

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

WRIT PETITION NO.5564 OF 2021

Arun Baburao Bhumkar	... Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

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WITH

WRIT PETITION NO.1265 OF 2019

Dnyaneshwar Rajaram Vitole & Anr.	...Petitioners
Versus	
The State of Maharashtra & Ors.	...Respondents

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WITH

WRIT PETITION NO.7335 OF 2021

Pimpri-Chinchwad Municipal Corporation	...Petitioner
Versus	
Mahananda Gulabrao Pawar & Anr.	...Respondents

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Mr.Rohit Sakhadeo, Advocate for Petitioner in WP No.7335/2021 and for Respondent No.4 in WP No.5564/2021 and for Respondent No.3 in WP No.1265/2019.

Dr.Uday P. Warunjikar, Advocate a/w Ms.S.A. Pilankar, for Petitioners in WP No.1265/2019, for Respondent Nos.1 and 2 in WP No.5564/2021 and WP No.7335/2021.

Mr.PB. Bhargude, Advocate a/w Mr.Sumit Sonare, for Petitioner in WP No.5564/2021 and for Respondent No.4 in WP No.1265/2019.

Mr.N.K. Rajpurohit, AGP a/w Mrs.A.A. Puray, AGP, for State in all matters.

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**CORAM : R. D. DHANUKA AND
M. G. SEWLIKAR, JJ.**

DATE : 27th JUNE, 2022

PC. :

1. Heard.

2. Rule. Respondents waive service. Rule made returnable forthwith. By consent of the parties, all the three petitions were heard together and are being disposed of by this common order.

3. In Writ Petition No.5564/2021, the petitioner claims to be the owner of the land bearing Survey No.83/3 situated at Mauje Wakad, Taluka-Mulshi, District-Pune admeasuring 25 R and claims to be in possession thereof, has prayed for a writ of mandamus against the State to delete the property bearing Survey No.83/3 from the acquisition award dated 14.12.2015 and further seeks the writ of mandamus directing the respondents not to disburse the amount of Rs.3,20,09,0371/- deposited in the joint name of the petitioner against Survey No.83/3 admeasuring 2042 square meters to the private respondents.

4. In Writ Petition No.1265/2019 the petitioners, who claim to be the owners of the land bearing Survey No.83/1 situated at Mouje Wakad, Taluka-Mulshi, District-Pune admeasuring 39 R, have prayed for an order and direction against respondent Nos.2 & 3 to restrain the respondents from disturbing the possession and/or carrying out construction of road over Survey No.83/1, except northern 663 squqre meters at Mouje Wakad, Taluka-Mulshi, District-Pune; and for order and direction to pay monetary compensation to the petitioners for the area of 663 square meters out of Survey No.83/1.

5. Writ Petition No.7335/2021 is filed by Pimpri Chinchwad Municipal Corporation praying for a writ of certiorari quashing and setting aside the order dated 12th July, 2021 passed by the learned District Court, Pune in Misc. Civil Appeal No.4/2020 and the order dated 8th November, 2019 passed by the learned Civil Judge, Junior Division, PCMC Court, Akurdi, Pune below application at Exhibit-5 in RCS No.42/2018 be quashed and set aside.

6. In view of the administrative order passed by the Hon'ble the Chief Justice, Writ Petition No.7335/2021, which was to be

heard by the learned Single Judge, is tagged along with these petitions.

7. Insofar as Writ Petition No.5564/2021 is concerned, it is the case of the petitioner that the said land was not to be acquired by the acquiring body. Various correspondences in this regard are relied upon by the petitioners in this Writ Petition.

8. Learned counsel for the petitioner relied on the affidavit-in-reply filed by the State Government and more particularly in paragraphs No.15A, 16, 26 and 28. He submits that it is an admitted position in the said affidavit that the Survey No.83/3, which is the land of the petitioners, is not affected by the acquisition and thus their land should be deleted from the award. If this Court directs respondent No.3 to make a correction in the award, then only it would be possible to apply before the District Court to delete the exact area of survey No.83 (Part). It is stated that it is possible to rectify the award amount as per the corrected area in the plan.

9. Mr. Rajpurohit, learned A.G.P. for the State also invited

our attention to the facts brought to our notice and prays that the respondent No.3 be directed to make correction in the award as stated in paragraph No.28 of the said affidavit-in-reply and to mention compensation amount for land admeasuring 3.50 Are (350 square meters) as Rs.0/- in the award, to delete the name of Mr.Arun Baburao Bhumkar (the petitioner herein) from the award of Survey No.83/3 as survey No.83 is not partitioned and the land is not affected by the land acquisition. It is also prayed to issue direction to pay compensation to the respondent Nos.5 & 6 for the area admeasuring 1648 square meters as against 2042 square meters area which is mentioned in the name of the petitioner in the award.

