

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 61 OF 2023**

Muttha Realty LLP & Anr	...Petitioners
<i>Versus</i>	
The District Collector Pune & Ors	...Respondents

Mr RD Soni, i/b Ram & Co, for the Petitioners.
Mr Abhijeet Kulkarni, with Sweta Shah & Krushna Jaybhay, for
Respondent No. 4-PMC.
Mr AA Alaspurkar, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 29th August 2023

PC:-

1. Having heard Mr Soni for the Petitioners quite extensively, we do not believe that there is any cause for exercise of our extraordinary and discretionary writ jurisdiction. Prayers (a), (b) and (c) of the Writ Petition at pages 17 and 18 read thus:

“(a) That this Hon’ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus, thereby directing the Respondents to suitably amend the Ready Reckoner rate per square meter of the Petitioners’ land bearing Survey Nos. 246, 248 and 253 admeasuring 9 Hectors and 46 Ares situated at Lohegaon, Taluka Haveli, Dist. Pune which

ASHWINI
H
GAJAKOSH

Digitally signed
by ASHWINI H
GAJAKOSH
Date:
2023.08.30
09:39:50
+0530

more particularly mentioned in Schedule Exh. A hereto and to bring the same on par with the surrounding lands which fall within the development zone as more particularly mentioned in the Chart annexed as Exh. D hereto.

(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus, thereby directing the Respondents to suitably rectify the Ready Reckoner and bring the rate of the Petitioners' land on par with the surrounding properties.

(c) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Writ of Mandamus, thereby directing the Respondents to consider the value of the Petitioners' property on par with the value of the similarly situated surrounding properties which fall in the development zone as mentioned in the Ready Reckoner for the year 2019-20."

2. *Ex facie*, the Petitioner has no enforceable let alone a constitutional or legal right to demand that a Ready Reckoner be prepared, updated (or even brought into existence), or that the Petitioners' land be brought on a value parity with some other land. The prayer, worded like this, is such that it rejects itself. This is entirely a matter that is within the exclusive purview of the Executive. There is no question of judicial review of any such action or decision.

3. Although the Petitioner may not appreciate it, there is a clear line that we will not cross where judicial review must end and beyond which lies purely executive discretion. Courts will not

readily overreach into the realm of purely executive decision making.

4. In particular, we note that the prayers are in the form of a mandamus. Yet in the Petition there is no averment that justice was denied to them. The law in this regard is well settled: without both an express demand for justice and an express averment of demand, no court can issue a mandamus. That demand must be the invocation of a legally enforceable right calling upon the instrumentality of the State to perform an identified statutory or constitutional obligation.¹ As the Supreme Court said 61 years ago, “it is well settled that no mandamus will be issued unless the applicant had made a distinct demand on the appropriate authorities for the very reliefs which he seeks to enforce by mandamus and that had been refused”: *Commissioner of Income Tax v Scindia Steam Navigation Co Ltd.*² In *Mani Subrat Jain & Ors v State of Haryana & Ors*,³ the Supreme Court said:

It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to

1 *Amrit Lal Berry v Collector*, (1975) 4 SCC 714 : AIR 1975 SC 538; *Kamini Kumar Das Choudhary v State of West Bengal*, (1972) 2 SCC 420 : AIR 1972 SC 2060; *RXA De Monte Furtado v Administrator*, 1982 SCC OnLine Bom 316 : (1983) 2 LLN 623 : 1983 Lab IC 1329; *Surendra Govekar & Anr v Village Panchayat of Anjuna-Caisua & Ors*, 2017 SCC OnLine Bom 8386 : (2018) 2 Mah LJ 326

2 (1962) 1 SCR 788.

3 (1977) 1 SCC 486.

abstain from doing something...

(Emphasis added)

There is a long line of decisions to this effect.⁴

5. Once it is seen that there is no vested right in the Petitioner to make such a demand for updating the Ready Reckoner or for upgrading the value of the Petitioners' property, nor a corresponding duty or obligation on the part of the public authority, then no mandamus can issue. The Petition must necessarily fail.

6. Mr Soni argues that the State Government called for suggestions and objections. The Petitioner made certain suggestions and objections, but these were not expressly rejected. Hence,

⁴ *Saraswati Industrial Syndicate Ltd & Ors v Union of India*; (1974) 2 SCC 630; *State of Haryana v Subhash Chander Marwaha & Ors*, (1974) 3 SCC 220; *State of Haryana & Anr v Chanan Mal & Ors*, (1977) 1 SCC 340; *Mani Subrat Jain & Ors v State of Haryana & Ors*; *Director of Settlements, AP & Ors v MR Apparao & Anr*, (2002) 4 SCC 638; paragraph 17; *Sesa Shipping Ltd & Anr v Board of Trustees of the Port of Mormugao & Anr*, (2003) 105 (1) Bom LR 61; *Jaripatka Dalit Kalyan Mahila Mandal v State of Maharashtra & Ors*, (2004) 5 Bom CR 441; *Bharat Petroleum Corporation Ltd & Anr v State of Maharashtra & Ors*, (2009) 4 Bom CR 616 : 2009 SCC Online Bom 756; *Qambeer Jeevaji & Ors v State of Maharashtra & Ors*, (2010) 5 Mah LJ 484 : (2011) 3 Bom CR 299; *The United Goans Shanti Concern v Chief Secretary, Government of Goa & Ors*, 2012 SCC Online Bom 1325; *Rajasthan State Industrial Development & Investment Corporation & Anr v Diamond & Gem Development Corporation Ltd & Anr*, (2013) 5 SCC 470; *Rajasthan State Industrial Development & Investment Corporation v Subhash Sindhi CHSL, Jaipur & Ors*, (2013) 5 SCC 427; *Rajesh Punraj Khobragade & Ors v State of Maharashtra & Ors*, 2016 SCC Online Bom 5798; *Warsi CHS (Proposed) v Mumbai Municipal Corporation & Ors*, 2016 SCC Online Bom 4811; *DN Jeevaraj v Chief Secretary, Government of Karnataka & Ors*, (2016) 2 SCC 653 (which reviews the law on the subject); *More Jeevan Yashwant & Ors v Mumbai Municipal Corporation & Anr*, 2017 SCC OnLine Bom 10101; *All India IDBI SC, Nav Buddhist & OBC Officers' Welfare Association v IDBI Bank Ltd*, (2017) 3 Bom CR 425 : 2017 SCC Online Bom 1830.

presumably, the submission is that they must be deemed to have been accepted. The alternative submission is that there is in fact a recommendation, and that the recommendation should be implemented.

7. No Court can issue a mandamus to a final decision-making body to accept or not accept a particular recommendation. That is entirely the prerogative of the State Government, and we will not interfere with or curtail in any manner the exercise of that executive discretion.

8. Then Mr Soni contends that the decision to accept or reject should be communicated. There is no such requirement in law. Our experience in town planning law, for example, tells us that the development planning process requires public participation by the mechanism of inviting suggestions and objections. This is true also of many other executive actions. But it is always for the sanctioning authority to consider those suggestions and objections in its discretion. There is no requirement that every suggestion must be accepted or that every suggestion must be responded to with either a note of acceptance or rejection. That would place an unreasonable fetter on the exercise of executive discretion in the matter of decision making. Considering suggestions and objections from the public does not require a reasoned order or communication. The final result will tell whether a particular suggestion has or has not been accepted. There is no substance to this submission.

9. Being totally devoid of merit, the Petition is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)