

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17261 OF 2024

G. B. Industries through its Partners ...Petitioner
Vs.
Smt. Minakshi Balasao Magdum & Ors. ...Respondents

Mr. Shrikrishna Ganbavle with Mr. Ruturaj Pawar and Mr. Dheeraj Patil for
Petitioner.

Mr. Prasad Kulkarni for Respondent Nos.1 to 3.

Mr. A. I. Patel, Addl. GP with Ms. M. S. Bane, AGP for State/ Respondent
Nos.4, 5 & 7.

Mr. Nitin Deshpande for Respondent No.6.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATE: 10 DECEMBER 2024.

P.C.

1. On 28 November 2024, we had passed an order directing Mr.
Tejusing Pawar to file his affidavit in terms of our observations made in
paragraphs 14 to 19. The said observations read thus:-

“14. On the aforesaid premise purporting to be aggrieved by
such action on the part of the official respondents who may
proceed with the land acquisition, the present petition has been
filed for the reliefs as noted by us hereinabove.

15. However, it appears that the Additional Collector also
played at the hands of the petitioner when he addressed a letter to
respondent Nos.1 to 3 dated 26 September 2024 that as the
proceeding of the suit and this petition was pending, further
proceedings on the land acquisition cannot be taken although
complied in respect of other lands. Thus, respondent Nos.1 to 3
were suffering not only at the hands of petitioner but also from the
Additional Collector. In these circumstances respondent Nos.1 to 3
were required to also approach this Court in the proceedings of
Writ Petition No.16858 of 2024 (Meenakshi Balaso Magdum &
Ors. Vs. G. B. Industries & Ors.) the companion petition. On such

petition on 21 November 2024 after hearing the learned counsel for the parties we have passed the following order:

1. We are informed by Mr. Haridas, learned counsel for the petitioner that respondent nos. 1A and 1B have filed a Writ Petition in this Court raising issues, similar to the subject matter of the present proceedings, namely, the acquisition of the land of the ownership of the petitioner for the Kolhapur Airport.
2. The case of the petitioner is that respondent nos. 1A and 1B were licencees of the petitioner under a Leave and Licence Agreement, hence they would not have any legal right of the nature of ownership or otherwise except what the licence would confer. His contention is that the Collector, Kolhapur/respondent no. 2 as also the Competent Authority/respondent no. 3 are playing at the hands of respondent no. 1 and are not proceeding with the acquisition giving some credence to the case of these respondents although not explicitly. This despite a specific order passed by the Civil Court in a Civil Suit, which does not recognize any legal right of respondent nos. 1A and 1B.
3. Prima facie we see substance in the contentions as urged on behalf of the petitioner. We need to hear respondent nos. 1A and 1B, as to whether merely on a Leave and Licence Agreement any right questioning acquisition or any right in the compensation can at all be claimed by respondent no. 1A and 1B and that too after the substantive relief in this regard having being rejected or not granted by the Civil Court.
4. Considering such conspectus, we are more concerned with the approach of the Collector as also the Competent Authority, Sub-Divisional officer Karveer as to why the land acquisition proceedings are delayed to the prejudice of the petitioner.
5. Issue notice to respondent nos. 1A and 1B, returnable on 28 November, 2024. Learned advocate for the petitioner is permitted to serve respondent nos. 1A and 1B by all permissible modes and place on record an affidavit of service before the returnable date. If despite service respondent nos. 1A and 1B are not represented on the adjourned date of hearing, the Court shall proceed to hear the appearing parties considering that respondent nos. 1A and 1B are not interested to contest the present proceedings.
6. Accordingly, list this petition on **28 November, 2024 (H.O.B.)** along with Writ Petition (St.) No. 27634 of 2024 filed by respondent nos. 1A and 1B.
7. Let copy of this order be also forwarded by the learned AGP to the concerned officer.

