
(2013) 01 BOM CK 0131

In the Bombay High Court

Case No : Chamber Summons No. 735 of 2012 in Suit No. 5172 of 2000

Umesh Jashbhai Patel and Others

APPELLANT

Vs

Harishankar Ramchandra Mhatre and Others and Municipal
Corporation of Greater Mumbai

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 15(a), 16, 23
Maharashtra Regional and Town Planning Act, 1966 — Section 125, 126, 126(1),
126(3), 26

Citation : (2013) 2 ABR 261 : (2013) 2 ALLMR 582 : (2013) 5 BomCR 792 :
(2013) 3 MhLj 338

Hon'ble Judges : Roshan Dalvi, J

Bench : Single Bench

Advocate : S.S. Pakale assisted with Ms. Varsha Ubale assisted with Mr. H.C. Pimple and Mr. B.R. Zaveri, for the Appellant; A.K. Dubey for Defendant No. 2 and Mr. H. Toor a/w. Mr. D.A. Patil instructed by S.K. Legal for Defendant No. 10, for the Respondent

Judgement

Mrs. Roshan Dalvi, J.—This Suit is filed by 5 plaintiffs claiming to have purchased the suit property from defendant No. 1 who was stated to be the then owner of the suit properties. The suit property is stated to be an open plot of land. The plaintiff has sued for a number of reliefs from (a) to (t) being for declaration that certain agreement, conveyance, lease deed, powers of attorney between the plaintiffs and defendant No. 1 are valid and subsisting and that certain agreement, sale deed, powers of attorney between defendant No. 1 and defendant Nos. 4 to 9 are null and void and not binding on the plaintiffs and for order for cancellation and impounding of those documents. The suit is also for declaration that a certain consent terms filed in another Court and is void and not binding on the plaintiffs and for prosecution of defendant Nos. 4 to 10 for perjury with regard to those documents. The incidental reliefs are for executing the documents in favour of the plaintiffs by defendant Nos. 1, 2 & 3 or the officer of the Court and for necessary injunctions against all the defendants against the

transfer as also against entering upon and carrying on construction on the suit property and for mesne profits. Whereas the plaintiffs claimed to have executed agreements and conveyance as also a lease deed with defendant No. 1, 2 & 3, similar such agreements are stated to have been executed by defendant No. 1 in favour of defendant Nos. 4 to 9 and thereafter in favour of defendant No. 10. The plaint is stated to be reconstructed as the original plaint is stated to be lost/misplaced. None of the documents relied upon by the plaintiffs is shown to be annexed to the reconstructed plaint. Defendant No. 1, defendant No. 10 and defendant Nos. 4 to 9 have filed separate written statements. Defendant No. 10 is the real contesting defendant in the suit.

2. Defendant Nos. 1 to 3, who are the owners of the suit property, have not contested the suit at all as they have sold the suit property to the plaintiff as also defendant Nos. 4 to 9 who in turn have sold the suit property to the developer, defendant No. 10 who is the main contesting defendant.

3. The applicant/MMC has taken out this Chamber Summons for being made a party-defendant in the suit and for demolition of the GI sheet compound wall on the suit property and for an order to take a portion of the development plan road (DP Road) shown in the Development Plan (DP) for development of 18.30 mtrs DP road inter alia on the suit plot of land. The DP road is shown to be running on a part of the suit plot of the land across its middle under CTS No. 14(part)/14E.

4. It is the case of the MMC that the DP road was shown in the DP pursuant to which the required lands were acquired by the Government on behalf of the Municipal Corporation of Greater Mumbai (MMC) and an award came to be passed and possession of those lands came to be given by the Special Land Acquisition Officer (SLAO) under the Land Acquisition Act, 1894 (LAA) to the MMC upon the MMC depositing the requisite amount of compensation determined for the acquisition of suit plot of land as the acquiring body. It is the case of the MMC that the requisite procedure was followed under the Maharashtra Regional Town Planning Act, (MRTP) 1966 for the demarcation of the DP road on the DP which came to be final. It is also its case that upon the acquisition proceeding being undertaken as per the procedure established by law and the award being passed and possession being handed over by the Government to the MMC, the land vested in the MMC. The MMC requires part of the suit land where the DP road is demarcated for the purpose of construction of the DP road and hence claims that it is a necessary party to the suit and has applied for the mandatory reliefs of demolition of the compound wall to take a portion of the suit property for the construction of such DP road.

