

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9655 OF 2024

M/s. Shree Tirupati Developers through Properiter ...Petitioner
Versus
The State Of Maharashtra Thr. The Secretary & Ors. ...Respondents

Mr. Sandeep Mishra a/w Prakash Mishra for Petitioner.

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

Mr. G. S.Hegde, Sr. Adv. i/b Ms. P. M. Bhansali for Respondent/MMRDA.

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

DATE: 26 SEPTEMBER 2024

P.C.

1. We have heard learned counsel for the parties on this petition filed under Article 226 of the Constitution of India where the basic grievance of the petitioner is that the possession of the petitioner's land although was handed over to respondent No.2 for the purpose of construction of twin tunnels between Thane and Borivali, no steps were being taken to acquire the land in a manner known to law.

2. The substantive prayers as made in the petition are required to be noted which reads thus:

“a) The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to 4 jointly or severally to follow the procedure of land acquisition act and thereby to pay the petitioner monetary compensation for the acquisition of the said land of the petitioner under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

b) The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to 4 to consider and finalize the monetary compensation in pursuance of the letter dated 20.02.2024 made by the petitioner addressing to the chief social development cell of respondent no. 2.

c) The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 & 3 to stop the further work of construction of Thane Borivali Twin Tunnel Road project on the said land of the petitioner till payment of monetary compensation in lieu of acquisition of the said land of the petitioner is finalized and paid to the petitioner.

d) The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to 4 not to take any drastic action in respect of said existing structures lying on the said land of the petitioner till finalization of the monetary compensation and payment to the petitioner in lieu of acquisition of said land of the petitioner.”

3. It is on such premise, we had heard the learned counsel for the parties on the earlier occasions and we had passed a detailed order on 23 August 2024 which needs to be noted hereunder:

“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."

4. In pursuance of the aforesaid order, on behalf of the respondent Nos.2 & 3 / MMRDA an affidavit of Shri Pankaj Sonawane, **ACDO** with respondent / MMRDA is placed on record dated 23 September 2022. In such affidavit, it is conceded on behalf of the MMRDA that the MMRDA is willing to pay compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "**2013 Act**") and to that effect MMRDA has already vide its letter dated 23 August 2024 informed the SLAO to initiate process for calculating and deciding the compensation payable as per the said Act and pass an award, accordingly. Paragraph No.3 of the said affidavit which would redress the grievance of the petitioner, is required to be noted which reads thus:

"3. I say that MMRDA is willing to pay compensation as per the LARR Act, 2013 and MMRDA has already vide its letter dated 23 August 2024 informed the SLAO to initiate process for calculating and deciding the compensation payable as per the said Act and pass an award accordingly. Hereto annexed and marked as **Exhibit- 'A'** the copy of the said letter dated 23 August 2024."

5. Learned counsel for the petitioner however has drawn our attention to paragraph No.4 of the affidavit which according to him would create an ambiguity, the said paragraph reads thus:

“4. I say that as and when the said award is passed by the SLAO, subject to the rights and contentions of MMRDA, the Respondent MMRDA shall pay the compensaation to the petitioners.”

6. We had called upon Mr. Hegde, learned senior counsel for MMRDA to explain as to what would mean by paragraph No.4. Mr. Hegde however on taking instructions of the deponent of the affidavit who is present in the Court fairly states that the MMRDA shall delete paragraph No.4 from the affidavit. Thus, for the purposes of record paragraph No.4 stands deleted and shall not form part of the record of the affidavit.

7. In this view of the matter, in our opinion, the petition would not require further adjudication as the primary contention and grievance of the petitioner in regard to no steps being initiated to acquire the land and to pass an award, has now been redressed as MMRDA has taken a fair position that the petitioner would be paid a compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8. We are accordingly inclined to dispose of this petition by the following

order:

ORDER

I. The Special Land Acquisition Officer shall accordingly take steps to acquire the petitioners land and as per the intimation received by him vide MMRDA's letter dated 23 August 2024 and proceed to pass an award within a period of four months from today.

II. Insofar as the quantum of the compensation which may be arrived at, all rights and contentions of the parties are expressly kept open in accordance with law.

9. Needless to observe that the Special Land Acquisition Officer shall take all preliminary steps in regard to the measurement, survey, assessment of the structure etc. to be jointly undertaken for any further demolition and thereafter proceed to make an award, as per the provisions of 2013 Act.

10. Disposed of in the above terms. No costs.

11. Interim orders passed earlier shall accordingly stand vacated. The MMRDA is permitted to proceed with the work subject to the above observations.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)