10. Mr. Sakhadeo, learned counsel for the Municipal Corporation could not demonstrate as to how the land of the petitioner was acquired and could not controvert the statements made by the State Government in the affidavit-in-reply. The statements made by the State Government in the affidavit-in-reply filed by Smt. Shubhangi Rajan Kulkarni, Special Land Acquisition Officer affirmed on 18.12.2021 are accepted and taken on record.

In our view, in view of this admitted position, the Special Land Acquisition Officer who is unable to carry out the correction in the award rightly seeks assistance of this Court to direct the Special Land Acquisition Officer to correct the award for the reasons stated in the affidavit-in-reply.

11. Accordingly in view of these statements made by the State Government, we direct the Special Land Acquisition Officer to delete the land bearing Survey No.83/3 forming part of Survey No.83 standing in the name of the petitioner from the land acquisition award dated 14.12.2015 impugned in this petition within two weeks from the date of communication of this order without fail. The acquiring body would be at liberty to apply for withdrawal of the amount of compensation that is deposited by Pimpri Chinchwad Municipal Corporation in the District Court in view of the directions issued by this Court to delete the land of the petitioner in question from the award. If any such application is made by Pimpri Chinchwad Municipal Corporation before the District Court, the District Court shall allow the said application and allow the Corporation to withdraw the said amount with

accrued interest, if any, within four weeks from the date of making such application. The deletion of the land of the petitioners from the award shall be communicated to the learned counsel for the petitioner within one week from the date of effecting such deletion.

12. Insofar as Writ Petition No.1265/2019 filed by Dnyaneshwar Rajaram Vitole and another is concerned, Dr. Warunjikar learned counsel for the petitioners invited our attention to the affidavit-in-reply filed by Smt. Shubhangi Rajan Kulkarni, Special Land Acquisition Officer affirmed on 30.4.2022 and would submit that in the affidavit-in-reply filed by the State Government it is clearly admitted that the lands of the petitioner bearing Survey No.83/1A and 83/1B were not forming part of the impugned land acquisition award and thus, the acquiring body could not have disturbed the possession of the petitioners.

13. Learned counsel also invited our attention to the *prima facie* findings recorded by the Civil Court in the order below application (Exhibit-5) before the trial Court and would submit that the trial Court has granted injunction against the acquiring body restraining it from disturbing the possession of the petitioners.

14. Mr. Rajpurohit, learned A.G.P. also relies on the statements made by the Special Land Acquisition Officer in the said affidavit and would submit that in view of the stand taken by the Special Land Acquisition Officer, it is clear that the lands of the petitioners are not included in the award.

15. In view of the fact that the land of the petitioners was not acquired and was not included in the impugned award, Pimpri Chinchwad Municipal Corporation cannot disturb the possession of the petitioners. It is declared that the land bearing Survey No.83/1A & 83/1B are not forming part of the impugned award. The statements made by the Special Land Acquisition Officer in the affidavit-in-reply are accepted.

16. It is made clear that the Municipal Corporation is permitted to make an application for withdrawal of the amount of compensation deposited in respect of the lands which are subject matter of these petitions before the District Court. If any such application is made by the acquiring body before the District Court, the same shall be allowed and the amount of compensation with accrued interest if any shall be permitted to be withdrawn within

four weeks from the date of such application.

17. Insofar as Writ Petition No.7335/2021 is concerned, this Writ Petition is arising out of the order passed by the learned Adhoc District Judge-5, Pune dismissing Misc. Civil Appeal No.4/2020 filed by Pimpri Chinchwad Municipal Corporation impugning the order passed by the Civil Judge, Junior Division, PCMC Court, Akurdi, Pune allowing application (Exhibit-5) filed by the original plaintiffs i.e. Smt. Mahananda Pawar and Shri Dnyaneshwar Vitole.

18. In view of the directions given by this Court in the earlier paragraphs of this order declaring that the said lands which were subject matter of the said civil suit were not forming part of the award made by the Special Land Acquisition Officer, we are not inclined to interfere with the impugned order passed by the learned District Judge.

19. It is made clear that if Pimpri Chinchwad Municipal Corporation proposes to acquire any of these lands which are subject matters of Writ Petition Nos.5564/2021 & 1265/2019, the Municipal Corporation would be at liberty to take steps as may be

permissible in law. If any such steps are taken, the same would be considered by the appropriate court in appropriate proceedings. It is made clear that if the Municipal Corporation enters into any negotiation and offers any compensation in respect of the lands which are the subject matter of Writ Petition Nos.5564/2021 & 1265/2019, the Municipal Corporation can apply for modification of the order passed by the trial Court in Regular Civil Suit No.42/2018.

20. All the three petitions are accordingly disposed of in aforesaid terms. Rule is made absolute accordingly. No order as to costs. Parties and the District Court to act on the authenticated copy of this order.

(M. G. SEWLIKAR, J.)

(R. D. DHANUKA, J.)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Digitally signed by
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Deshmane (PS)