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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6862 OF 2021

Ganesh Narayan Dandekar (Koli) ...Petitioner
V/s.
The State of Maharashtra and Ors. ...Respondents

WITH
WRIT PETITION (STAMP) NO. 3473 OF 2022

Pranjal Deepak Dandekar and Anr. ...Petitioners
V/s.
The Deputy Collector (Acquisition) and Ors. ...Respondents

Mr. S. P. Thorat for the Petitioner in WP/6862/21.

Mr. Rahul Thakur for the Petitioner in WPST/3473/22.

Mr. Nitin Gangal a/w Mr. Ashok D. Kadam and Ms. Prerna Shukla for the Respondent Nos. 2 and 4-CIDCO in WP/6862/21 and for the Respondent Nos. 1 and 7 in WPST/3473/22.

Mrs. Rupali M. Shinde, AGP for the Respondent Nos. 1 and 3 in WP/6862/21 and for the Respondent Nos. 2 to 6 and 8 in WPST/3473/22.

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

DATE : 11TH FEBRUARY, 2022.
(THROUGH VIDEO CONFERENCE)

P.C. :-

1. By writ petition no.6862 of 2021 filed under Article 226 of the Constitution of India, the petitioner – Ganesh Narayan Dandekar seeks a declaration that the petitioner is entitled to compensation as

well as the amenities and the facilities provided by the respondents to the petitioner. The petitioner further seeks a declaration that the notice dated 5th October, 2021 is not received by the petitioner at his own address.

2. The petitioner has also impugned the award under Section 11(2) of the Land Acquisition Act, 1894 in respect of the premises of the petitioner bearing no. KB-181, A, B, 182 and seeks compensation for his constructed premises bearing KB-181, A, B, 182 under the provisions of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the said Act of 2013) and for other reliefs.

3. The petitioners in Writ Petition (Stamp) No. 3473 of 2022 seek a writ of certiorari against the respondents for quashing and setting aside the award passed under Section 11(2) of the Land Acquisition Act, 1894 dated 3rd March, 2015 passed by the respondent no.1 and not to disturb the lawful possession of the petitioners.

4. Insofar as Writ Petition No. 6862 of 2021 is concerned, the matter was argued at length by Mr. Thorat, learned counsel for the petitioner before this Court on 24th January, 2022, 25th January, 2022 and today. Learned counsel for the petitioner in the said writ petition made a statement before this Court that his client is in exclusive

possession of the portion of land in question and on instructions gave an undertaking that within seven days from taking of the joint measurement by the respondent nos. 2 and 4, his client will handover vacant and peaceful possession to the respondent nos. 2 and 4 of the land and the structure claimed to be in possession of his client without fail. This Court recorded the said statement as and by way of undertaking to this Court.

5. This Court recorded the statement that the possession of the alleged structure that would be handed over to the respondent nos. 2 and 4 would be without prejudice to the rights and contentions of the petitioner to claim compensation in accordance with law. Learned counsel also on instruction gave an undertaking that his client would demolish the structure standing on the plot at his own costs at the first instance to respondent nos. 2 and 4 within the time prescribed. In view of the statement made by Mr. Thorat, Mrs. Shinde, learned AGP for the State made a statement that the services of the Taluka Inspector of Land Records (TILR) would be provided for the purpose of taking joint measurement. This Court accordingly directed the TILR to remain present on site for the purpose of taking joint measurements on 28th January, 2022 at 11:00 a.m.

6. This Court directed the petitioner and authorized

representatives of the respondent nos. 2 and 4 to remain present at the time of taking joint measurements. This Court also directed to take signatures of the petitioner as well as the respective representatives of the respondent nos. 2 and 4 on the measurement sheet. This Court directed the respondent nos. 2 and 4 to provide assistance for videography at the time of taking joint measurements at their own costs initially subject to further orders to be passed by this Court. Pursuant to the said order dated 25th January, 2022, the TILR took a joint measurement of the land and structures in question. The report of the TILR is produced on record.