16. Mr. Ganbavle, learned counsel for the petitioner has limited submissions. He has drawn our attention to the documents as placed on record. Mr. Ganbavle's contention is primarily that the petitioner have a legal right in the land belonging to respondent Nos.1 to 3. He began his arguments by contending that the petitioner had become tenants and which according to him, is also admitted by respondent Nos.1 to 3 in the written statement as filed. When a query was made Mr. Ganbavle whether the written statement would unequivocally go to show that there is tacit acceptance of the tenancy throughout in the written statement, Mr. Ganbavle could not make this position good, and clearly so, in view of the categorical stand taken by respondent Nos.1 to 3 that the petitioner had no legal right after the license in respect of the land in question had expired, and much less to assert any right to compensation or of any tenancy, considering the specific clauses of the leave and license agreement. Mr. Ganbavle however, would submit that there is a valuation report in respect of the shed as set up by the petitioner, as if to give an impression to the Court that such valuation report is at the behest of the respondent Nos.1 to 3. He states that the shed was valued at Rs.17 Lakhs. However, Mr. Ganbavle is not in a position to demonstrate that at any point of time and in any manner whatsoever, respondent Nos.1 to 3 had asserted any amounts, on the valuation of the said shed as undertaken. In fact, on behalf of the respondent No.1 to 3, Mr. Haridas has pointed out to us clause-2 of the leave and license agreement of which we have made a mention hereinabove, that the petitioner were required to remove the shed after the license period was to expire. However, it appears from Mr. Ganbavle's contention that putting of this shed was sought to be exploited to the advantage of the petitioner, so as to assert rights not only of the tenancy but also in respect of the land acquisition compensation, knowing well, that by merely having open land (subject matter of leave and license), no tenancy could have been claimed under the Maharashtra Rent Control Act, 1999. Mr. Ganbavle, however, would submit that the petitioner need to be permitted to claim compensation on such rights as asserted in the petition, before the land acquisition authorities. Now he says that the claim for compensation would be qua the shed. Mr. Ganbavle, however, could not dispute that the petitioner had claimed / asserted a wholesale tenancy rights qua the land in question and such assertion had been already rejected by the Civil Court, in rejection of the petitioner's injunction application. Also to this effect the petitioner could not obtain any order in the Appeal by it before the District Court. Nonetheless Mr. Ganbavle has verbose arguments that the prayers as made in the petition be considered by the Court and relief as prayed for be granted.

17. On the other hand, Mr. Haridas, learned counsel for respondent Nos.1 to 3 submits that the petitioner have no legal right whatsoever. He has submitted that the petitioner have not

only instituted proceedings before the Civil Court but have made applications before the authorities asserting compensation without any legal right on the property in question. He submits that the petitioner has dragged respondent No.1 -widow into unwarranted proceedings which are in the nature of sheer harassment and as categorically asserted by respondent No.1 to 3 before the Civil Court in the written statement. It is his submission that having not succeeded in the injunction application, there was no legal right whatsoever which could be asserted by the petitioner in the present proceeding before this Court, and more particularly, when all such contentions as raised were subject matter of consideration in the Civil Suit as also in the pending appeal of the petitioner. It is hence the submission that the present proceedings are clearly an abuse of process of law and are required to be accordingly dismissed with exemplary costs.

18. Mr. Deshpande has represented respondent No.6 being the acquiring body. We have perused the documents which are relevant so far as Mr. Deshpande's client is concerned from which we were of the clear impression that the concerned officer namely Mr. Tejsingh Pawar, Additional Collector has not acted fairly and more particularly, in our opinion, overlooking and/or misconstruing the orders of the Civil Court and when he addressed the communication dated 26 September 2024 to the Deputy Collector which reads thus :-

(Translation of a photocopy of a LETTER, typewritten in Marathi).

MAHARASHTRA AIRPORT DEVELOPMENT
COMPANY LIMITED

(Government of Maharashtra Undertaking)

Tele. No. -----, Fax No. 022-22163814

CIN : U45205MH2002SGC1360/79

EXHIBIT 'U'

No. MADC-2017/M.No.09/LA/885 Date :26.09.2024

To,
The Sub Divisional Officer,
Karvir Division, Kolhapur,
Swarajya Bhavan, Nagala Park,
District – Kolhapur – 416003.

Subject : Regarding acquiring the area admeasuring
0.96 Hectare-Are from out of the land
bearing Gat No. 288/A/1 to 3, situated at
Village – Mudshingi, under the project of
Expansion of Kolhapur Airport.

Reference : Your Letter bearing No. L.A./Va. Shi./
1472/2024, dated 12.09.2024.

In pursuance of the matter under the subject noted above, a proposal for acquisition of land by way of Direct Sale has been received under the letter referred to hereinabove. When scrutiny into the said proposal is made, it is found that the Suits Proceedings going on in respect of the land bearing the said Gat Number have not been disposed of and that the same are pending. Further, the affected Party, concerned in the said Suit, has filed a Writ Petition before the Hon'ble Bombay High Court and the Maharashtra Airport Development Company has been made as a Party i.e. Respondent No.6 in the said Petition. Taking into consideration the contents of the aforesaid Paragraph, as the said matter is still pending before the Court, the concerned land cannot be purchased by way of Direct Sale by private negotiations.

(Signature Illegible)
26.09.2024.
[Tejusing Pawar]
Additional Collector.”

19. The aforesaid letter was in the teeth of what was communicated to him by the Sub-Divisional Officer vide letter dated 12 September 2024 which recorded that the petitioner could not get any relief in its injunction application filed before the civil Court. Mr. Deshpande on instructions of the said officer submits that such officer is apologetic of his conduct and he is willing to file affidavit tendering unconditional apology for having misconstrued the orders of the Civil Court in addressing such communication, although in concluding the other acquisitions, for such reason delaying to conclude acquisitions of the land in question by negotiation. We accept Mr. Deshpande's statement however with a warning to the said Officer that in future, he shall not repeat such actions and shall be extra careful. The affidavit of such officer be placed on record within one week from today.”

