

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

WRIT PETITION NO. 11728 OF 2017

Suhas Dattatray Modgi and Ors.

... Petitioners

Versus

The State of Maharashtra and Ors.

... Respondents

YUGANDHARA
SHARAD
PATIL

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Mr. Chidambar G. Gavnekar a/w Ashutosh Gavnekar, Rohit Parab
for the Petitioners.

Mr. R.S. Pawar AGP for the Respondent Nos. 1,4 and 5-State.

Mr. Akshay Shinde for Respondent No. 2-MMRDA.

Ms. Priyanka Bhadrashete i/b N.N. Bhadrashete for Respondent No.
3.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 23rd JANUARY, 2023

PC. :-

1. Rule. Mr. Pawar, learned AGP waives service for Respondent Nos. 1, 4 and 5. Mr. Shinde, learned counsel for Respondent No. 2 waives service. Ms. Priyanka Bhadarshete, learned counsel for Respondent No. 3 waives service. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this Petition filed under Article 226 of the Constitution of the India, the Petitioners seek writ of mandamus against Respondent

No. 1 to withdraw/cancel the impugned Notification dated 3rd September 1979 and to initiate fresh acquisition proceedings for the writ lands.

3. Petitioners also seeks writ of mandamus to set aside impugned decision dated 28th September 2016 and to determine the compensation payable to the Petitioners.

4. This matter was on board on 11th January 2023 when we perused the letter dated 16th September 2013 addressed by Respondent No. 3 informing BMRDA now MMRDA that, it is not possible for Respondent No. 3 for whom this writ property was acquired to pay compensation in the sum of Rs. 108.25 crores and accordingly requested to cancel the said acquisition. Respondent No. 2 MMRDA accordingly addressed a letter to the Town Planning Department, requesting to cancel the proposal of acquisition in respect of the writ property.

5. This Court accordingly observed that neither Respondent No. 3 requires the said land for any purpose nor the MMRDA seeks to pursue the said acquisition. This Court accordingly direct the State Government to make its position clear as to whether the said land

can be refused to be released from acquisition though Respondent No. 3 and MMRDA are not interested in pursuing the acquisition.

6. Mr. Pawar, learned AGP on behalf of the State tendered a copy of letter dated 22nd January 2023, to the learned AGP requesting adjournment on the ground that the State Government will seek information from MMRDA regarding acquisition.

7. MMRDA has already made its stand clear before this Court on 11th January 2023 based on the requisition made by Respondent No. 3 that it was not in a position to pay the compensation amount of Rs. 108.25 crores and had requested to cancel the said proposal. In view of the statement already made by MMRDA, we are not inclined to grant any adjournment on the request made by learned AGP. Under Section 32 of the Mumbai Metropolitan Region Development Authority Act, 1974, the State Government acquired the writ property on the request made by the MMRDA. MMRDA had taken such steps on the request made by Respondent No. 3. Respondent No. 3 does not require the land and had accordingly communicated to MMRDA to inform the State Government, requesting not to proceed with the acquisition and/or cancel the said requisition.

State Government now cannot refuse to release the writ property from acquisition though Respondent No. 3 and MMRDA do not propose to continue the acquisition. Accordingly, we pass the following order.

ORDER

- a) Writ Petition is allowed in terms of prayer clause (a).
- b) The amount deposited by MMRDA in this Court is directed to be released within four weeks from the date of communication of this order.
- c) Registry of this Court is to act on authenticated copy of this order.
- d) It is made clear that in view of the relief granted in terms of prayer clause (a) of the Petition, all subsequent steps taken by Respondent No. 1 are also quashed and set aside.
- e) Rule is made absolute. No order as to costs. Parties to act on an authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]

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