7. Mr. Thorat, learned counsel for the petitioner pointed out that the structure in question could not be demolished in view of the objection raised by Pranjal Deepak Dandekar and also Deepak Dandekar who are petitioners in Writ Petition (Stamp) No. 3473 of 2022. He informs this Court that the said Pranjal Deepak Dandekar and her father also filed a separate writ petition bearing Writ Petition (Stamp) No. 3473 of 2022. This Court accordingly directed the office to place the said writ petition also to be heard along with Writ Petition bearing No. 6862 of 2021.

8. Both the petitions were heard in detail. Mr. Thorat, learned counsel for the petitioner in Writ Petition No. 6862 of 2021 made further submissions today. He submits that though the

petitioner had also engaged a private surveyor at the time of taking joint measurement, the TILR did not permit the private surveyor appointed by the petitioner to take joint measurement or to participate at the time of taking joint measurement. The next submission is that the Officers of CIDCO have colluded with the petitioners in Writ Petition (Stamp) No. 3473 of 2022 and did not record the correct joint measurement of the premises in possession of his clients.

9. Mr. Thakur, learned counsel for the petitioners in Writ Petition (Stamp) No. 3473 of 2022 vehemently urged that the Land Acquisition Award is purported to have been passed under Section 11(2) of the Land Acquisition Act though no consent was given by his clients. He submits that the entire proceedings culminated in the award are thus *void-ab-initio*. He submits that no notice of any nature whatsoever was given to his client at any stage. His client has separate claim in respect of the structures occupied by this client. Mr. Thorat, learned counsel for the petitioner in Writ Petition No. 6862 of 2021 could not have made any statement to handover possession of the entire premises including the premises which are alleged to be in possession of his client to CIDCO before this Court on the last date.

10. Mr. Gangal, learned counsel for the CIDCO, on the other

hand submits that Mr.Thorat has already made a statement before this Court on 25th January, 2022 that the possession of the land and structure thereon would be handed over to the respondent nos. 2 and 4 without prejudice to the rights and contentions of his client to claim compensation in accordance with law. He also made a statement before this Court that his client is in exclusive possession of the portion of land in question.

11. It is submitted that the petitioner was also present at the time of taking joint measurement by the TILR and did not raise any objection about incorrect measurement alleged to have been recorded by the TILR. He submits that the claim for compensation made by all these petitioners in both the petitions would be considered in accordance with law. Learned counsel submits that the plot in question is required for Navi Mumbai International Airport. He submits that 2700 structures falling on the plot required for Navi Mumbai International Airport have been already demolished. Only these three structures which are subject matter of these two writ petitions remained to be demolished.

12. Learned counsel for the CIDCO invited our attention to page 169 of Writ Petition No.6862 of 2021 and would submit that in this case, the Special Land Acquisition Officer had invoked the urgency clause under section 17(4) of the said Act. He also invited

our attention to the notice issued by the Special Land Acquisition Officer on 29th January, 2015 inviting objections. The said notice was given to the petitioner in Writ Petition No. 6862 of 2021, the petitioner no.2 in Writ Petition (Stamp) No. 3473 of 2022 and several others. The petitioner no.1 in Writ Petition (Stamp) No. 3473 of 2022 appeared before the Authority through his father who claims to be in possession of the structure which is subject matter of Writ Petition (Stamp) No. 3473 of 2022 and made a claim for separate and independent premises as and by way of compensation. He did not raise any objection in respect of the acquisition of the land in question. It is submitted that the documents sought to be produced by the petitioner in Writ Petition (Stamp) No. 3473 of 2022 are of the recent period and do not appear to be genuine.

13. It is submitted by the learned counsel that if the claim of the petitioners in Writ Petition (Stamp) No. 3473 of 2022 is found to be genuine, the petitioners in that writ petition also would be paid compensation or other benefits according to the policy framed by the State Government and as may be applicable under the provisions of the Act of 2013. Statement is accepted.