2. In pursuance thereof, Mr. Tejusing Pawar has filed an affidavit dated 04 December 2024, which as recorded by us in our order dated 06 December 2024, was wholly unacceptable. The observations made by this Court in the order dated 06 December 2024 are required to be noted which read thus:-

“1. Today Mr. Deshpande has tendered an affidavit of Mr. Tejusing Pawar, Additional Collector in regard to the concerns and his conduct as noted by us in paragraphs 18 and 19 of the order dated 28 November 2024. We are not satisfied with this affidavit at all. Mr. Deshpande is at pains to inform that even as an officer of the Court, he is not agreeable to such affidavit as filed by Mr. Tejusing Pawar, Additional Collector. It, therefore, appears to be very clear that our observations in the orders, are not followed by the officer in filing the affidavit, as also what has been informed by us is that he appears to be an obstinate officer. The said affidavit is taken on record.

2. We may also observe that the conduct of Mr. Pawar in filing such affidavit is, in fact, in breach of our orders and for which we reserve to pass appropriate orders in this regard, on the adjourned date of hearing.

3. We therefore direct Mr. Tejusing Pawar, Additional Collector to remain present in this Court as he has refused to file an affidavit as observed by us in paragraph 19. However, in the event the officer is inclined to place on record an appropriate affidavit, the same be submitted through the Advocate representing respondent No.4, there shall not be any further adjournment. If such an affidavit is not placed on record on the adjourned date of hearing, our directions to remain present the said officer before the Court, shall operate.

4. We may also note that the observations as made against Mr. Pawar are quite serious and more particularly acting as a Public Officer, we may request the Secretary, Ministry of Revenue to take note and examine the conduct of this officer and more particularly dealing with the Court orders and an appropriate view in this regard be taken and a report / compliance in this regard be placed on record of this Court.

5. Insofar the petitioner – G.B. Industries is concerned, as observed by us in the order dated 2 December 2024 a cheque of the cost as awarded by us was handed over to respondent No.1 and the same is now stated to have been encashed.

6. In this view of the matter, we accept the compliance of our orders and vacate the directions as issued by us in paragraph 26. The result would be that the petitioner is free to operate all its bank accounts. The banks to act on the authenticated copy of this order.

7. Only insofar as the compliance of our orders dated 28 November 2024 in relation to the affidavit of Mr. Tejusing Pawar, we adjourn the proceeding to 10 December 2024. First on Board.”

3. In pursuance of such order, an additional opportunity was being made available to Mr. Tejusing Pawar, Additional Commissioner,

Maharashtra Airport Development Company Ltd. Today an affidavit is placed on record which is dated 09 December 2024 whereby Mr. Tejusing Pawar has tendered his unconditional apology for his actions of which a serious note is taken by this Court. We need to extract the contents of the said affidavit which reads thus:-

“1) At the outset, I submit that I have carefully gone through the order dated November 28, 2024 and 06.12.2024 passed in the above matters. I have also gone through Para Nos. 18 and 19 of the order dated 28.11.2024. I tender my unconditional apology for overlooking/misconstruing the order of the Civil Court in my letter dated 26.09.2024 addressed to the Sub-Divisional Officer, Sub-Division Karveer, Kolhapur. I am sorry for the observations made by this Hon’ble Court in Para Nos.18 and 19 of the said order. I assure this Hon’ble Court that I shall not repeat such actions and shall be extra careful. I also assure this Hon’ble Court that I shall complete the acquisition by negotiation within the time stipulated by this Hon’ble Court.

2) I have also gone through the order dated 6.12.2024. I am extremely sorry for the circumstances under which observations are made by this Hon’ble Court in the said order. I tender my unconditional apology for tendering an Affidavit, which was not as per the observations made by this Hon’ble Court in para Nos. 18 and 19 of the order dated 28.11.2024 in this Writ Petition. I reiterate that I shall be extra careful in future in my official duties.

3) I once again tender my unconditional apology for the observations that were required to be made by this Hon’ble Court in its order dated 28.11.2024 and 6.12.2024.”

4. Only as a matter of indulgence and considering that these statements as made by Mr. Tejusing Pawar would remain solemn for all times to come, we accept the apology of Mr. Tejusing Pawar, however, sounding a note of caution to this officer that henceforth, all his actions in the service of the State Government and as a Public Officer / Public Servant shall strictly be in accordance with law and no conduct or action whatsoever of this officer

shall be such which would in any manner, cause any prejudice or breach the rights of the citizens much less intentionally. In other words, this officer is required to exercise all care and caution in discharging his official duties. It is on this caution, we have accepted the affidavit and the apology as tendered by Mr. Tejusing Pawar.

5. In this view of the matter, further orders are not required to be passed. We record compliance. The petition is already disposed of by our order dated 28 November 2024.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)