

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6334 OF 2015**

Maharashtra State PWD Employees CHS Ltd. .. Petitioner

vs.

The Pune Municipal Corporation & Anr. .. Respondents

Mr.Girish Godbole, Senior Advocate a/w Mr.Shivraj Patne i/b
Mr.Aditya Shirke for the Petitioner.

Mr.Rajdeep Khadapkar for Respondent No.1-PMC.

Mr.Surel Shah, Senior Advocate i/b Mr.Shubham Shinde for
Respondent No.2.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ**

DATE : 7th SEPTEMBER 2026

JUDGMENT (PER BHARATI DANGRE, J) :

1 The Petition revolves around the powers exercised by the Commissioner, Pune Municipal Corporation under Section 205 of the Maharashtra Municipal Corporation Act (for short 'MMC Act'), when it resolved to layout and make a new public street.

The piece and parcel of land bearing Survey No. 38 and 39 situated at Village Erandawane, District Pune is the subject property involved, of which the Petitioner, Maharashtra State PWD Employees CHS Ltd. is the owner alongwith the building/structure standing thereon.

Survey No.37 H.No.1/1/2 of the same village abuts the northern boundary of the subject property and belongs to one Ajit Giridharilal Nahar (Respondent No.2) of which he alleges to be landlord and being the owner of the said property, it is at his instance, the Corporation has acted.

The Petition has a checkered history and in an earlier round when the Petitioner approached this Court with a grievance about the exercise of power under Section 205 of the MMC Act, by the Pune Municipal Corporation, the Division Bench on 30/06/2017 examined the issue as to whether the impugned Resolution passed by the Corporation desiring to convert a part of the land held by the Petitioner into public street or a street for public use and whether the exercise of the power was justiciable and the Petitioner advanced the contention that the Resolution is *per se* illegal as it provides for taking over the property of the Petitioner without payment of any compensation and the specific contention that the said action has been taken for the benefit of the second Respondent, who has acquired the adjacent property being the landlord. The submission advanced was very specific that even assuming that a road can be constructed through the land of the Petitioner, the same can only be done after acquiring the requisite portion of the land in accordance with the provisions of the MMC Act.

The Pune Municipal Corporation adopted a stand that after obtaining requisite undertaking and/or deposit from the private Respondent as regards cost of acquisition of land, development of road and compensation can be undertaken and be paid to the Petitioner, shall take steps under the Act for acquisition of the

said land for the purpose of road. It was emphatic statement of the Corporation that it is vested with the power to acquire private land for construction of a public street and it cannot be prevented from acquiring the said land.

The counsel for the private Respondent, however, pointed out the negotiations with the Petitioner/Society for grant of right of way and a statement was specifically made that the Petitioner-Society had received a sum of Rs.15,00,000/- from the second Respondent and the access was very much needed as the Petitioner-Society was a landlord and he had offered to pay the Petitioner-Society the compensation payable in respect of the land acquired for construction of public street.

2 In the light of the submissions advanced and in the wake of the existing statutory scheme in form of Section 205 and 209 of the MMC Act read with Section 77 to 79 of the MMC Act, an inference was drawn that the Municipal Corporation can authorize the Commissioner to make a new public street on private land, if the owner of the private land has not consented for making a public street, but recourse will have to be taken for acquisition either by Section 77 or 78 of the MMC Act, as both these provisions require Municipal Corporation to pay compensation.

On a careful analysis of the Resolution passed by the Corporation, the Division Bench noted thus :-

“13 We have carefully perused the impugned resolution of the first Respondent. The purport of the resolution is that the General Body authorised taking of action under Section 205 subject to condition that neither monetary compensation nor TDR/FSI will be given to the Petitioner. It specifies that only subject to this condition that a

permission has been granted to proceed under Section 205. Some argument was canvassed by the learned Counsel appearing for the second Respondent that at highest only that part of the resolution is illegal which provides that no compensation will be payable to the Petitioner. We do not agree with the said submission for the simple reason that the decision of the General Body is to grant consent for initiating action under Section 205 subject to condition that no compensation will be payable. There is no application of mind by the Municipal Corporation to the question whether Municipal Corporation can acquire the said land of the Petitioner by paying compensation to the Petitioner.