14. In view of the statement made by Mr.Thorat before this Court on 25th January, 2022 on instructions from his client that the possession of the plot and the structures thereon in question would

be handed over to the respondent nos. 2 and 4, without prejudice to the rights and contentions, to claim compensation in accordance with law, this Court cannot allow Mr.Thorat to address this Court on the merits of the matter once again.

15. Be that at it may, insofar as the submission of Mr.Thorat, that the private surveyor was not allowed by TILR at the time of taking joint measurement or that the correct measurement is not recorded by the TILR is concerned, a perusal of the record indicates that the client of Mr.Thorat did not raise any objection to such joint measurement at the time of taking joint measurement. Learned A.G.P. and Mr.Gangal, jointly state that pursuant to the order passed by this Court on 25th January, 2022 Videography was taken at the time of taking joint measurement. They submitted that even the Videography carried out at the site at the time of taking joint measurement also would not indicate any objection raised by Mr.Thorat's client at the time of taking joint measurement. We are inclined to accept the submission made by the learned A.G.P. and Mr.Thorat, learned counsel for CIDCO.

16. Insofar as the objection raised by Mr.Thakur, learned counsel for the petitioner in Writ Petition (Stamp) No. 3473 of 2022 is concerned, Mr.Thakur could not dispute that the notice was issued by the Authority on 29th January, 2015 inviting objections. In

response to the said notice, the petitioner no.2 in Writ Petition (Stamp) No. 3473 of 2022 was present. No objection regarding acquisition of the land and structure was raised. The only request of respondent no.2 on behalf of himself and petitioner no.1 was that a separate and independent property by way of permanent alternate accommodation shall be allotted to them.

17. In our view, the submission of learned counsel for the petitioner in the said writ petition that the land acquisition award was issued under section 11(2) of the Land Acquisition Act would be of no substance in the facts and circumstances of this case.

18. There appears to be dispute between the petitioners in Writ Petition (Stamp) No. 3473 of 2022 and Writ Petition No. 6862 of 2021. This dispute, if any between them can be adjudicated upon in the appropriate proceedings by appropriate Court of law. Be that as it may, their respective claims for compensation can be considered by the competent authority under the provisions of the Land Acquisition Act or the Act of 2013 as may be applicable. The petitioners cannot be allowed to continue to occupy their respective structures alleged to be in their possession on the ground that their claims for compensation is yet to be decided.

19. We are inclined to accept the submission of Mr. Gangal, learned counsel for CIDCO that about 2700 structures are already

demolished for the purpose of New Mumbai International Airport and except these three structures, the other occupants have already shifted to permanent alternate accommodation, whomsoever are allotted such accommodation. In our view, the petitioners thus cannot stall the public project under the guise of pending adjudication of their claim for compensation.

20. We accordingly pass the following order :-

(i) The petitioners in Writ Petition No.6862 of 2021 and the petitioners in Writ Petition (St.) No.3473 of 2022 are directed to demolish their respective structures within one week from today and hand over vacant and peaceful possession thereof to the respondent no.2 CIDCO, without fail, without prejudice to their rights and contentions to claim compensation.

(ii) It is made clear that if the petitioners do not hand over vacant and peaceful possession of the land in question after demolishing the structures thereof to CIDCO within the stipulated time, the CIDCO and the State Government would be at liberty to take forcible possession thereof and demolish those structures and if necessary, with the assistance of police.

(iii) The claim for compensation that would be made by the petitioners in each of these petitions to be considered by the Deputy Collector (Acquisition) within a period of four weeks from the date of

receipt of such claim for compensation in accordance with law.

(iv) The petitioners in both these petitions are permitted to file application for compensation within one week from today without fail. The CIDCO is directed to pay the fees and charges of TILR claimed at Rs.3,000/- to the office of the TILR within one week from today, without fail.

(v) It is made clear that the issue of measurement already taken would not be allowed to be raised before the respondent no.1 or in any other proceedings.

(vi) Both these writ petitions are dismissed subject to aforesaid clarifications. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

(vii) Place both these writ petitions on board for 'reporting compliance on 22nd February 2022.

(S.M. MODAK, J.)

(R.D. DHANUKA, J.)