished the judgments relied upon by Dr. Sathe, learned Senior Counsel appearing for MIDC on the ground that the said Order dated 17 January 2003 is clear and not ambiguous or not capable of two interpretation as canvased by Dr. Sathe, learned Senior Counsel for MIDC.

14 Perusal of the title of the Writ Petitions, which came to be disposed of by the Order dated 17 January 2003, clearly indicates that five Writ Petitions were disposed of by the said Order including Writ Petition No.3412 of 1992 filed by the Petitioner. The first paragraph of the said Order refers to affidavit of P.D. Nikumbh, Special Land Acquisition Officer, Ulhas Valley Project, Thane. It is stated in paragraph-1 that in the said affidavit that a statement has been made that Respondent Nos.1 to 4 have no objection to hand over the possession of the land as it stands today and

which is in possession of the State Government.

15 We have perused the averments made by the Petitioner herein in his Writ Petition No.3412 of 1992. In paragraph-4 of the Writ Petition, it is averred by the Petitioner that his father was in possession as owner and tenant of several lands situated at Village Airavatli, Ilthan, Kalva, Chinchavali and Dighet. The tenanted lands were thereafter sold to the heirs of father under the provisions of the B.T. & A.L. Act. Father of the Petitioner died on 21 October 1955 leaving behind widow and six sons and one daughter. After the death of father of the Petitioner, lands standing in his name were partitioned and divided between widow and his six sons. In para-5 of the said Writ Petition, it is averred by the Petitioner that on 11 October 1963, Notification under Section 4 of the Act was issued, and came to be published in the Government Gazette on 14 October 1964. By the said Notification, inquiry under Section 5A of the Act was dispensed with and urgency clause was applied. Thereafter the Notification under Section 6 of the Act was issued in respect of the said land in question, possession whereof was taken from the Petitioner on 16 January 1964 and was handed over to Respondent No.5-MIDC. In para-9 of the Writ Petition, it is averred by the Petitioner that almost all the lands that are owned by the Petitioner are acquired and taken in possession. The name of the Respondent No.5 is appearing to the said land, who in turn has developed the said land and has allotted to several industrial undertakings.

16 Though there was no prayer in the Writ Petition originally filed for recovery of possession of the said land, the Petitioner during the pendency

of the said Writ Petition applied for amendment in the Writ Petition seeking vacant possession of the said land bearing Gat No.78, admeasuring 12 acres and 24 gunthas of Village Chinchavali Taluka and Dist. Thane. It is thus clear beyond reasonable doubt from the averments in the Petitioner itself that possession of the land was already taken by the State Government and was already handed over to MIDC. It is also admitted that MIDC has in turn developed the said land and allotted it to several industrial undertakings.

17 Perusal of the Affidavit affirmed on 8 March 2007 filed by MIDC clearly indicates that it is the case of the MIDC that part of Gat No.78 has been used by the MISC for service road and pipeline and remaining portion of Gat No.78 is included in the open space No.2(K) of Kalwa Block of Trans Thane Creek (TTC). It is further submitted that on the date of filing of the said affidavit, there was proposal for conversion of about 1.96 hectors of land from Open Space No.21(k) to amenity area.

18 SLAO also produced various possession receipts and have produced on record the payments of compensation to the then owners of the land. There is no specific direction issued in the said Order dated 17 January 2003 passed by the Division Bench of this Court to hand over the possession to the Petitioner or to pay its compensation in the Writ Petition filed by the Petitioner. The common statement was made by SLAO as well as MIDC in respect of all five Writ Petitions. There is ambiguity in the Order while recording the statements made by the State Government and MIDC. It is not in dispute that except the Petitioner herein, the other four

Petitioners did not allege any violation of the said Order by SLAO or by MIDC and did not file any Contempt Petition.

19 The Hon'ble Supreme Court in the case of **State of Bihar Vs. Rani Sonabati Kumar** (supra) has held that if the order was ambiguous and equivocal and reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have willfully disobeyed the order. There must be two conditions to be satisfied: (1) that the order was ambiguous and was reasonably capable of more than one interpretation, (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order.

20 The Hon'ble Supreme Court in the case of **Tamilnad Mercantile Bank Shareholders Welfare Association (1) Vs. Tamilnad Mercantile Bank Ltd** (supra) has taken similar view as taken in the case of **State of Bihar Vs. Rani Sonabati Kumar**.

21 In case of **T.C. Gupta Vs. Bimal Kumar Dutta And Others**, the Hon'ble Supreme Court have reiterated statement of law that the order of court in respect of which violation is alleged must be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged. An interpretation of the terms of court's order in respect of which disobedience is alleged would not be appropriate while dealing with a charge of contempt. Such a charge cannot be brought home by unravelling the true meaning of the

court's order by a subsequent order when there is an apparent ambiguity, lack of clarity or dichotomy in the initial order. In a situation like the present where the High Court had directed maintenance of status quo as to allotment when the interim prayer was to stay the implementation of the final development plan "in view of the contemplated grant of licence to the colonisers/developers/societies" it was not open for the High Court to hold the contemnor guilty of commission of contempt by understanding the order in question therein to mean status quo or a restraint in respect of grant of licences under the Haryana Act of 1975.

22 Perusal of the Order dated 17 January 2002, clearly indicate that there is no clear and categorical direction issued by this Court or unclear or ambiguous statement made by SLAO stating that possession of land claimed by the Petitioner would be handed over or compensation would be paid or whether the said statement was in respect of other four Writ Petitions in favour of the Petitioners. The Petitioners in those four Petitions have not alleged violation of the said Order dated 17 January 2003. The provisions of law laid down by the Hon'ble Supreme Court in the cases of **State of Bihar Vs. Rani Sonabati Kumar, Tamilnad Mercantile Bank Shareholders Welfare Association (1) Vs. Tamilnad Mercantile Bank Ltd** and **T.C. Gupta Vs. Bimal Kumar Dutta And Others** (supra), apply to the facts of the present Contempt Petition. We are respectfully bound by the provisions of law laid down by the Hon'ble Supreme Court.

23 In our view, in this Contempt Petition, this Court is not in a position to interpret the statement made by SLAO or by MIDC in the manner as

sought to be canvased by Mr. Ponda, learned Senior Counsel for the Petitioner. Since the said Order dated 17 January 2003, is unambiguous, unclear and is capable of two interpretation, we are not inclined to initiate any action against SLAO for alleged violation of the said Order dated 17 January 2003.

24 The Contempt Petition is totally devoid of merits and is, accordingly, dismissed.

25 The accompanying petition, i.e. Writ Petition No.1098 of 2006, which is tagged with the Contempt Petition and is on Board today, shall be placed on Board for Admission on 15 March 2022 along with respective Interim/Civil applications.

RAJESH
VASANT
CHITTEWAN

Digitally signed by
RAJESH VASANT
CHITTEWAN
Date: 2022.03.04
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(S.M. MODAK, J.)

(R.D. DHANUKA, J.)