Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4961 OF 2022

WITH

INTERIM APPLICATION (L) NO. 22121 OF 2021

IN

WRIT PETITION NO. 4961 OF 2022

AND

INTERIM APPLICATION NO. 2665 OF 2022

IN

WRIT PETITION NO. 4961 OF 2022

1. **Shailendrakumar Ugamchand Jain,**
   Age 56 years,
   Occ. Agriculture and business,
   R/o Kapad Bajar, Panvel, Tal. Panvel,
   District Raigad.
2. **Vijaykumar Manmohan Jain,**
   R/o. A/2, Ratnadip Co-operative Hsg. Ltd, 60 feet Cross Road, Opp. Ganesh Temple, Bhayandar, Thane.
3. **Khushalchand alias Kushalchand Labhichand Jain,**
   R/o. 365, Kapad Bajar, Tilak Road, Panvel, District Raigad.

3) **Khuscalchand Labichand Shaha,**
(Since deceased through legal heirs)

3-A **Sushila Kuschalchand Jain,**
(Since deceased through legal heirs)

3-A1) **Bhavin Kushalchand Jain,**
Age 47 years, Occ: Business,
R/o. 365, Kapad Bajar, Tilak Road, Panvel,
District Raigad.

3-A2) **Rakesh Khuschalchand Jain,**
Age 43 years, Occ: Service,
A-9 Sahayog Nagar, Joshi Aali,
Panvel, District Raigad. ...**Petitioners**

~ **versus** ~

1. **City and Industrial Development Corporation of Maharashtra Ltd,**
having office at CIDCO Bhavan, CBD Belapur, Navi Mumbai 400 614.

2. **The Principal Secretary,**
Urban Development Department,
Mantralaya, Mumbai.

3. **The State of Maharashtra,**

4. **NAVIN NIRMALCHANDRA JAIN,**
R/o. 5/C/3, Third Puliya Chaupasani
Housing Society Board, Jodhpur,
Rajasthan. ...**RESPONDENTS**

APPEARANCES

FOR THE PETITIONERS	**Mr Shriram Kulkarni**, *with Radhali Kadam.*
FOR RESPONDENT NO.1	**Mr Yogesh Bhoge**, *i/b Jurisperitus Mumbai.*

CORAM : G.S. Patel &
Neela Gokhale, JJ.

DATED : 27th February 2023

ORAL JUDGMENT (*Per GS Patel J*): -

1. **Rule**. Rule made returnable forthwith. The matter is taken up for final disposal.

2. There are no Affidavits in Reply despite an adequate opportunity given to the Respondents by an order dated 8th April 2021 which reads thus:

> "1. None for Respondent No.1-CIDCO though served.
>
> 2. Stand over to 5th May 2021.
>
> 3. In the meantime, no coercive action shall be taken against the Petitioners.

> 4. The Learned Advocate appearing for the Petitioners shall serve a copy of this order along with a copy of the Writ Petition on the Learned Advocate/s appearing for the Respondents Nos. 1, 2 & 4 by hand delivery / courier / WhatsApp / RPAD.
>
> 5. The Respondents shall file their respective Affidavits in Reply within two weeks from today and remain present before this Court on the adjourned date."

3. The City and Industrial Development Corporation ("**CIDCO**") says that it was "awaiting" an Affidavit in Reply from the State Government since it is the Government Resolution ("**GR**") that is under challenge. The State Government has not said anything at all. For almost *two years* there are no Affidavits in Reply. Now we are told that the Petition must be adjourned by another four weeks, as if to suggest that these authorities can get indefinite amounts of time to file Affidavits and as if orders of the Court to file Affidavits are only suggestions, not required to be obeyed. We refuse to grant adjournments to file Affidavits in Reply. We are compelled to proceed with the Petition without Affidavits in Reply.

4. The Petitioners are all persons whose lands have been acquired. The Petition challenges condition (c) of the GR dated 6th March 1990. By this, twice the per unit rate of compensation for acquired land plus development charges at the rate of Rs. 715/- per square meter are levied for the allotment of plots under what is called the 12.5% scheme. The scheme is that where gaothan farmland is acquired by CIDCO, the owner is allotted 12.5% of the acquired land area, and the person is allowed to construct on it. The challenge is to the imposition of a condition that requires the person whose land is acquired to pay a premium and other charges for the allotment of that 12.5% plot. Mr Kulkarni's complaint is that in this case, as much as just under half the compensation awarded is being taken back as premium and other charges, making the compensation illusory.

