

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

WRIT PETITION NO. 222 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 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 for direction to Respondents not to act on award dated 31st March 1973 and declaring the acquisition proceedings as lapsed under 1894 Act and under Section 24 of the 2013 Act.

3. The description of the subject matter of the property as stated in paragraph no. 3 is reproduced below:-

“The subject matter of the present petition is a property bearing Survey No. 33/12 and 17 (corresponding to CTS Nos. 850 and 857), Survey No. 34/7 (corresponding to CTS No. 815), situated at Kandivali, Mumbai Suburban District, admeasuring 2 Acres, 36 Gunthas, equivalent to 7,688.78 sq. mtrs.”

4. We have heard learned counsel for the Petitioner and learned counsel for the Respondents.

5. Perusal of Affidavit-in-Reply affirmed by Executive Engineer of the Municipal Corporation dated 6th October 2022 shows that Corporation has clearly accepted that there is no question of taking possession of writ properties i.e. land bearing CTS Nos. 850, 857 and 815 out of the earlier survey numbers because these lands are withdrawn from the acquisition proposal as per memorandum dated

23rd November 1967 issued by the Government of Maharashtra, Revenue and Forest Department. Sub paragraph no. f and g of paragraph no. 5 of the said affidavit reads thus:-

“f. From the files/records available in this office in respect of the aforesaid acquisition proceedings, it is seen that the acquisition proceedings had been dealt by the office of Special Land Acquisition Officer (S.L.A.O.3) on behalf of State Govt and by the office of the Administrative Officer (Estates), Bombay Municipal Corporation. As per Memorandum dated 23.11.1967 issued by Under Secretary to the Government of Maharashtra Revenue and Forest Department, informed to then S.L.A.O.3 with reference to his letter dated LAQ/102/1177 dated 10.11.1967, that the some of the lands was withdrawn from the acquisition proposal which is sanctioned, which includes the land under reference i.e. S.No.33/12pt (CTS No. 850), 33/17(CTS No. 857)&34/7(CTS No. 815).

g. On going through Mutation Entry No. 1848 dated 14.08.2015, it appears that Dy.Collector (Land Acquisition) No. 4, MSD has issued letter dt. 07.07.2015 to Tahsildar, Borivali and City Survey Officer, Borivali for mentering the name of Acquiring Body i.e. MCGM on 7/12 extract and PR card of some parcels of land of Village Kandivali, based on Awards declared in past for the acquisition of lands for the

public purpose of 'Shifting of Industries' at Kandivali(W). On receipt of letter dt. 07.07.2015 along with Award copies from Dy.Collector (Land Acquisition) No. 4,MSD, Tahsildar, Borivali and directed Circle Officer, Borivali for taking Mutation Entries on 7/12 extract of land. Mutation entry No. 1848 dated 14.08.2015 for land under reference. It seems that cognizance of above stated memorandum dated 23.11.1967 withdrawing certain lands from acquisition has not been considered while taking mutation entry by circle officer. As such, details of the same shall be obtained from Deputy Collector(Land Acquisition) No. 4 Mumbai Suburban District as Mutation Entry No. 1848 dated 14.08.2015 is recorded by Talathi, Kandivali as per direction from Dy. Collector(MSD)."

6. It is further stated by Corporation in para 12 of the affidavit that in Mutation Entry No. 1848, Survey No. 62, Hissa No. 2 is also included i.e. CTS No. 528 which is in possession of Corporation and hence the same is required to be retained in the name of the BMC. Mr. Narula, learned Counsel for the Petitioner on instructions states that Petitioner has nothing to do with CTS No. 528.

7. Since the writ properties are withdrawn from the acquisition

proposal itself, the impugned mutation entry cannot apply thereto. For the same reason impugned award also cannot apply to the writ properties.

8. In that view of the matter, we are satisfied that the Petitioner has made out case for grant of relief as prayed. Hence, we 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.
- (iii) Parties to act on an authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]