

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9655 OF 2024

M/s. Shree Tirupati Developers

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. Atul Damle, Senior Advocate with Mr. Sandeep Mishra for Petitioner.

Ms. P. J. Gavhane, AGP for State.

Mr. G.S. Hegde, Senior Advocate with Ms. Pinky Bhansali for Respondent/MMRDA.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATED: 23 AUGUST 2024.

P.C.

1. *Prima facie* we are of the opinion that in regard to the acquisition of the petitioner's land, which is stated to be at the behest of the MMRDA, so far no procedure under law governing land acquisition has been followed.

2. Mr. Hegde, learned senior counsel for the Mumbai Metropolitan Region Development Authority Act, 1974 (for short, "MMRDA Act") has placed reliance on the provisions of Section 35 of the MMRDA Act to contend that the land acquisition compensation would be required to be determined as per the said provision. However, it appears to us that for Section 35 to be applicable, prior procedure, namely, issuance of notification under section 32 of the MMRDA Act itself has not taken place.

3. Mr. Hegde would not dispute that the petitioner is entitled to compensation, he, however, submits that the State Government has to clarify as to whether the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, “2013 Act”) read with the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”) needs to apply, or whether the provisions of Chapter VIII of the MMRDA Act, and more particularly Section 35 thereunder, which provides for ‘basis for determination of amount for acquisition of lands in municipal areas’, would become applicable.

4. The fact remains that under such labyrinth, the possession of the petitioner’s land is taken over by the MMRDA, without payment of compensation to the petitioner and is stated to have commenced the public work in question.

5. Respondent no.4, who is the land acquisition officer, as also respondent no.1-State Government have not filed any reply affidavit.

6. From the arguments as advanced at the Bar, it appears to us that the petitioner has taken a fair position that the physical possession of the land be handed over to the MMRDA for the public works in question, however, with a legitimate expectation that the petitioner would be paid

compensation for acquisition of the petitioner's land. As the petitioner was not being paid compensation, the present petition was filed.

7. Although Mr. Hegde has taken the position of the aforesaid uncertainty in regard to the applicability of appropriate law, his submission is that the State Government be directed to clarify the correct position on the applicability of the law. He would also submit that the stand of the MMRDA is that the compensation would be required to be paid as per the provisions of Section 35 of the MMRDA Act. His contention is also that the provisions of the Unified Development Control and Promotion Regulations for Maharashtra State (for short, "UDCPR") and more particularly paragraph 5.2 thereunder would become applicable. We, however, find that the UDCPR have been issued under the provisions of the MRTP Act as seen from page 282 of the paper-book. These are not regulations under the MMRDA Act.

8. Be that as it may, the fact remains that the MMRDA itself is not certain under what law the land of the petitioner would be required to be acquired, i.e., whether under the provisions of the MMRDA Act or UDCPR read with the provisions of the MRTP Act, or the 2013 Act, and it is in such state of confusion that the petitioner is kept deprived of the compensation for his land, possession of which is already taken.

9. There is also some dispute in regard to the possession receipt which we do not intend to delve at this stage of the proceedings, inasmuch as it does not appear to be disputed that the possession of the petitioner's land, reserved for public purpose, has been taken over, and the tunnel work has already been commenced.

10. Before we proceed to pass further appropriate orders on the petition on considering the position in law, as may be urged by the parties and applicable to the facts of the present case, we are of the clear opinion that the MMRDA as also the State Government need to take an appropriate position to inform the Court as to in what manner the petitioner would be compensated either under an agreement or by an appropriate procedure the law would mandate. We are also of the *prima facie* opinion that considering the contention of the MMRDA that the acquisition is under the UDCPR, then it is likely that the provisions of the MRTP Act would become applicable.

11. The fact, however, remains that today the petitioner is rendered landless without an award being declared and without payment of compensation as the law would prescribe. The public works in question is already being undertaken. In such scenario, Mr. Damle, learned senior counsel for the petitioner has submitted that either the petitioner needs to

be compensated, that is the land acquisition compensation needs to be paid to the petitioner, or the possession of the land in question is required to be restored to the petitioner. We shall consider such plea as urged on behalf of the petitioner on the adjourned date of hearing. However, before that we give a final opportunity to the MMRDA and the State Government to place on record an appropriate position in regard to the issues as noted by us hereinabove. This be addressed by filing a further affidavit which be confined to the legal position on the petitioner's entitlement to the land acquisition compensation. Let such affidavit be placed on record well in advance before the adjourned date of hearing.

12. List the proceedings on 30 August, 2024 (H.O.B.).

13. At this stage, Mr. Damle submits that the MMRDA is to proceed to demolish the existing structures on the land and that too in the situation of such uncertainty, hence the petitioner's prayers for interim reliefs in terms of prayer clause (c) be considered. Before we consider the interim prayers, as an ad-interim measure, we are of the opinion that the work in regard to the tunnel can proceed, however, any structure of the petitioner existing as on date be not demolished till the adjourned date of hearing. Ordered accordingly.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)