5. It is the case of the plaintiffs as well as defendant No. 10 that these parties were in possession of the suit property. Receiver was appointed and the possession has not been handed over to the MMC so that the land has not vested in the MMC. It is argued on behalf of the plaintiffs that though the owner was to hand over possession, the possession received does not show the signature of the owner showing the handing over of the possession despite the claim of the

MMC that compensation was paid to the owner. It is also the case of the parties to the suit that they have not been paid compensation and hence would not have handed over possession.

6. It must be borne in mind that the suit plot is stated to be an open plot of land. The aerial photographs of the suit plot produced by the MMC shows essentially an open plot of land on the fringes of which certain unauthorized hutments are erected. The photographs of the suit plot produced by the plaintiffs also show essentially an open plot of land strewn with garbage, parked vehicles and on a part of which are some hutments.

7. Copy of the development plan shows the DP road horizontally running across inter alia the suit property.

8. In view of the objections to the Chamber Summons the requirements of the process of law under the MRTP Act for demarcation of the DP road and the LAA for acquiring the property on which the DP road is to be constructed are required to be seen.

9. Chapter III of the MRTP Act deals with the preparation, publication, submission and sanction of the DPs.

10. Chapter VII of the MRTP Act deals with acquisition of land required inter alia for a D P. The land required for a DP is deemed to be needed for a public purpose, the acquisition of which is to be made after publication of the DP upon reservation of the public purpose by the appropriate authority to acquire the land upon making an application to the State Government for such purpose under the LAA for it to vest in the MMC as the Planning Authority. The relevant parts of the relevant sections of the MRTP Act run thus:

21. Development Plan.- (1) every Planning Authority shall carry out a survey, prepare an existing land-use map and prepare a draft development plan for the area within its jurisdiction, publish a notice in the Official Gazette and in such other manner as may be prescribed stating that the draft development plan has been prepared and submit the plan to the State Government for sanction.....

(B) PROCEDURE TO BE FOLLOWED IN PREPARING AND SANCTIONING DEVELOPMENT PLANS.

23. Declaration of intention to prepare Development plan.- (1) A Planning Authority shall, by a resolution make a declaration of its intention to prepare a Development plan; and shall despatch a copy of such resolution with a copy of a plan showing only the boundary of the entire area proposed to be included in the Development plan to the State Government.....

The Planning Authority or the said Officer, as the case may be, shall also publish a notice of such declaration in the Official Gazette, and also in one or more local newspapers in the prescribed manner, inviting suggestions or objections from the

public within a period of not less than sixty days from the publication of the notice in the Official Gazette.

(2) A copy of the aforesaid plan shall be open to the inspection of the public at all reasonable hours at the head office of the Planning Authority and Local Authority.

26. [Preparation and publication of notice] of draft Development plan.-

(1) a Planning Authority or the said officer shall, prepare a draft development plan and publish a notice in the, Official Gazette and in such other manner as may be determined by it stating that the Development plan has been prepared. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and that copies thereof or extracts therefrom certified to be correct shall be available for sale to the public at a reasonable price, and inviting] objections and suggestions within a period of sixty days from the date of notice in the Official Gazette.....

(2) [The notice shall also state that copies of the following particulars in relation to the Draft Development plan are also available for inspection by the public and copies thereof, or extracts therefrom certified to be correct.....

(i)

(ii) maps, charts and a report explaining the provisions of the draft Development plan;

(ii-a) map showing the planning units or sectors undesirable till the Development Plan is revised;.....

28. Objections to draft Development plan.-(1) if any person communicates in writing to the Planning Authority or the said officer any suggestions or objection relating to the draft Development plan, the Planning Authority or the said officer may, after considering the report of the Planning Committee under sub-section (2) and the suggestions or objections received by it or him, modify or change the plan in such manner as it or he thinks fit.

(2) The Planning Authority or the said Officer shall forward all objections and suggestions received by it to a Planning Committee.....

..... having special knowledge or practical experience of matters relating to town and country planning or environment or relating to both for consideration and report.

