



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4183 OF 2024

Kanaiyalal Purshottamdas Shah & Anr.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondent

Mr Vipul Shukla, Advocate for the Petitioner.

Ms Uma Palsuledesai, AGP for Respondent – State.

Mr Akshay Shinde, Advocate for MMRDA.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATE : OCTOBER 1, 2024

PC :

1. The Petitioner No.1 who is a Senior Citizen of 92 years age is before the Court being aggrieved by the total inaction on the part of the Respondent No.3 – the Executive Engineer, Mumbai Metropolitan Region Development Authority (“MMRDA”) who was appointed as a Special Land Acquisition Officer in regard to acquisition of the Petitioner’s land under Section 301 of the Mumbai Municipal Corporation Act, 1888.

2. It is not in dispute that the subject land belonging to the Petitioner No.1 was acquired for the Mumbai Metro Project and land acquisition Award dated 23rd August 2019 came to be published whereby the Petitioner No.1 has been awarded compensation of an amount of Rs.7,91,60,362/-. Copy of the Award is annexed to the Petition at page 86. The Petitioner No.1 however was not satisfied with the amount of compensation that was granted by the Award and accordingly, the Petitioner No.1 made a reference application to Respondent No.3. However, inadvertently, the Petitioner No.1 referred to the application under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for the reason that the Award had inadvertently referred to provisions of the said Act along with the provisions of Section 301 of the Mumbai Municipal Corporation Act, 1888. Be that as it may, we are of the opinion that although land has been acquired for the purpose of Mumbai Metro with the acquiring body being MMRDA, the acquisition also postulated that a road be constructed. In the peculiar facts of the case and after having perused the Award, we consider that the Petitioner would be entitled to be benefited by making a reference to be made under the provisions of

Section 301(4) of the Mumbai Municipal Corporation Act, 1888 before the Small Causes Court.

3. Mr. Shinde, learned counsel for the Respondent No.3/MMRDA has fairly agreed that the reference ought to be made to the Small Causes Court, as, in fact, his contention is that the acquisition is under the Mumbai Municipal Corporation Act, 1888.

4. Ms. Palsuledesai, learned Assistant Government Pleader would also not have any objection about the reference being made to the Small Causes Court.

5. In the aforesaid circumstances, we are of the clear opinion that it could not have been that the Petitioner No.1 is made remediless. Despite an application made by the Petitioner No.1 for making a reference for enhancement for compensation on 4th February 2020, inaction on the part of the Respondent No.3 cannot at all be countenanced. This more particularly considering that the Petitioner No.1 is a Senior Citizen of about 92 years of age. He could not have been dragged into litigation and

made to approach this Court in the present proceedings. In our opinion, it is a clear case of the Petitioner No.1 suffering prejudice at the hands of the Respondents.

6. Matters pertaining to MMRDA are regularly coming before this Court where either there is a gross delay in making payment of compensation, or in cases of present nature where for four years a reference is being delayed. We are not aware as to how many such matters are pending with the MMRDA and whether at the highest level, MMRDA is looking into all these issues.

7. Today, Mr. Shinde has neither any instructions nor has an affidavit been filed. He requests that a short reply be filed in this Petition. However, we are concerned not only with this Petition but larger issues. In the present Petition, we are certain that a reference needs to be immediately made and the same is required to be disposed of. But before we pass such order we need to hear the Commissioner, MMRDA on these issues, which in our opinion, are vital to protect the rule of law and more particularly concerning the constitutional rights guaranteed to the citizens under the Constitution of India including Article 300-A of the

Constitution of India. It cannot be a situation that such valuable rights of the citizens are being dealt in a such manner by the MMRDA in undertaking public projects that lands are taken away without passing an Award or that awards are made but no references are made for years together. We do not know how many more issues in regard to such acquisition affecting such valuable rights of the citizens are subject matter of applications pending with the MMRDA. We also cannot countenance a situation that the citizens are dragged into unwarranted litigation. The present Petition is a classic case of a person who is 92 years of age who is required to knock the doors of this Court for no fault of his.

8. In this view of the matter, we direct the Commissioner, MMRDA to remain present before the Court and explain to us as to what steps the Commissioner has taken to look into the issues of the citizens on land acquisitions and also explain to us as to why the concerned officers are not sensitive and alive to the valuable rights of the citizens. This apart, a short affidavit to the Petition dealing with the Petition be also placed on record so that appropriate orders as the law would mandate would be required to be passed including looking into the conduct of the Executive

Engineer of having delayed making a reference.

9. List the proceedings in Chambers at 1.15 pm on October 3, 2024.

[SOMASEKHAR SUNDARESAN, J.]

[G. S. KULKARNI, J.]