

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 61 OF 2025

Yashwant Jana Mhatre & Since Deceased ...Petitioners
through Legal Heirs Representatives
Versus
The State of Maharashtra Through Secretary ...Respondents
& Ors

**Mr AV Anturkar, Senior Advocate, with Kaustubh Patil &
Sachin S Punde, for the Petitioners.**
**Mr AI Patel, Addl. GP, with MS Bane, AGP, for Respondent
Nos. 1 to 3-State.**
**Mr GS Hegde, Senior Advocate, with PM Bhansali, i/b DSK
Legal, for Respondent No. 4-CIDCO.**

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**CORAM M.S. Sonak &
 Jitendra Jain, JJ.**
DATED: 3 April 2025.

PC:-

1. Heard Mr Anturkar, learned Senior Counsel, Mr Punde, and Ms Bhansali for the Petitioners, Mr Patel, Addl. GP with Ms Bane, AGP, for Respondent Nos. 1 to 3-State and Mr Hegde, for Respondent No. 4, CIDCO.

2. This Petition seeks to review our Judgement and Order dated 24 March 2025 *inter alia* in Writ Petition No. 1490 of 2016 and connected matters.

3. Mr Anturkar submitted that there was an error apparent on the face of the record in as much as he seems to have suggested that the proviso to Section 11 of the Land Acquisition Act 1894, which requires prior approval of the State Government before an Award is made was introduced by the 1984 amendment with effect from 29 April 1984. Mr Anturkar pointed out that Section 11 of the Land Acquisition Act 1894 was amended by the Bombay State in 1953 with effect from 6 June 1953 and had provided no Award allowing compensation exceeding such amount by the State Government by a general order specify shall be made by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf.

4. Mr Anturkar invited our attention to the observations in paragraph 90 of the Judgement and Order to which review is applied. Therein, we observed as follows:

“90. If the provisions of Old and New Land Acquisition Acts regarding lapsing of acquisitions as contained in Section 11A or 11A of the Old Land Acquisition Act, 1894 or Section 25 of the New Land Acquisition Act, 2013 or the proviso to Section 11 of the Old Act relating to obtaining of prior approval were to apply to the present acquisition proceedings, then, surely, we would have no hesitation in striking down the acquisition for breach of these mandatory provisions. The facts borne from the records and the law on the subject would then warrant interference with the impugned acquisition.”

5. Mr Anturkar submitted that the word “or” appearing in lines three and four of paragraph 90 must be interpreted as “or” and not as “and”. He submitted, therefore, that if the proviso to Section 11 of the 1984 Act were on the statute book in 1971 when the Land Acquisition Act 1894 provisions were incorporated in the Maharashtra Regional and Town Planning Act 1966 (“**MRTP Act 1966**”), then, such provisions would apply and based upon the same, the acquisition would be void for want of prior approval. He referred us to the decisions in the case of *State of Uttar Pradesh Ors vs Rajiv Gupta & Anr*¹ and *Sharadchandra Ganesh Muley vs State of Maharashtra & Ors*² to submit that prior approval provided under section 11 was mandatory and any Award made without such prior approval would be void and non-est.

6. Based on the above contention, Mr Anturkar submitted that a clear error is apparent on the face of the record exercising the review jurisdiction. He submitted that the impugned acquisition must be declared void, consistent with other findings recorded in our Judgment and Order dated 24 March 2025.

7. Me Hegde learned Senior Counsel for CIDCO and Mr Patel, Addl. GP resisted this Review Petition by submitting that the findings that the present acquisition was not under the provisions of the Land Acquisition Act 1894, and no review was even sought with respect to those observations. They

¹ (1994) 5 SCC 686.

² 1995 Supp (4) SCC 702.

submitted that *Girnar Traders (3) vs State of Maharashtra*³ has held that the MRTP Act 1966 is a complete Code and, therefore, any acquisition under the MRTP Act 1966 would not be governed by the restrictive clauses under the Land Acquisition Act 1894. They submitted that the observation about the approval of the Land Acquisition Act being an instance by legislation of incorporation was an additional reason to hold the provisions of Section 11A of the Land Acquisition Act 1894 would not apply.

8. We have considered the rival contentions and perused the record.

9. Mr Anturkar is justified in contending that there is an error apparent on the face of the record in as much as certain observations in the Judgment and Order suggest that even the proviso to Section 11 of the Land Acquisition Act 1894 was introduced only in 1894 and was not on the statute book in 1971 when the provisions of the Land Acquisition Act 1894 were applied to the MRTP Act 1966.

10. The proviso to Section 11 of the Land Acquisition Act 1894 was indeed introduced by the Parliament only in 1894. However, before that, there was a Bombay amendment effective from 6 June 1953, by which it was declared that no Award allowing compensation exceeding such amount by the State Government by a general order specified shall be made

3 2011 3 SCC 1.

by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf.

11. Thus, when the Land Acquisition Act 1894 provisions were incorporated in the MRTP Act 1966, effective from 1971, the proviso to Section 11 regarding obtaining the prior approval of the State Government was on the statute book. To that extent, there is certainly an error on our part, which must be corrected. We correct it accordingly.

12. However, even after correcting such error, we do not find any reasonable ground to review our Judgment and Order for the conclusions recorded therein. Firstly, the observations in paragraph 90 of our Judgement and Order must be read and construed in the context. It is well settled that the Judgment of the Court should not be read like a statute. From the context, it is very apparent that we did not intend to use the word “or” as being disjunctive.

13. Secondly, since Girnar Traders (3) (Supra) has held that such acquisitions are under the MRTP Act 1966 and, further, since MRTP Act is a complete Code, the restrictive provisions under the Land Acquisition Act 1894 may not apply. Even after correcting the error pointed out by Mr Anturkar, no case has been made to review our judgment and order or the conclusions recorded therein. This aspect of our

understanding of the Girnar Traders (3) judgment is not even sought to be reviewed or assailed as an error.

14. For the above reasons, we dismiss this Review Petition without any order of cost.

(Jitendra Jain, J)

(M. S. Sonak, J)