14 As stated earlier, if a public street is to be made on a private property owned by a citizen, recourse will have to be taken to Section 77 or Section 78 of the said Act. Both the sections provide for payment of compensation to the person whose land is required to be acquired for construction of a public street. In the present case, it is undisputed that the Petitioner is the owner of the said land. Therefore, the resolution amounts to depriving the Petitioner of its valuable property in contravention of right conferred by Article 300-A of the Constitution of India.”

A stand was adopted by the Corporation in its Affidavit stating that the Corporation, after obtaining requisite undertaking and/or deposit from Respondent No.2 as regards the cost of acquisition, development of road and compensation to be paid to the Petitioner, will take steps under the MMC Act for acquisition of the said land under the said road.

However, the Court noted that nowhere in the Affidavit it was stated that impugned Resolution has been rescinded or modified and when it continues to operate on the date of the order with no compensation being paid to the Petitioner, the stand that, compensation will be paid to the Petitioner, was clearly contrary to the impugned General Body Resolution. Very categorically the Court observed thus :-

“ The resolution which is impugned in the petition does not say that acquisition will be initiated by paying compensation to the Petitioner and by taking undertaking from the second Respondent to pay the

compensation. The learned counsel appearing for the second Respondent stated that apart from depositing the amount, the second Respondent has given undertaking to the Municipal Corporation to pay a requisite amount towards the compensation. Therefore, in our considered opinion, the impugned decision/impugned resolution of the first Respondent Corporation is completely illegal and the same will have to be quashed and set aside.”

As far as the deposit of the amount of Rs.15,00,000/- is concerned, if the Petitioner had not abided by its alleged assurance, the Court deemed it appropriate to permit the second Respondent to initiate appropriate proceedings against the Petitioner in accordance with law, either enforcing the alleged assurance or for refund of Rs.15,00,000/-.

3 Being aggrieved by the said Judgment, Ajit Nahar approached the Apex Court by filing Civil Appeal No. 4153 of 2022 (arising out of SLP (C) No.1160/2018). On analysing the facts and the arguments advanced and in specific the contention on behalf of the Appellant that he had already parted with large sum of money in the year 2014(Rs.15,00,000/-) and the Cooperative Society had passed a Resolution resolving to accept the request, however, the General Body did not approve the same.

In addition, the Appellant before the Apex Court invited attention to Section 205 (a) and (b) and it was submitted that the land was lying adjacent to each other and the only way out for the Appellant was through the property of the first Respondent. Attention of the Court was invited to the condition of lay out, which was in existence since 1978 and it read thus :-

“For the purpose of proper circulation of road pattern and to have continuity of the water and drainage system and other service.... for the development of the adjacent land the PMC reserves the right to permit access and extension of the internal roads and services through the land under layout/sub-division.”

The aforesaid condition was, therefore, invoked by submitting that it would bind the Cooperative Society and on its basis the Appellant is entitled to succeed.

In short, it was urged that the layout of the first Respondent was approved subject to the condition and this having been accepted the construction was carried out on its plot.

A counter submission was advanced on behalf of the Cooperative Society to the effect that it was only a right reserved for ensuring proper circulation of road pattern and no way confer any right on the Appellant.

The Hon'ble Apex Court, therefore, deemed it appropriate to remand the matter back to the High Court for determining the following issues :-

- i. To consider the aspect relating to the imposition of condition for approving the lay out in the year 1978.
- ii. What will be impact of reservation in the year 1978 claimed by Respondent No.2 and the PMC on invocation of power under Section 205 of the MMC Act.
- iii. The scope of exercise of discretion under Article 226 of the Constitution of India in favour of the Society.
- iv. The deposit of the amount of Rs.15,00,000/- in the year 2014 by Ajit Nahar though the Society had expressed its willingness to return the said amount within two months.
- v. In light of Section 205, whether it could be said that having regard to all that has happened the case could be treated as falling under Section 205(b) of the MMC Act.

4 With the aforesaid direction for reconsideration by the High Court on remand, the impugned Judgment was set aside and the matter was remitted to the High Court by order dated 18/05/2022.

