



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

WRIT PETITION NO. 3565 OF 2016

1. Mustafa Ibrahim Nadiadwala)
Age : 73 years, Occup. Business,)
Residing at 203, Mona Lisa)
Mona Lisa, Hill Road,)
Chinchpokli Lane, Opp. Police)
Police Station, Bandra (West),)
Mumbai – 400 050)
 2. Yusuf Ibrahim Nadiadwala)
Age : 75 years, Occup. Business,)
 3. Abdul Latif Ibrahim Nadiadwala)
Age : 66 years, Occup. Business,)
 4. Abdul Razak Ibrahim Nadiadwala)
Age : 68 years, Occup. Business,)
 5. Mohd. Iqbal Ibrahim Nadiadwala)
Age : 63 years, Occup. Business,)
 6. Abdul Gani Ibrahim Nadiadwala)
Age: 61, Occup. Business)
- all above having their Office)
address at Summer Villa, 7th Road,)
Santacruz (E) Mumbai – 400 055)

.... Petitioners

Versus

1. The State of Maharashtra,)
Through the Secretary of)
Urban Development Department)
Mantralaya, Mumbai)
2. Collector - Mumbai Suburban)
District, Administrative Building)
10th Floor, Government Colony)

- Opposite Chetana College,)
Bandra (East), Mumbai – 400 051)
3. Special Land Acquisition)
Officer No. 4, Administrative)
Building, Government Colony,)
Opposite Chetana College,)
Bandra (East), Mumbai – 400 051)
4. Union of India, Through its)
Ministry of Urban Area)
Development at the office of the)
Secretariat, New Delhi)
5. Office of the Defence Estate)
Officer, Ministry of Defence)
Mumbai Circle, Colaba,)
Mumbai – 400 005) Respondents

Senior Advocate Mr. Girish Godbole a/w. Mr. Shon Gadgil, Mr. Gaurav Gopal, Mr. Mohit Goyal i/b. Wadia Ghandy and Co., for Petitioners.

Mr. A.I. Patel, Addl. G.P. a/w. Msr. M.S. Bane, AGP, for State/Respondent Nos. 1 to 3.

Senior Advocate Mr. A. S. Khandeparkar a/w. Mr. Niranjani Shimpi, for UOI/ Respondent Nos. 4 & 5.

**CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.**

RESERVED ON : 7th AUGUST, 2023

PRONOUNCED ON : 21st SEPTEMBER, 2023

JUDGMENT (Per M.M. SATHAYE, J.)

1. This matter is pending at the admission stage since the date of its filing on 5th May, 2015. Rule. Mr. Patel, learned Addl. G. P. waives

service on behalf of Respondent Nos. 1 to 3. Senior Advocate Mr. A.S. Khandeparkar waives service for Respondent Nos. 4 & 5. Rule made returnable forthwith. Taken up for final disposal by consent.

2. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioners are, *inter alia*, seeking a declaration that acquisition proceedings arising out of the impugned Award dated 23rd September, 1986 and the Requisition Order bearing No. WAR/90 dated 19th February, 1943 are illegal and not valid. The Petitioners are further seeking a writ to quash and set aside the said impugned Award and the said Requisition Order. A prayer is further made to get possession of the subject plot/land which has been acquired under the impugned Award.

3. Shorn of unnecessary details, the factual matrix of the matter is summarized below.

4. 50% share of the Petitioners' predecessor (Ibrahim Nadiadwala) out of Survey No. 119 (Part-3) of Village Malad, Taluka Borivali, District Mumbai Suburban, admeasuring 4097 square meters or thereabout is the subject matter of this Petition. The said property

bearing Survey No. 119 (Part-3) is hereinafter referred to as '**the said land**'.