(3) The Planning Committee, shall on receipt of objections and suggestions, make such inquiry as it may consider necessary, and give a reasonable opportunity of being heard to any person including representatives of Government departments who may have filed any objections or made any suggestions in respect of the draft Development plan, and after considering the same, the Planning Committee shall submit its report to the Planning Authority.....

The draft Development Plan so modified shall be published in the Official Gazette and in such other manner as may be prescribed, not less than one month prior to the submission of the same to the State government for sanction.

30. Submission of draft Development Plan.- (1) The Planning Authority or as the case may be, the said Officer shall submit the draft Development Plan to the State Government for sanction within a period of twelve months [from the date of publication of the notice in the Official Gazette, regarding its preparation] u/s 26.

31. Sanction to draft Development plan.- (1) Subject to the provisions of this section, and not later than one year from date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper.....

43. Restrictions on development of land.- After the date on which the declaration of intention to prepare a Development plan for any area is published in the Official Gazette [or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in the Official Gazette,] no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority.

125. Compulsory acquisition of land needed for purposes of Regional Plan, Development plan or town planning scheme, etc. -Any land required, reserved or designated in a Regional plan, Development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).

126. Acquisition of land required for public purposes specified in plans.- (1) When after the publication of a draft Development plan, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may acquire the land,-.....

(a).....

(b)

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894,

and the land (together with the amenity, if any, so developed or constructed) so acquired under the Land Acquisition Act, 1894, shall vest in the Planning Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose

..... it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (1 of 1894), in respect of the said land.

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land,

11. Hence the preparation, submission and sanction of the DP is to be as per procedure established under Chapter III of the MRTP. The Planning Authority is required to make a declaration of its intention to prepare a DP by a resolution with a copy of the plan showing the boundary of the proposed area to be included in the DP to the State Government and public notice of such declaration in the Official Gazette and newspaper and invite suggestions and objections from the public thereof and keep the plan open for inspection of the public.

12. Thereafter the Planning Authority is required to survey the land and prepare a draft development plan. It has to publish a notice in the Official Gazette and submit it to the State Government for sanction.

13. The Planning Authority is thereafter required to publish a notice in the Official Gazette inviting the objections and suggestions to the draft development plan and offer for inspection of the public inter alia the map of the draft development plan.

14. If any person makes suggestions or objections, the Planning Authority is required to forward them to the Planning Committee who may make such inquiry upon giving reasonable opportunity of being heard to the objector and submit a report to the Planning Authority who may modify or change the DP upon such suggestions or objections and publish the DP so modified in the Official Gazette.

15. The Planning Authority is then required to submit the DP to the State Government for sanction.

16. The State Government may sanction the draft DP with or without modification as it may consider proper.

17. Hence when once the process of sanction of the draft development plan is submitted to the State Government and the DP is sanctioned, it being for a public purpose u/s 125 of the MRTP, none can challenge the D P. Similarly none can change the use of the land or carry out any development of the land under the development plan after the date on which an intention to develop the land as a DP as published in the Official Gazette without the permission of the Planning Authority, the MMC.

18. When a land is needed for a public purpose the procedure under the LAA would have to be followed for the acquisition of the land by declaration in the

Official Gazette u/s 6 of the LAA and the process of acquisition being followed under the LAA. The relevant parts of the relevant sections of the LAA runs thus:

6. Declaration that land is required for a public purpose.- (1)..... [when the] [appropriate Government] is satisfied that any particular land is needed for a public purpose, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.....

(2) [Every declaration] shall be published in the Official Gazette, [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the date of such publication and the giving of such public notice, being hereinafter referred to as the date of publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose as the case may be; and, after making such declaration the [appropriate Government] may acquire the land in a manner hereinafter appearing.

7. After declaration, Collector to take order for acquisition.-Whenever any land shall have been so declared to be needed for a public purpose, the [appropriate Government] or some officer authorised by the [appropriate Government] in this behalf, shall direct the Collector to take order for the acquisition of the land.

8. Land to be marked out, measured and planned.- The Collector shall thereupon cause the land (unless it has been already marked out u/s 4), to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof), a plan to be made of the same.

9. Notice to persons interested.- (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence address or place of business.....

11. Enquiry and award by Collector. - [(1)] On the day so fixed, or any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, and into the value of the land and [at the date of the publication of the notification u/s 4, sub-section (1)], and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him:.....

12. Award of Collector when to be final.- (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

16. Power to take possession.- When the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) within six weeks from the date of the Collector's award.