It is in the wake of the aforesaid, the Writ Petition is placed before us and on the pleadings being completed, we have taken up the same for hearing.

5 The learned senior counsel Mr. Godbole would invite our attention to the Scheme of the Maharashtra Municipal Corporation Act, which has defined the term 'private street', 'public street' as well as 'street' and our attention is also invited to the provisions contained in Chapter XIV of the Act relating to 'streets' and in specific Section 202, 205 and 209 of the Statute.

It is his submission that as per Section 202 all streets within the city being or which at any time become, public streets vest in the Corporation and shall be under the control of the Commissioner, that is the Corporation acquires ownership rights for such property.

According to him, in passing the impugned Resolution No. 505 on 23/12/2014 and the impugned order dated 15/06/2015, the PMC purportedly exercised power under Section 205(a) of the MMC Act and sanctioned a new public street upon the Petitioner's privately owned land and in specific the open space of the said plot, by imposing a condition that, 'no compensation is liable to be paid'.

It is his contention that Section 205 cannot be resorted to by the Corporation without payment of compensation, and, therefore, the action of passing of the Resolution under the impugned order is contrary to the Scheme of the MMC Act.

By inviting our attention to Section 209 of the MMC Act, he would submit that the Commissioner is empowered, subject to the

provisions of Section 77 to 79, to acquire any land required for opening of new public street or for widening or for extending any existing public street, thus clearly indicating that whenever a new public street is to be laid or existing public street has to be widened or extended, for that purpose, the Commissioner shall take recourse to the procedure of acquisition as provided under Section 77 or 78 of the Act.

By inviting our attention to Section 77 of the MMC Act, Mr. Godbole would urge that the said provision deals with acquisition of immovable property by Agreement with the owner of the concerned property by the Commissioner, whereas, Section 78 is applicable when the Commissioner is unable to acquire the land under Section 77, in which case the immovable property is to be acquired as if such property is needed for public purpose, within the meaning of Land Acquisition Act, 1894. In both the contingencies, according to him, the provision contemplate provision of compensation to the owner whose land is proposed to be acquired.

However, in the present case, the Petitioner being the owner of the subject property, if the PMC purport to make a public street passing through its property, then it cannot be deprived of its rights in the property without adequate compensation.

Apart from this, his emphasis is on Section 205 which is the power of the Commissioner to make a new public street only subject to two stipulations viz. a) Layout and make new public street and b) Agree with any person for making of the street for public use through the land of such person, either entirely at his expenses or partly at his expenses and partly at the expenses of

the Corporation that such street, in completion, become the public street and shall vest in the Corporation.

It is the contention of the Petitioner that the Commissioner has categorically refused to grant its assent for constructing public road and therefore, there is no question of clause (b) being attracted and, therefore, what remains is the power in the Commissioner to lay down a new public street.

6 One additional submission of Mr.Godbole is that a public street cannot be laid for the benefit of only one individual and for acquiring the land, the process must involve larger public interest.

As regards the condition imposed as a part of layout plan of 1978, it is the submission of Mr.Godbole that the said clause empowers the PMC to allow passage of drainage or other lines through the land in layout, but in no case does it justify opening of a new public street and in any case the said clause do not operate in isolation, and particularly, by bypassing the procedure laid down under the MMC Act. In any case, according to him, the said condition cannot be construed to grant unfettered and perpetual right to the PMC to enter upon to use and take over the Petitioner's private property, much less the right to construct a 'public street' as defined in Section 2(5) of the MMC Act, by exercising the power under Section 205 (a) though the Petitioner who is the owner of the property has objected to the same and that too without taking recourse to the procedure of acquiring the said land.

7 Mr. Godbole would also invite our attention to the Sale Deed dated 06/10/2009 under which Respondent No.2 has purchased the plot and according to him, in the Sale Deed the Vendor has clearly agreed to grant access through his remaining land to the purchaser, indicating that there was an easement of right of way created in his favour from the property of the Kachares and once such contractual right of grant of easement was created, remedy to invoke Section 205 of the MMC Act was not available and the only remedy available to the second Respondent was to file Suit against the Vendors for seeking access through their land and in any case , according to Mr. Godbole there is an alternate access available to Ajit Nahar.

