

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 750 OF 2024

Habib Bismilla Khan

... Petitioner

*Versus*

The State of Maharashtra Thr. Deputy Collector  
(Land Acquisition) – 4

...Respondent

AND

WRIT PETITION NO. 479 OF 2024

(APPELLATE SIDE)

Jyoti Balkrishnan Shah

... Petitioner

*Versus*

The Municipal Corporation for Greater Mumbai &  
Ors.

...Respondent

Mr. Omar Khaiyam Shaik, for Petitioner in WP No.750 of 2024.

Mr. Sachin Dhakephalkar, for Petitioner in WP No.479 of 2024.

Mr. Atul Damle, Sr. Advocate a/w Ms. Anuja Tirmali i/b S. K. Sonawane,  
for BMC in WP No.750 of 2024.

Mr. R. Y. Sirsikar, for Respondent No.1 / BMC in WP No.479 of 2024.

Mr. Himanshu Takke, AGP for State in WP No.750 of 2024.

Ms. M. S. Bane, AGP, for State in WP No.479 of 2024.

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

DATED: 25 July 2024

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P.C.

1. These are two petitions. The petitioner in both these petitions are interested to receive the compensation in respect of a land which is subject matter of reservation by the Municipal Corporation for the purpose of a recreation ground. It is for the Municipal Corporation to ultimately take an

appropriate decision whether to acquire this land for the purpose for which it is reserved. It also appears to be the case of the Municipal Corporation that the land is encroached. For convenience, we note the prayers as made in both these petitions. In Writ Petition No.750 of 2024 substantive prayers read thus:

- “a) To admit the present Writ Petition and issue Rule;
- b) To issue writ of *mandamus* or any other appropriate writ in the nature of *mandamus*, order or direction against the Respondent No.1 to pass award in the ongoing Acquisition Proceedings bearing No.LAQ/243 and pay the amount so awarded to the Petitioner alone;
- c) To issue writ of mandamus or any other appropriate writ in the nature of mandamus order or direction against the Respondent No.2/MCGM to deposit the amount of award that may be passed by the Respondent No.1, with the Respondent No.1; d) To issue writ of mandamus or any other writ in the nature of mandamus, order or direction against the Respondent No.1 to initiate appropriate proceedings to bring back the amount of ₹3,13,00,000/- wrongly paid to the Respondent No.3/Jyoti Shah;
- e) To issue writ of certiorari or any other writ in the nature of certiorari order or direction interalia quashing the Circular dated 15th October 2019 (at Exhibit - AG) being ultra vires the provisions of The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013, the MRTP Act, 1966 and the MMC Act, 1888;
- f) In the alternative, this Hon'ble Court be pleased to declare that the acquisition has lapsed in the light of (i) no award having been passed till date, (ii) no compensation paid, and (iii) the Petitioner continues to be in possession thereof;”

In Writ Petition No.479 of 2024 substantive prayers read thus:

- “(a) This Hon'ble Court be pleased to issue writ of mandamus, or a writ, order or direction in the like nature or any other appropriate writ, order or direction to the Respondents to continue and complete the Acquisition process of the Petitioner's land bearing C.S. NO. 1(P), S. NO. 161 (P) admeasuring 5705.60 Sq. Meters situated at Mouje- Pahadi

Goregaon, Taluka- Borivali by depositing the Award amount with interest as per the provisions of LARR-Act-2013 forthwith and also as per the directions of Respondent No.4 i.e. Additional Chief Secretary, Urban Development Department State Government vide Order dated 28/03/2023 as well as the Letter dated 02/05/2023 of the Municipal Commissioner of Mumbai Municipal Corporation.

(b) This Hon'ble Court be pleased to issue writ of mandamus, or a writ, order or direction in the like nature or any other appropriate writ, order or directions to the Respondents not to grant any sort of permission for construction on the Petitioner's land bearing C.S. NO. 1(P), S. NO. 161 (P) admeasuring 5705.60 Sq. Meters situated at Mouje- Pahadi Goregaon, Taluka- Borivali without permission of this Hon'ble High Court pending, hearing and final disposal of the present Writ Petition.

(c) Ad-interim relief in terms of prayer clause (b) above kindly be granted.

(d) Any other suitable relief to which the Petitioners may be deemed entitled to, be kindly granted in favour of the Petitioner.”

2. Considering the nature of the prayers and the plea as raised before us and also considering the earlier orders passed on this petition, we are of the opinion that in the event, the Municipal Corporation desires to acquire the land for the public purpose for which it is reserved, it is for the Municipal Corporation to set into motion the land acquisition procedure as known to law.

3. If that be so, it will be permissible for the State Government to acquire the land as per the provisions of the 2013 of Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. It would thus may not be possible to consider the prayers as made in both these petitions at this stage of the proceedings. We, accordingly, dispose of the

petition keeping open all contentions of the parties including the contention of the Municipal Corporation in regard to the acquisition in question.

4. Needless to observe that in the event, the land is sought to be acquired, proper procedure in that regard would be required to be followed and after hearing all the objections on the parties a appropriate award as known to law would be required to be passed. Therefore, we also keep open any issue in regard to the apportionment of the compensation.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)