19. This process of law for acquisition is under Part II of the LAA. The land is to be declared to be required for public purpose. Hence, for acquiring any land for construction of the DP road, the first requirement is for the Government to publish a preliminary notification about need to use the land for public purpose in the Official Gazette as well as newspapers and to give public notice at convenient places in the locality and then to publish the required declaration. The date of the publication of the preliminary notification shows the intention of using the land for public purpose and the publication of the declaration conclusively proves the public purpose.

20. Thereafter the Collector is required to take an order of acquisition as required u/s 126(3) of the MRTTP Act.

21. The land would then be marked, measured and planned.

22. Notice is required to be given to the interested persons at convenient places near the land to state the nature of their interest in the land, the claims made by them to compensation for such interest and the objections, if any, and to make a written statement.

23. The collector would then inquire into the objections and pass the necessary award.

24. The award of the Collector would become final, the notice of which is to be given by the Collector to the persons interested but not present.

25. Upon the collector having made the award, he would be entitled to take possession of the land, which shall thereupon vest absolutely in the government, free from all encumbrances.

26. Any person interested who has not accepted the award may, within 6 weeks require the Collector to refer the award for the determination of the Court with regard to any objection he may have for measurement or compensation.

27. The aforesaid is the procedure established by law for acquisition of land for a D P. Once that procedure is followed under the MRTTP as also the LAA, there can be no legal objection to the development of the road which is a public purpose. In such circumstances private interest, if any, must yield to public purpose. The purpose of acquisition of land required for construction of a DP road is deemed to be a public purpose and must be clothed with the incidents of a public purpose from the fact of it being a part of the D P. Hence when a land is reserved for a D P, its acquisition follows as a matter of course. Once the process of acquisition is followed, the land can be used for nothing except that D P. It would accordingly vest in the Planning Authority, the MMC which would be enjoined to construct such road. All that the Government has to do is to have the DP prepared, submitted and sanctioned and then to have the land acquired.

28. It is not disputed that the procedure under the MRTTP Act was followed and the land falling under the draft DP and the sanctioned DP came to be so treated under the aforesaid provisions of the MRTTP Act. It is, therefore, undoubted that the part of the suit land was reserved for a DP and the procedure under the MRTTP Act was followed. Neither the plaintiff nor the defendants have raised any objection or made any suggestion for modification of the D P. The portion of the suit land to be used for the DP was required to be and was sought to be acquired as per the mandate contained in Section 126 of the MRTTP Act. It is not disputed that the award came to be passed and became final in respect of part of the suit land under Sections 11 & 12 of the LAA.

29. All that is stated is that the possession of the land was not given to the SLAO by the original owner, defendant No. 1. The letter of possession is sought to be relied upon to show that the signature of the original owner is not put thereon. However the applicant as the Planning Authority has taken possession of the suit land from the SLAO. Since the Collector is required to take possession of the land, it is argued that that should have been from the original owner or the parties in possession. The plaintiff as also defendant No. 10 claim to be in possession of the suit land which is an open plot of land. It is for them to show that it was in their possession. Mr. Pakale has rightly argued that since the suit land is an open plot of land, possession follows title. The title is admittedly in defendant No. 1 who is the original owner. It, therefore, follows the possession of the suit land would be with defendant No. 1 unless it is shown to be in the actual possession of either the plaintiffs or defendant No. 10. It would be for the plaintiff as also defendant No. 10 to prove their title in the suit. Neither the plaintiffs nor the defendant No. 10 has shown the Court its actual possession. The photographs show a land which is merely open and encroached upon on some fringes. Despite the agreements, conveyance or lease deeds of 1980 in favour of the plaintiffs or defendant Nos. 4 to 9 or thereafter defendant No. 10 the suit land has not yet been developed or used. The photographs of the parties are eloquent on this aspect.

30. Mere documents executed by private parties in favour of certain persons and later others would not show possession having changed hands until the case of the parties is proved on evidence in the face of the DP road running through the suit land which has been acquired by the Government for such purpose.