8 The learned counsel Mr.Khadapkar representing the PMC would oppose to the reliefs sought in the Petition by submitting that the layout condition clearly contemplated that the Corporation would ensure access to the adjoining plot holder and keeping this condition in mind, the Resolution was passed after due consideration with the Committee constituted for the said purpose with a specific remark that no FSI/TDR or any cash component in compensation shall be made available.

The learned counsel Mr.Khadapkar would invite our attention to Resolution No.505 , which permitted 6 mtr. wide road to be laid and carved out with its boundaries being marked as A, B and C , passing through Survey No.38 and 39, which has housed the Maharashtra State PWD Employees CHS to be followed by in an order issued by the Municipal Commissioner on 15/06/2016 to the following effect :-

“In exercise of the powers vested u/s 205(1) of Maharashtra Municipal Corporation Act, I prescribe fresh regular line of street 6.00 M wide passing through the open space of the sanctioned Lay out of PWD Employee co-op Housing soc. ltd Erandawane [s.no](#) 38.39 for the property Erandawane [s.no](#) 37 H.No.1/1/2 CTS No. 149, with prior conditional approval of the General Body of the Pune Municipal Corporation vide its resolution No. 505 dt 23/12/2014.

The Regular line of the street mentioned above is shown as A-B-C (अ-ब-क) in RED colour on the accompanying plan.

Condition: No compensation for area under Road shall be paid.”

The learned counsel would also rely upon a specific statement made in the Affidavit filed by Prashant Madhukar Waghmare, the City Engineer working with the Corporation , were he categorically made a statement to the following effect :-

“I say that BMC after obtaining the requisite undertaking and /or deposit from Respondent No.2 as regards the cost of acquisition, development of road and the compensation to be paid to the Petitioner will take steps under the MMC Act for acquisition of the said land. Thus having regard to the same and further considering that the impugned order is made under Section 205 of the Act empowering the Commissioner to make the new public street, the contention of the Petitioner that the same is in contravention of Article 300A of the Constitution of India is misconceived.”

In short, the submission advanced on behalf of the Corporation is to the effect that there can be no denial that for laying down the public street , the land will have to be acquired and the procedure contemplated under Section 77, 78 and 79 shall be followed , but according to the learned counsel the declaration of the public street is the starting point, which decision would be taken ahead by acquiring the said land and in the course of it the procedure prescribed for acquisition and payment of compensation shall be adhered to.

9 The learned senior counsel Mr. Surel Shah representing

Respondent No.2 has also laid his emphasis upon the condition of the layout and he would request the Court to decide the issue, in the light of the order passed by the Apex Court when the Apex Court indicated that on remand, the High Court shall consider the said condition of layout.

It is also his submission that the Apex Court directed to consider the impact of the reservation in the year 1978 claimed by his client and what is its impact as regards the provision in form of Section 205 of the MMC Act.

Apart from this, he would submit that though the cooperative society had adopted a stand that the Appellant had an alternate way, the Apex Court directed this issue to be determined in the wake of the discretionary jurisdiction conferred under Article 226 of the Constitution of India.

According to Mr. Shah, on remand the matter will have to be examined in the light of the order passed by the Apex Court as in the earlier round when the Division Bench of this court on 30/06/2017 had allowed the Petition, it did not consider the condition of the layout which was brought forth at the time when the matter was before the Hon'ble Apex Court.

10 In light of the aforesaid contentions the chronology of events which emerges before us are outlined below :

Respondent No.2 purchased the adjoining plot by a registered Sale Deed on 06/10/2009 and in the year 2011 made handwritten Application to the Petitioner requesting for grant of access through the property. He also addressed a communication to the Executive Engineer, Pune Municipal Corporation that he do

not have access to the approach road and made a request to make the land accessible.

Pursuant thereto, the Deputy Engineer (Building Control) PMC on 01/06/2012 informed the Petitioner-Society to submit its objection/consent for providing approach road through its land, which was refused by the Petitioner, as it seriously raised an objection for construction of public road upon the subject property.