5. The said land was originally requisitioned under the Order of the Collector of Bombay during 1943 to 1955. It appears that the property remained under requisition, which was ultimately acquired under the Land Acquisition Act, 1894 and the impugned Award dated 23rd September, 1986 was passed. The legal heirs of Ismail Nadiadwala (owners of the remaining 50% share in the said land i.e., brother of Ibrahim) challenged the said acquisition proceedings and sought possession of the said land by filing Writ Petition No. 2699 of 1987. By an Order dated 21st July, 1998, this Court dismissed the said writ petition filed by the legal heirs of Ismail, who then carried the matter to the Hon'ble Supreme Court. By an Order dated 17th April, 2012 passed in Civil Appeal No. 4473 of 2000, the Hon'ble Supreme Court, after hearing the legal heirs of Ismail and the authorities, found that the whole acquisition proceedings by which the said land was acquired, is *null and void*. It appears that Respondent No. 5 (the acquiring body for the subject matter land) filed a Review Application No. 1422 of 2013 seeking review of the said Order dated 17th April 2012. By an Order dated 16th July, 2013, the said Review Petition was also dismissed, both

on the grounds of delay as well as on merits. Subsequently, Respondent No. 5 also filed a Curative Petition No. 270 of 2014, which was also dismissed by the Hon'ble Supreme Court by its Order dated 3rd February, 2015, *inter alia* recording that the same is passed after going through the petition and the relevant documents.

6. It appears that simultaneously the present Petitioners (Legal heirs of Ibrahim Nadiadwala) had preferred Land Reference bearing LAQ/SR/430 for enhancement of the compensation granted under the impugned award and the matter came up to this Court (LAR No. 3 of 1991). It further appears from the record that the Petitioners thereafter filed the present Petition, and withdrew the said LAR No. 3/91 under Order dated 29th January, 2015 of this Court.

7. Heard the learned senior counsel Mr. Godbole for the Petitioners and the learned senior counsel Mr. Khandeparkar for Respondent Nos. 4 & 5 (the acquiring body). Also heard Mr. Patel, the learned Addl. G. P. for Respondent Nos. 1 to 3 (State of Maharashtra, Collector, and the Special Land Acquisition Officer).

8. Mr. Godbole has invited our attention to the Order passed by the Hon'ble Supreme Court in Civil Appeal No. 4473 of 2000 which

is a reported Judgment in the matter of *Kulsum R. Nadiadwala and Ors. V. State of Maharashtra & Ors. reported in (2012) 6 SCC 348*. Inviting our attention to the observations in the said Judgment of the Hon'ble Supreme Court, the learned counsel has pointed out that challenge to the very same impugned Award in respect of the very same subject matter land (the said land) was under consideration before Hon'ble Supreme Court. He pointed out that the Hon'ble Supreme Court has found in paragraph 12 of the said Judgment that since the mandatory requirement under Section 4(1) of the Land Acquisition Act, 1894 (for short '**the said Act**') as regards publication, was not complied with by the Respondent Authorities while acquiring the said land, the entire acquisition proceedings are required to be declared as null and void. He urged that the Hon'ble Supreme Court has found that while acquiring the said land, along with other lands, the process as required under the law was not duly followed and therefore, the Hon'ble Supreme Court has opined that the entire acquisition proceedings are required to be declared null and void. He submitted that since only the legal heirs of Ismail were before the Hon'ble Supreme Court, the Appeal was allowed by the Hon'ble Supreme Court, and the relief was restricted to the 50% claim of the Appellants therein (legal heirs of Ismail). He further submitted that since the Hon'ble Supreme Court has found that the

entire acquisition proceedings under the said Notification (covering the said land) is declared as null and void by the Hon'ble Supreme Court, the present Petition to the extent of the remaining 50% share of the Ibrahim, must also succeed.