31. It may be mentioned that the plaintiffs as also defendant No. 10 who contend that they have sought to develop the land should have and are taken to have seen, investigated and inspected inter alia the DP remarks from the Planning Authority at the time of the commencement in development alleged by them. Mere filing of the suit and having the Court Receiver appointed between private parties cannot prove or show possession of both such parties in the suit property. The procedure established by the aforesaid laws having been undertaken cannot be undone. Unless it is proved that possession was handed over to the plaintiffs or defendant Nos. 4 to 9 by the original owner, defendant

No. 1, possession must be deemed to be continued with him. Defendant No. 1 is not shown to have claimed possession or agitated for it upon or after the acquisition of the land. Hence if defendant No. 1, as the owner, does not complain about the DP running through his land and does not challenge the acquisition for the construction of the DP and does not physically hand over possession but yet does not challenge the procedure, the possession would naturally be taken unopposed by the SLAO/Collector and must be deemed to have been so done thus completing the process u/s 16 of the LAA. Consequently upon there being no challenge to the acquisition, possession having been deemed to be taken by the SLAO, the land must be taken to have vested absolutely in the Government on that date free from the encumbrances of the parties to the suit who also allowed it to be taken unopposed. Further the parties to the suit as the transferee of defendant No. 1 who was the owner and in possession prior to their transaction must be imputed knowledge of the preparation, publication and sanction of the development plan as also the declaration of the State Government to acquire the land for construction of the DP road as per the D P.

32. In view of the contention on behalf of the defendant Nos. 1 to 3 as also defendant No. 10 claiming to be in continuous possession of the acquired premises and claiming that such possession was not taken from them, the Court deemed it fit to call for and go through the papers and proceedings of acquisition. It is important to note that u/s 12 of the LAA the award filed in the Collector's office would be final and conclusive evidence between the Collector and all the persons interested whether or not they appeared before the Collector with regard to the area as also the value of the land and the compensation paid so that the Collector can take possession from such interested persons.

33. The papers of the acquisition were produced before this Court. The initial notification u/s 126(1) of the MRTP Act read with Section 6 of the LAA is published in the Official Gazette dated 15th September, 1981. The papers and proceedings of the award passed u/s 11 of the LAA with regard to the said notification show inter alia the suit land under CTS No. 14 (part) admeasuring 1239 sq. mtrs. owned by defendant No. 1 and acquired for 56 ft. wide D.P. Road. The proceedings show that after the publication of the aforesaid notification, a general notice u/s 9 of the LAA was published on the office board of the Additional Collector, BSD, Tahasildar, Borivali in the Talathi's office and on the site. Individual notices u/s 9 of the LAA were served on the owners. The owners of the land verified the City Survey records. The records were enumerated showing inter alia the suit land of the above measurement against the name of defendant No. 1. The claims of the parties were also mentioned in the acquisition proceeding. Consequently the claim of defendant No. 1 for the suit land was Rs. 450/- per sq. mtrs. and/or FSI benefit. Instances cited by the land owners have been enumerated. The papers further show that taking the instances into consideration the SLAO, BSD accepted the valuation inter alia of the suit land at the rate of Rs. 190/- per sq. mtrs. The suit land is shown in the award for such

purpose at serial No. 1.

34. The award further mentions that possession of the land under acquisition would be taken after declaration of the award and same would be handed over to the acquiring body. The SLAO worked out the details of the valuation inter alia for the suit land at the rate of Rs. 190/- per sq. mtrs. for 1239 sq. mtrs. of the land acquired under CTS No. 14 part at Rs. 2,35,410/- adding thereto 30% solatium of Rs. 70,623/- and 12% component u/s 23(1)/Section 15(a) of the amended LAA of Rs. 1,38,782.25 at a total amount of Rs. 4,44,815/-. Consequently in the Award declared for total 7,987.4 sq. mtrs. of land for total consideration of Rs. 25,75,230/-. Compensation of Rs. 4,44,815/- is shown against the name of defendant No. 1.

35. The papers of acquisition further show a Power of Attorney executed by defendant No. 1 on 13th August, 1982 signed by defendant No. 1 before a Notary Public and identified by his attorneys appointing the plaintiff as the partner of M/s. Geometrical Tools Manufacturing Co. (India) as his Constituted Attorney. A panchnama prepared on 16.09.1986 shows inter alia the suit land against defendant No. 1. The papers of acquisition further show the panchnama made by 5 panchas on 19.09.1986 showing that the owners of the land mentioned therein were not present and in their absence their officer took possession of their land and handed them over to the Junior Engineer of the MMC (which was the acquiring body). Inter alia is the land of defendant No. 1, he not being present.