5. The State Government issued a notification under Section 113 of the Maharashtra Regional and Town Planning Act, 1966 ("**MRTP Act**") to develop around 96 villages as part of the Navi Mumbai project. Section 113(3A) and Section 113A of the MRTP Act were introduced by an amendment. CIDCO was constituted to develop and dispose of these lands. Periodically, the State Government issued notices for acquisition of lands under these 96 villages. The Land Acquisition Act, 1894 ("**the LA Act ")** itself was amended prescribing inter alia a time limit under Section 11-A to complete the acquisition and, on failure thereof, for the lapsing of the acquisition proceedings. The acquisition proposed of the Petitioners' lands lapsed and there followed a fresh notification under Section 4 in 1986 notifying the lands. The development plan for Navi Mumbai was already in place from 1971. The Petitioners' lands are situated in village Bambavi. A description of the lands is in paragraph 3 of the Petition. These were ancestral properties. There were some civil proceedings to declare the shares of various parties. These resulted in a consent decree and the various claimants to shares in the land agreed between themselves on a method of distribution of all compensation. This would have included any land allotted under the 12.5% scheme.

6. On 24th September 1986, the Section 4 Notification was published in the Official Gazette. An Award under Section 11 was passed on 16th September 1989. This gave compensation of Rs.40,748/-. The Petitioners filed a Reference under Section 18 of the LA Act before the Civil Judge, Senior Division, Raigad at Alibaug. On 8th May 2014, the Civil Judge Senior Division, Alibaug partly allowed the Reference and determined the market value of the land at Rs.715 per square meter with other benefits. The State filed a First Appeal before this Court. That Appeal was admitted on 25th February 2015, but the State Government was directed to deposit the entire decretal amount within 12 weeks. The Petitioners were allowed to withdraw 75% of the deposit on furnishing a solvent surety or security. The total amount of compensation received was Rs.2,09,58,423.25.

7. On 29th January 2021, CIDCO informed the Petitioners that plot No. 18, Section 15, Ulwe, Taluka Panvel, District Raigad, of about 549.82 square meters had been allotted to the Petitioners under the 12.5% scheme. CIDCO asked the Petitioners to deposit Rs.74,16,946.25 within 60 days i.e., Rs.11,261.50 per square meter. This is twice the amount of compensation and interest paid by the Government. This demand is styled as a lease premium. When the Petitioners asked why this amount was being demanded, the answer was that this was based on a State Government Resolution of 6th March 1999. That GR seems to say that where a person has not accepted compensation until 6th February 1986 but whose lands are acquired after that date then such landholders would be allotted 12.5% land against the acquired area. The GR also says that as a "consolation" (in Marathi, "dilaasa"), this 12.5% plot is being given to the persons subjected to acquisition. We do not understand how demanding a lease premium of twice the compensation, plus interest plus development charges can be considered solace or consolation without doing significant violence to the language.

8. In addition, apart from the significant development charges, the allotted land is subjected to reservations for various public purposes. The Petition argues that if the policy behind the GR was one of benevolence and to give some relief or redress to the grievances of the land owners, then clearly the recovery of twice the compensation was unjustified. This is exacerbated when the land owner effectively gets only 9% of the land, the remaining 3.5% being taken up by various reservations and amenities.

9. It is submitted that Clause (c) of this policy is ultra vires Section 118(2) of the MRTP Act. That Section reads as follows:

> "**118(2)** The powers of a Development Authority with respect to the disposal of land acquired for it for the purposes of this Act shall be so exercised as to secure, so far as practicable, that persons who were living or carrying on business, or other activities on land so acquired shall, if they desire to obtain a plot or accommodation on land belonging to, or vesting in, the Development Authority and are willing to comply with any requirements of the Development Authority as to its development and use, have an opportunity to obtain a plot or accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them."

10. A copy of the GR is at page 67B. Condition (c) reads thus:

> “ क) १२.५ टक्के एवढया वाटप केलेल्या जमिनीची किंमत संपादीत जमिनीच्या मोबदल्याच्या (दिलेलया व्याजासह) दुप्पट रक्कम अधिक विकास खर्चापोटी प्रत्येक चौ.मिटरला रू.५/— या दराने, वाटपदाराकडून वसुल करण्यात यावी.”

11. Mr Kulkarni argues that the State Government can recover the price of the plot to be allotted but this cannot be linked to the compensation paid. The cash compensation for acquisition is computed under Section 23 of the LA Act. The 12.5% land is an additional benefit sought to be offered to the persons such as the Petitioners and this is why it is referred to as some form of consolation, some form of land-for-land. But this cannot be rendered meaningless by charging a premium that is linked to the compensation in the first place. Mr Kulkarni points out that compensation for acquisition and the price of the lands allotted under the 12.5% scheme are two distinct concepts and cannot be muddled together like this.

12. The LA Act is now substituted by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**the RTFC Act**”) The Second Schedule of that Act came into effect from 1st January 2015. This Schedule inter alia provides for the offer of developed lands as elements of rehabilitation and resettlement. Even the RTFC does not contemplate levying twice the rate of acquisition from Project-Affected Persons and their families.

13. The Second Schedule contains entries of land-for-land (offers of developed land) and similar variations. But there is no linkage even in that statute between the cash compensation offered for acquisition and the price or premium for allotment of plots.