9. Senior counsel Mr. A.S. Khandeparkar, appearing for the acquiring body (Respondent No. 5) has fairly admitted that Respondent No. 5 [acquiring body] had filed a Review Application as well as a Curative Petition for reconsideration of the said Order of the Hon'ble Supreme Court (Kulsum's judgment supra), however, the same has been rejected. He has also fairly conceded that the award, notification and the said land involved Kulsum's case is the same as that of the present matter. He however submitted that in another matter, in the case of another land, belonging to one Mr. Gopaldas Bhagwandas (but covered by the same notification), this Court has passed an order dated 31st July, 2015 in Writ Petition No. 1667 of 2002, allowing the Petition, on the basis of Kulsum's Order of Hon'ble Supreme Court. He submitted that, this Order was challenged by Respondent No. 5 in Hon'ble Supreme Court but, it was rejected by Order dated 4th February 2020 (*reported in 2020 SCC Online SC 217*). He submitted that however, again Respondent No. 5 has filed a Review Application against the said Order

dated 4th February 2020, pointing out that the necessary requirement of publication of the Section 4 Notification was complied with and the said Review Application is pending (No. 21334/2020). Based on this, he submitted that the present Petition should not be allowed at this stage and should wait till the outcome of the said Review Application No. 21334 of 2020. A copy of the memo of the pending review application in the Gopaldas Bhagwandas matter has been placed on record alongwith the review compilation in Kulsum's matter also. On a specific query raised by the Court to the learned senior counsel appearing on behalf of Respondent No. 5, he fairly submitted, on instructions, that the said Review Application No. 21334 of 2020, and which is pending, is not in respect of the present subject matter land - Survey No. 119 (Part-3) but in respect of some other land belonging to Gopaldas Bhagwandas which is covered by the same Notification.

10. We have perused the Review Application which was filed by Respondent No. 5 in Kulsum's case, which has been rejected by the Hon'ble Supreme Court. In that Review Application also, specific grounds were raised that necessary compliances with Section 4 of the Land Acquisition Act, 1894 [about publication of the Notification] had been done. However, the Hon'ble Supreme Court has already rejected

the said contention. We fail to see how in respect of the same Notification, again the same contention can be raised by Respondent No. 5. Be that as it may, it is for the Hon'ble Supreme Court to pass necessary orders in the pending Review Application filed in Gopaldas' case. So far as the present matter is concerned, the issue is already concluded by the Hon'ble Supreme Court and this Court cannot go beyond it. We say this because the land in question in the present matter is the very same land which was the subject matter of the decision of the Hon'ble Supreme Court in Kulsum's case (supra).

11. In view of the forgoing discussion, the Petition succeeds. The acquisition proceedings as well as the impugned Award dated 23rd September, 1986 are quashed and set aside to the extent of the Petitioners' remaining 50% share in S. No. 119 (Part-3) of Village Malad, Tal. Borivali, Dist. Mumbai-Suburban. Respondent No. 5 is directed to hand over possession of the Petitioners' 50% share in the said land, after removing its structures thereon, if any, within 8 weeks from today.

12. As far as prayer seeking invalidation of the Requisition Order No. WAR/90 dated 19th February, 1943 is concerned, the same has become infructuous in view of the statement made in paragraph 5.1 of the affidavit in reply dated 29.08.2017 filed on behalf of Respondent

No. 4 & 5, wherein it is stated that the subject matter survey No. 119 (Part-3) is de-requisitioned on 08.04.1974.

13. Rule is made absolute in the above terms. However, there shall be no Order as to costs.

14. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]

15. At this stage, the learned Advocate appearing on behalf of Respondent Nos. 4 and 5 seeks a stay of the operation and implementation of this Order.

16. We are not inclined to accept this request for two reasons. Firstly, We have granted 8 weeks' time for Respondent No. 5 to comply with the directions given in the Order. Secondly, this Order pertains to the very same land which forms the subject matter of a reported judgment of the Hon'ble Supreme Court in the case of *Kulsum R. Nadiadwala and Ors. V. State of Maharashtra & Ors. (supra)*.

17. For these reasons the application for stay of this Order is hereby rejected.

[M.M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]