36. However thereafter defendant No. 1 through his Constituted Attorney, plaintiff No. 1 herein has accepted the cheque for the compensation amount of the suit land under CTS No. 14 part admeasuring 1239 sq. mtrs. which came to be acquired. A cheque for Rs. 4,35,480/- bearing No. 1176880 dated 05.09.1986 came to be issued to defendant No. 1 and was accepted by plaintiff No. 1 on his behalf for which plaintiff No. 1 executed the receipt on 22.10.1986 as the Constituted Attorney of defendant No. 1.

37. Mr. Zaveri on behalf of Plaintiff Nos. 1, 2 and 3 upon being shown a acquisition proceedings and upon taking instructions from Plaintiff No. 1 who is present in Court fairly concedes that Plaintiff No. 1 has indeed signed the receipt of the payment of compensation of Rs. 4,35,000/- on behalf of defendant No. 1 as his Constituted Attorney. Yet it is argued on behalf of the Plaintiff Nos. 1, 2 and 3 that since possession was not taken from defendant No. 1 or Plaintiff Nos. 1, 2 and 3 the land did not vest in the government and could not have been given to the MMC as the acquiring body. The argument with regard to the possession is wholly misconceived. After accepting compensation from the government, the owner would have no interest in the land. In this case Plaintiff No. 1 has received compensation on behalf of the then owner, defendant No. 1. Defendant No. 1 has thereafter transferred the land to defendant No. 10. Defendant No. 1 was never in possession. He had handed over possession to Plaintiff Nos. 1, 2 and 3 thereafter purportedly to defendant No. 10. Merely

because defendant No. 1 was not present, neither he nor his CA can take advantage of the fact that he had not actually hand over possession to the government.

38. Mr. Zaveri drew my attention to the judgment in the case of Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, , in which it is held that symbolic possession cannot be taken of any acquired land and possession that kind of taking over possession is not contemplated under LAA.

39. Mr. Zaveri also relied upon the judgments of this Court in the case of Fazalabhai Ibrahim Co. Ltd. Vs. Land Acquisition Officer, 2 Mh.L.J. 2012, in which also it has been held that when actual possession was not taken, the land did not vest in the government. In that case the acquisition as also compensation fixed thereunder came to be challenged. Part of the land which was sought to be acquired was actually not acquired. Acquisition of land was not withdrawn. That land was not released to the claimants. However, the possession letter excluded that land. Consequently in Paragraph 3 of the judgment it is held that under those circumstances when actual possession was not taken and the land was not acquired, that land did not vest in the government. The case is, therefore, wholly distinguishable. In that case the land was not acquired, award in that regard has not been passed and that land was not shown in the possession letter. Such land cannot vest in the government. In fact such land had to be released to the claimants and the acquisition in respect thereof had to be withdrawn.

40. In this case possession of the land which was sought to be acquired for the construction of the DP road was taken under the possession letter relied upon by the applicant/MMC/acquiring body. The possession letter under the panchnama shows the actual possession taken. Such actual possession may be actually handed over by the owner or the occupant of the land or may be actually taken by the government in the absence of the owner or the occupant. Taking of the actual possession is unmistakable. Such taking vests land in the government and the owner or the occupant thereafter cannot take advantage of his own absence at the time the possession of the land was sought by the SLAO.

41. Hence once a notification is published in the official gazette it tantamounts to notice upon the persons interested in the property. Once that notice is given, the omission to give notice to the subsequent owner of the property does not vitiate the enquiry and consequently the acquisition proceedings. [See Nandatai Vs. State of Maharashtra and Others, in which case after notice was given to the owner, his daughter-in-law who lived with the owner mutually divorced. In the family settlement the daughter-in-law was given the property sought to be acquired. She claimed that she was not given notice. In that case enquiry u/s 5(A) of the Act was also to be undertaken. Her claim was negated as she became the owner subsequently. It was held that the enquiry proceedings could not have been vitiated because she was not given notice again.

42. In the case of Balmokand Khatri Educational and Industrial Trust, Amritsar

Vs. State of Punjab and others, , the mode of taking possession was considered thus:

It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession.

