(2018) 01 BOM CK 0256

BOMBAY HIGH COURT

Case No: 5961 of 2017

Deepak Valji Karia & Anr.		APPELLANT
	Vs	
The State of Maharashtra & Ors.		RESPONDENT

Date of Decision: Jan. 8, 2018

Acts Referred:

- Land Acquisition Act, 1894, Section 11 - Enquiry and award by Collector

Hon'ble Judges: R.M. Borde, R.G. Ketkar

Bench: Division Bench

Advocate: Prasad P. Pathare, N.C. Walimbe, G.S. Hegde

Judgement

1. Heard. Rule. Rule made returnable forthwith.

2. Heard finally with the consent of the parties. The Petition is taken up for final disposal, at admission stage itself.

3. The Petitioner, who is a developer of a plot acquired by him from one Kisan Ganpat Patilthe original owner, has objected to the notice issued by the CIDCO on 6 May 2016, directing the Petitioner to stop the work being carried out over the plot allotted under 12.5% scheme, consequent upon acquisition of lands belonging to Uran Taluka Bhiwandiwala Trust.

4. It is the contention of the Petitioner that the Trust has no concern with the plot acquired by the Petitioner and in fact, it belonged to one Kisan Ganpat Patil. It is further contended that since the Trust has no concern with the plot and as Kisan Ganpat Patil is a private individual, who has been allotted the plot under the scheme, he can legally transfer the

same for the purpose of development. According to the Petitioner, since the Petitioner has not acquired the property from the Trust, nor there is any record to indicate that the plot acquired by the Petitioner, in fact, belongs to the concerned Trust, the order impugned in the Petition deserves to be set aside.

5. An affidavit has been presented on behalf of the State Government, wherein it has been specifically recorded that the award declared by the Land Acquisition Officer under Section 11 of the Land Acquisition Act, in favour of Kisan Ganpat Patil and the said claimant has received the amount of compensation. Being the beneficiary of 12.5% scheme, the CIDCO had allotted the said plot to him by way of rehabilitation benefit and that the concern Trust i.e. Uran Taluka Bhiwandiwalal Trust, has nothing to do with the ownership of the said land and as such, there is no question of cancellation of allotment of said plot.

6. In view of the affidavit presented on behalf of Tahasildar, Uran, TalukaUran, District Raigad, the Development Authority i.e. CIDCO has committed an error, in transmitting impugned communication. The communication issued by the Development Authority on 6 May 2016, directing the Respondent to stop the work over the plot in question, deserves to be quashed and set aside. It shall be further noted that the aforesaid notice has been issued on the basis of communication from the Lands Department i.e. State Government, informing that the plot appears to be belonging to Uran Taluka Bhiwandiwala Trust. Since the factual position has been clarified by the Tahasildar in the affidavit, the notice issued by the Development Authority i.e. CIDCO on 6 May 2016, deserves to be quashed and set aside and the same is accordingly quashed and set aside. As a result, all the consequential actions, based upon the aforesaid notice, also stand quashed and set aside. Rule is made absolute, accordingly.