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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.4769 OF 2024

The Union of India, through
Deputy Salt Commissioner ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

ATUL
GANESH
KULKARNI

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Mr. Devang Vyas, Additional Solicitor General with Mr. D.P. Singh, Mr. Sheelang Shah, Mr. Gauraj Shah, Ms. Vaibhavi Chaudhary, Mr. Jalaj Prakash & Ms. Swati Pandey i/by Mr. Ranjeet Kumar for the petitioner – Union of India.

Mr. Milind V. More, Additional G.P. for respondent Nos.1 and 2.

Mr. Aspi Chinoy, Senior Advocate with Mr. Aditya Bapat and Mr. S.A.K. Nijam-es-Sani i/by Maneksha & Sethna for respondent No.4.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ &
AMIT BORKAR, J.**

DATED : OCTOBER 24, 2024

P.C.:

1. Issue notice to the respondents, returnable on **5th December 2024**.

2. On behalf of respondent Nos.1 and 2, Mr. More, learned AGP appears and waives service of notice; whereas on behalf

of respondent No.4, Mr. Aspi Chinoy i/by Maneksha & Sethna puts in appearance and waives service of notice.

3. So far as respondent No.3 is concerned, apart from usual mode of service, hamdust is permitted.

4. The respondents may file their affidavits-in-reply by 20th November 2024, to which rejoinder-affidavits, if any, may be filed by the petitioner by the next date of listing.

5. This is a rare occasion when Union of India invokes our jurisdiction under Article 226 of the Constitution of India against the State of Maharashtra by taking exception to an order dated 17th April 2023 passed by the Collector concerned, whereby the subject land in question has been allotted to another public entity, namely, Mumbai Metropolitan Regional Development Authority–respondent No.3. Ordinarily, such disputes should not reach the Courts, however, instant matter appears to bear a checkered history.

6. As a result of an earlier round of litigation, the order of allotment of land in question by the Collector concerned in favour of respondent No.3 was withdrawn. The Collector concerned vide order dated 1st October 2020 had allotted the

land to the respondent NO.3 and the said order became subject-matter of challenge in Writ Petition (L) No.3523 of 2020 and Writ Petition (L) No.5983 of 2020, both of which were filed by the Union of India. The order dated 1st October 2020 was also challenged by respondent No.4 by instituting Writ Petition (L) No.7877 of 2020. All the aforesaid three writ petitions were heard together on the prayer for interim relief and a coordinate Bench of this Court by means of an order dated 16th December 2020 had granted interim relief staying operation of the order dated 1st October 2020, and further staying the on-going operations being carried out on the land in question. On a subsequent hearing, when it was informed to this Court that the order dated 1st October 2020 had been withdrawn, all three writ petitions were disposed of by means of order dated 30th August 2022.

7. However, certain observations made in the order dated 16th December 2020 by this Court are relevant to be noticed at this juncture so far as consideration of the prayer for grant of interim relief is concerned. After noticing various facts, in paragraph 28 of the said order, the Court observed as follows:

"28. That apart, in the process of allowing the prayer of the MMRDA, the Collector does not appear to have considered the

evidence which was relevant, material and germane for a decision on the prayer of the MMRDA. This was obviously because the request of the MMRDA was disposed of without putting the UoI and the petitioner in WP-III on notice. The order and the two letters referred to in paragraph 11 supra do not appear to have been placed before the Collector and, therefore, he too did not have the occasion to consider the same. If indeed the same had been placed before him, he ought to have referred to it. Non-consideration of evidence that was relevant, material and germane is a serious flaw in the decision-making process vitiating the impugned order and rendering it perverse."

8. The observations made by the Court in the said order in paragraph 29 are also apposite to be extracted here, which run as under:

"29. Next, the presentation of Civil Application No.84 of 2016 by the State of Maharashtra has left us intrigued. Permission having been sought for from the Court [obviously because the request of the Salt Department in the UoI for correcting revenue records in terms of the order of the OSD dated September 30, 1996 not having been granted referring to the interim order passed in Bafna's WP (letter dated April 16, 1999 of the Desk Officer, Revenue and Forests Department, page 2 of the compilation of Mr. Singh)] and the Court being seized of such application, it stands to reason that the GoM could not have on its own utilized the subject land for any public purpose conceived by it. However, we are aghast to note that while Civil Application No.84 of 2016 has been pending, the Collector on his own and without waiting for the outcome of such application has passed the impugned order and delivered possession to the MMRDA. Significantly, the plan annexed to such application and the plan placed before us by Dr. Sathe bear clear resemblance evincing that the site for the proposed Metro car shed is one and the same, i.e., the subject land. We, thus, see no reason as to how during its pendency the Collector could pass such an order. Looking at the decision in Amrita Prithishwar Bhattacharjee

(supra), it seems to be clear that there has been a change in policy with change in the ruling dispensation in the State. While changes can be effected keeping in mind what that larger public interest warrants, extraneous considerations ought not to outweigh all other considerations of propriety, legality and fairness in administrative action. The decision-making process leading to the impugned order does not pass the test of judicial scrutiny on this count. We are conscious of the element of public interest involved in setting up of the Metro car shed on the subject land; at the same time, we cannot remain oblivious if a person is divested of its/his right in property without the authority of law."

9. We, thus, notice that the Court while passing the said order dated 16th December 2020 had clearly opined that the Collector while passing the order impugned in the writ petition did not appear to have considered the evidence which was relevant, material, and germane for decision on the prayer of respondent No.3 for allotment of land. The Court further observed that it was obvious that the relevant material was not considered by the Collector while passing order dated 1st October 2020 because request of respondent No.3 was disposed of without putting the Union of India and the petitioner in Writ Petition (L) No.7877 of 2020 on notice. The Court also referred to Civil Application No.84 of 2016 filed by the State of Maharashtra, whereby permission was sought from this Court. The Court also observed that this Court being seized of hearing, it stood to reason that the Government of

Maharashtra could not have on its own utilized the land for any public purpose conceived by it. The Court also observed that while Civil Application No.84 of 2016 had been pending, the Collector on its own and without waiting for decision on such application had passed order dated 1st October 2020 and delivered the possession to the respondent No.3.

10. Even on the date of passing of the order impugned in this petition, namely, order dated 17th April 2023, Civil Application No.84 of 2016 is said to be still pending as informed by the learned Additional Solicitor General representing the petitioner and Mr. Aspi Chinoy, learned Senior Advocate representing respondent No.4. It has also been submitted both by Mr. Vyas, learned ASG and Mr. Chinoy that before passing order dated 17th April 2023, no opportunity was ever given by the Collector either to the Union of India, the petitioner or the respondent No.4.

11. Having recorded the aforesaid facts, what we *prima facie* find is that the situation which prevailed at the time of passing of the earlier order of allotment dated 1st October 2020 had not undergone any change when the impugned order dated 17th April 2023 was passed by the Collector concerned.

12. Accordingly, we provide that till the next date of listing, i.e., 5th December 2024, parties to this writ petition shall maintain *status quo*. It is further directed that nature of the subject land shall also not be changed.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)