

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 264 OF 2018

Hrishikesh B. Mhatre

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

Mr. Rajiv Narula a/w Mr. Taran Jatiani i/b M/s Jhangiani, Narula and Associates for the Petitioner.

Mr. Himanshu Takke a/w Mr. Amit Shastri AGP for the Respondent Nos. 1 to 3-State.

Ms. R.M. Hajare i/b Mr. Sunil Sonawane for Respondent Nos. 4 to 6-MCGM.

Ms. Vishakha Chaudhary, Sub Engineer (DP) MCGM present in the Court.

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

DATE : 6th JANUARY, 2023

PC. :-

1. Rule. The learned AGP waives service for Respondent Nos. 1 to 3. Learned Counsel for MCGM waives service for Respondent Nos. 4 to 6. Rule is made returnable forthwith.

2. By this Petition filed under Article 226 of the Constitution of the India, the Petitioner seeks writ of certiorari for quashing and

setting aside mutation entry No. 1848 dated 13th August 2015 in respect of the subject property and also seeks a writ of mandamus against Respondents not to act on award dated 31st March 1973 and declaring the acquisition proceedings as lapsed under the Land Acquisition Act and under Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The subject matter of the property is described in paragraph no. 3 of the Writ Petition as follows.

The subject matter of the present petition is a property bearing Survey No. 89/2 (corresponding to CTS No. 650), Survey No. 76/11 (corresponding to CTS No. 677), Survey No. 78/1, 78/2 and 78/6 (Corresponding to CTS Nos. 635, 640 and 670) situated at Kandivali, Mumbai Suburban District, admeasuring 10 Gunthas, equivalent to 6,221.84 sq. mtrs.”

4. Municipal Corporation has filed an Affidavit-in-Reply dated 6th October 2022 in respect of these properties. In paragraph No. 5(e), the Corporation has described the details of the acquisition proceedings and declaration of Award in respect of some of the properties. It is stated that permission for residential development

on land bearing CTS No. 631, 635 of village Kandivali for which award was not declared and notification lapsed, development permission was granted in the year 1998, the proposal was thereafter transferred to SRA in the Special Planning Authority. So far as Mutation Entry No. 1848 dated 14th August 2015 is concerned, it is stated in the affidavit that Deputy Collector has issued letter dated 07.07.2015 to Tahsildar, Borivali and City Survey Officer, Borivali for entering the name of Acquiring Body i.e. Municipal Corporation in 7/12 extract and property card. It is further stated that cognizance of granting development permission in favour of the Petitioner has not been considered while taking Mutation Entry. In paragraph no. 10 of the said Affidavit-in-Reply it is stated that since the possession of the land has not been taken over by the Municipal Corporation, the Petitioner has no right to claim any relief against the Municipal Corporation. In paragraph No. 11 it is stated that the Municipal Corporation has not acted upon award dated 31st March 1973. In so far as Mutation Entry No. 1848 is concerned, he stated that Petitioner has to approach competent authority i.e. the Deputy Collector, Land Acquiring No. 4. In paragraph no. 12 it is stated that Mutation Entry No. 1848 dated 14th August 2022, Survey No. 62,

Hissa No. 2 is also included which is in possession of the Municipal Corporation as per possession receipt and the same is required to be retained in the name of the Municipal Corporation.

5. Mr. Narula, learned counsel for the Petitioner, on instructions states that the property bearing Survey No. 62, hiss no. 2 bearing CTS No. 528 is not involved in this petition and thus Petitioner is not concerned with the said land.

6. We also perused the prayers made in the Writ Petition. The Petitioner has prayed for writ of certiorari for quashing and setting aside mutation entry No. 1848 dated 13th August 2015 in respect of the subject property and has also applied for relief for declaration that the acquisition proceedings terminated in Award dated 31st March 1973 shall be declared as lapsed in view of subsequent events and in view of the fact that Petitioner had carried out development on the said property.

7. In view of clear stand taken by Municipal Corporation in the affidavit-in-reply, Petitioner has made out case for grant of relief as

prayed. We accordingly pass the following order.

- (i) Writ Petition is allowed in terms of prayer clauses (a) and (b).
- (ii) Revenue Authority is directed to delete Mutation Entry No. 1848 dated 13th August 2015 in respect of subject property, as stated in paragraph no. 3 of the petition within six weeks from communication of this order.
- (iii) Learned Counsel for Corporation to communicate this order to the Revenue authority for information and compliance.
- (iv) Parties to act on an authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]