

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3691 OF 2005

Dosu Ardeshir Bhiwandiwala ... Petitioner

Versus

City Industrial Development
Corporation of India and Ors. ... Respondents

Mr. Y.S. Jahagirdar, Sr. Advocate with Mr. G.S.
Godbole for Petitioner.

Mr. G.S. Hegade for R. No. 1.

Mr.V.P. Malwankar, A.G.P. for R. Nos. 2 and 3.

**CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.**

DATED : FEBRUARY 07, 2006

P.C.

. Rule. Heard forthwith.

. It is the case of the Petitioner that the land bearing S.No. 465 corresponding to Gat No. 8 at village Kharghar, taluka Panvel, District Raigad which is of their ownership has been taken in possession by Respondent No. 1 without the land being acquired. It is the case of the Respondent No. 1 that they are in possession, since the

possession was handed over to them by Respondent No. 2. The learned A.G.P. Mr. Malvankar on instructions from Mrs. Revati A. Gaikar, Special Land Acquisition Officer, Panvel and Mr.N.M. Sanap, Tahsildar, Panvel who are present in the court makes a statement that on consideration of the documents in their possession that except for 93 Ars they have no documentary evidence to show that rest of the land was acquired. That being the case, we think it just and proper that the respondents should take steps to acquire the land as no person can be deprived of his property without compensation as contemplated by Article 300A of the Constitution of India. In fact in Para 10 of the affidavit of Mr. Anil Vajarkar, the Chief Lands and Survey Officer of the first respondent, it has been set out as under :

"Above area was not included in the list of private lands notified by Government for acquisition. I further say that vesting order of the Petition land by the State Government was not received. Therefore, the Respondent CIDCO made

several correspondence with the Collector, Raigad from 1984 and requested to issue formal vesting order of land at Gat NO. 8/0, admeasuring 7-96-0 (HRP) and finally after repeated reminders and persuasions, the Collector, Raigad, on 30.07.2004, has informed that the petition land is not murum quarry or Government land and this land is privately owned by one Khan Bahadur Horamsaji Bhiwandiwala Trust and the land cannot be vested as Government Land."

. It is also set out in Para 11 that :

"..... the petition land is already in possession of CIDCo and this land is required for the Navi Mumbai Project. Although the land is in possession of CIDCO, no one from the beginning has ever made any interference in the peaceful possession of the CIDCO of the said land in the last 35 years...."

. On behalf of the respondent No. 1, their learned counsel contends that as they are in possession of the lands for last more than 35 years, the present petition is hit by laches and consequently should not be countenanced. We are afraid, at least this stand cannot be taken by an authority constituted under the Statute. The land admittedly does not belong to them but it is in their possession. It is only in the event the land was acquired by them could they be in possession thereof lawfully. If such argument on behalf of the Public Authority including the State are countenanced to, it would mean that the State can use its police powers and others powers to take over the lands of public in possession and not pay compensation to the rightful parties. That argument has to be rejected at the threshold itself.

. Considering the above, the Petition can be disposed of by issuing the following directions.

(1) The Respondent No. 3 to take steps to acquire the land by following due procedure.

(2) The Respondent No. 3 to complete the entire acquisition process within one year of receiving the requisition from Respondent No. 1.

(3) All other issues, including whether the Petitioner is entitled to compensation from Respondent No. 1 for occupation of the land for last 35 years, except as to the matter of acquisition and payment of compensation which will be governed under the appropriate legislation, are left upon to be raised by the Petitioner in any appropriate proceedings that he may initiate alongwith the defences of the respondents which they may have.

(F.I. REBELLO, J.)

(DR. D.Y. CHANDRACHUD, J.)