14. This is therefore the basis of the challenge. The Petitioners say that the policy of recovering 25% of compensation with interest for allotting 12.5% land as a so-called solace or consolation and that too for only 9% of the usable land is directly ultra vires to the RTFC Chapter V of that Act and the Second Schedule of that Act. It is also, Mr Kulkarni submits, contrary to Article 162 of the Constitution of India. The charging of a premium, whether under the GR or otherwise, is an executive action. Executive power is co-terminus with legislative power. Necessarily, therefore, execute power cannot be contrary to statute but must operate within the confines of the statute. A state's executive power cannot transgress or violate a central statute. Mr Bhoge for CIDCO argues that there is no prohibition or proscription in the statute, central or otherwise, from the levy of a premium and therefore permissible.

15. It is also submitted by Mr Kulkarni that condition (c) of the GR dated 6th March 1999, which provides for the levy of this premium, is not only arbitrary and irrational but is ultra vires Article 14 read with Article 300-A of the Constitution of India. Some figures in addition to the ones which are set out above tell the story. CIDCO deducted roughly Rs 5.60 lakhs towards CGST and an identical amount towards SGST. The demand then was at the rate of Rs.11,261.50 per square meter. The aggregate demand, as per page 61, a communication of 29th January 2021, was for these Petitioners to pay Rs.74,16,946.35. This includes so-called development charges at the rate of Rs.200/- per square meter (item 5) and certain other charges as well. The total land originally held by the Petitioners and taken up in acquisition was split between Hissa Nos. 5 and 6 of Survey Nos. 4 and 8 at village Bambavi. It was about 6160 square meters i.e., roughly one and a half acres. What is being offered is a plot of land of 549.82 square meters and this is said to be available only if the Petitioners pay Rs.74,16,946.35.

16. The Petitioner has withdrawn roughly Rs.2,10,00,000.00 from the compensation awarded and the amount deposited. But the effect of the impugned demand is that just a little under half of that amount is demanded back by CIDCO as the premium for this allotment. The arbitrary linkage between the compensation rate and the premium, etc., has the effect of nearly halving the effective compensation. As Mr Kulkarni puts it, the government gives compensation with one hand and then promptly takes back half of it with the other. That, he submits, cannot be sustained.

17. Having considered the submission, we are not prepared to hold that there should be *no* charge for the 12.5% land. Obviously, taxes and duties must be paid. We are also saying nothing about the imposition of land-use reservations on the allotted plots. That is governed by the MRTP Act and the Development Plans. We are only concerned with the attempt to link the premium to the rate of compensation. As shown earlier, compensation for land acquired operates in a different field from the charges for allotment. The linkage between the two is irrational and, given its effect of nearly halving the effective compensation, is ex facie arbitrary. There is no nexus shown between the rate of compensation and the so-called 'premium' for allotment of the 12.5% plot.

18. Prayers (a), (b) and (c) at pages 22 and 23 reads thus:

> "(a) This Hon'ble Court be pleased to hold and declare that the condition No (C) of the Government Resolution No.LQN-1985/1710/CR-217/85/TP-10 dated 06.03.1990 at Exh "E" to the Petition, is ultra-vires, contrary to provisions of Land Acquisition Act, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 MRTP Act, 1966, hit by Article 14, 19, 21, 300-A of Constitution of India, opposed to public policy and therefore same is liable to be quashed and set aside and accordingly be set aside.
>
> (b) This Hon'ble Court be pleased to direct the Respondents to allot Plot No.18, Sector 15 Ulve, Tal. Panvel, District Raigad, admeasuring about 549.82 square meters is allotted to the Petitioners & Respondent No.4 under 12.5% scheme to the Petitioners on such terms and conditions as deemed fit to this Hon'ble Court.
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> (c) This Hon'ble Court be pleased to hold and declare that GST is not attracted in the cases where the lands allottable by way of rehabilitation, solace/consolation to the landless agriculturists, project affected persons and therefore, GST charged by the CIDCO in their letter of allotment at Exh "E" of Rs.11,14,523.62 need not be recovered from the Petitioners."

19. So far as prayer clause (a) is concerned, we are entitled to make Rule absolute, but with the qualification that CIDCO may stipulate a reasonable amount for allotment of the 12.5% land or may provide an alternative option. As regards prayer clause (b) we do not think it would be appropriate for us to set out the terms and conditions governing the allotment of lands. That is for the Government and CIDCO to do. But if condition (c) of the GR is quashed and set aside then obviously this means that the plot must stand allotted and the Petitioners must be given possession of it subject to their undertaking to abide by such reasonable conditions as may be imposed on a reconsideration. The State Government and CIDCO must take a decision on those conditions within a period of six weeks from today. It is open to the Petitioners to challenge those conditions separately if the need arises.

20. As far as prayer clause (c) is concerned and the question of application of GST, that is not a relief we are prepared to grant at all. In fairness, Mr Kulkarni does not press this prayer before us but seeks liberty to take it up in an appropriate proceeding before the authorities concerned. We grant that liberty.

21. The Petition is disposed of in these terms. There will be no order as to costs.

22. In view of this, the pending Interim Applications are also disposed of as infructuous.

(Neela Gokhale, J) **(G. S. Patel, J)**