43. In this case after the acquisition proceedings were completed by the SLAO, possession was handed over to the MMC as the acquiring authority so that the land vested in the MMC. As defendant No. 1 as also his Constituted Attorneys, plaintiff Nos. 1 & 2 remained absent, physical possession was actually not handed over by defendant No. 1 as the owner. Yet his retention of possession itself become illegal and unlawful and consequently transfers by him suffered from the same malady. Hence the acquisition proceedings which are conclusive evidence of what transpired show possession of the land acquired from defendant No. 1 lawfully taken after payment of lawful consideration which was accepted by plaintiff No. 1 on behalf of defendant No. 1, the original owner. The acquired land, therefore, vested in the Government free from all encumbrances of the plaintiffs or defendant No. 10, it having been acquired for the applicant, MMC.

44. Consequently the papers and proceedings of acquisition showing the award, which is final and conclusive evidence, shows that due legal process under the MRTTP Act and LAA were followed and the compensation was granted to defendant No. 1 and collected by plaintiff No. 1. It, therefore, does not matter that defendant No. 1 or plaintiff Nos. 1 to 3 or defendant No. 10 were not present and had not handed over possession of the suit land part of which came to be lawfully acquired. Once the land is acquired after following due legal process, it is of no consequence that the owner who accepts the compensation does not remain present to actually hand over possession of the land so acquired to the Land Acquisition Officer. The proceeding cannot be vitiated for the neglect or the fault of the owner who accepts the acquisition proceeding by the acceptance of compensation. Any rights thereafter created by such owner in favour of any other party would be vitiated.

45. In this case defendant No. 1 through plaintiff No. 1 himself accepted compensation. Both these parties were not present at the time of possession had to be taken. In their absence possession of the land was given by the SLAO to the acquiring body. Plaintiff Nos. 1 to 3 as also defendant No. 1 who were parties to the initial transaction, for which declaration of the validity was sought in the suit, were concerned with and actually partook in the acquisition proceeding. Thereafter defendant No. 1 has sought to sell the same land earlier owned by him and to which he had no title after acquisition to defendant No. 10. The sale has no validity in law. Such sale is effected by a party having no title. Due

diligence was required on the part of defendant No. 10 at the time defendant No. 10 sought to purchase the suit land from defendant No. 1. If defendant No. 10 has sought to purchase the property without those minimum requisites of ascertaining the title, defendant No. 10 would not acquire legal rights thereto. Possession of any of these parties thereafter is of no consequence. The rights, if any, of the original plaintiff No. 4 would follow plaintiff Nos. 1, 2 & 3.

46. In the case of S. Prabh Singh Dhillon and Others Vs. Hoshiarpur Improvement Trust and Others, it was held that after the possession is taken if the owner continues in possession he would not be entitled to interest on the compensation paid. In that case also possession was taken upon the award much as in this case under the letter of possession. Actual possession remained with the owner and interest was claimed. It was held that the owner was not entitled to such interest.

47. Consequently neither plaintiff Nos. 1 to 3 nor plaintiff No. 4 nor defendant Nos. 1 to 3 nor defendant Nos. 4 to 9, nor defendant No. 10 can claim to be in possession of the acquired premises, nor claim any right, title or interest to the land so acquired. The public purpose of making a 56" D.P. Road cannot be frustrated by a party who acquiesced in the acquisition proceedings by accepting compensation, nor by his subsequent transferees.

48. Hence Chamber Summons has to be made absolute as prayed.

49. The applicant/MMC must, therefore, be held to be entitled to demolish the GI sheet compound wall on the suit property and construct the DP road for public purpose.

50. There is no objection to the MMC being made a party- defendant in the suit. It is seen to be a proper party to the suit a part of the suit property having vested in it.

51. Hence the Chamber Summons is made absolute in terms of prayer clauses (a) & (b). The plaintiff Nos. 1 to 3 shall carry out the necessary amendments within 2 weeks in the plaint and in the copies of the plaint served upon all the defendants including the newly added defendants as per the order in another Chamber Summons passed earlier. All the defendants shall file their written statements within 30 days of the amendments being carried out in their copies or served upon them. The MMC shall be entitled to demolish the GI sheet compound wall on the suit property and construct the DP road thus serving the public purpose.

52. Chamber Summons is disposed of accordingly. This order is stayed for 2 weeks.