The aforesaid sequence of events was followed by the Resolution being passed by the City Improvement Committee on 08/02/2013 resolving to solicit the opinion of the Municipal Commissioner on the issue of the access road.

Though the Managing Committee of the Petitioner-Society on 28/12/2013 resolved, that the offer of Respondent No.2 to pay premium of Rs.15,00,000/- for grant of proposed access should be accepted and requisite lease deed be executed, the said Resolution required an approval from the Special General Body meeting (SGM) and on 02/02/2014, the SGM of the Petitioner-Society rejected the same after due deliberation.

Mr.Ajit Nahar, accepting the said Resolution by his letter dated 05/02/2014, requested the Petitioner-Society to refund the money paid by him. However, the said money could not be refunded as the Administrator came to be appointed on the Petitioner-Society to look after its affairs.

In the meantime, the City Engineer, by his communication dated 04/07/2014 sought the opinion of the Committee constituted for consideration of the cases for making road/street under Section 205 of the MMC Act and the Committee, in its

meeting held on 19/07/2014 gave favourable opinion for laying road by exercising the power under Section 205 of the MMC Act. It was also opined that in lieu of the same the PMC should not give FSI/TDR or monetary compensation.

The journey of the said proposal progressed and the proposal for access road was, thereafter, forwarded by the Additional Commissioner to Municipal Secretary for placing before the General Body of the Corporation for its approval and the General Body by passing Resolution No.505 dated 23/12/2014 resolved to approve making of the new public street upon the subject property belonging to the Petitioner by exercising the power available under the MMC Act, with a direction that no monetary compensation or compensation by way of FSI/TDR shall be paid to the owner. It is this order, which is impugned in the present Petition.

The Petitioner raised an objection with the PMC about the access being granted to the private Respondent through its property and requested for a hearing. However, pursuant to the impugned Resolution passed, the Commissioner of PMC exercised the power under Section 205 on 15/06/2015 and passed the impugned Office Order, prescribing 6 meter wide 'New public street' upon the open space in the subject property with a condition that 'no compensation for the area under the road shall be paid'.

11 This chronology will have to be appreciated in the light of the statutory scheme of the Maharashtra Municipal Corporation Act . The said enactment has defined the term 'land' in Section

2(30) to the following effect :-

“Land” includes land which is being built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street.

Section 2(47) has defined “Private street” to mean a street which is not a public street.

Section 2(52) has defined the term “Public street” to mean any street, heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public fund, or which under the provisions of Section 224 is declared to be, or under any other provision of this Act becomes, a public street.

Similarly another definition which warrant our consideration is Section 2(63), which has defined “street”.

Another relevant provision in the statute is Section 66 which provide for the matters which may be provided by the Corporation at its discretion and this include particularly sub-section (34), which reads thus :-

“66. Matters which may be provided for by Corporation at its discretion.

....

(34)laying out whether in areas previously built upon or not, new public streets and acquiring land for that purpose and land required for the construction of buildings or cartilages thereof to abut on such street or streets.”

12 In the Scheme of the enactment, Chapter XIV pertains to “Streets” “Construction, Maintenance and Improvement of Streets” and the relevant provisions are Section 202, 203 and 205, which we deem appropriate to reproduce for the sake of convenience.

202. Vesting of public streets in Corporation.

All streets within the City being, or which at any time become, public streets, except streets, which on the appointed day vested in the [Government] or which after the said day may be constructed and maintained by an authority other than the Corporation, and the pavements, stones and other materials thereof shall vest in the Corporation and be under the control of the Commissioner.

203. Power of Commissioner in respect of public streets.

(1) The Commissioner shall from time to time cause all public streets vested in the Corporation to be levelled, metalled or paved, channelled, altered and repaired, as occasion shall require, and may also from time to time widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered and may place and keep in repair fences and posts for the safety of pedestrians:

Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed five thousand rupees or such higher amount as the Corporation may from time to time fix shall be undertaken by the Commissioner unless or until such undertaking has been authorised by the Corporation.

(2) With the sanction of the Corporation, the Commissioner may permanently close the whole or any part of a public street vested in the Corporation:

Provided that such sanction of the Corporation shall not be given unless, one month at least before the meeting at which the matter is decided, a notice signed by the Commissioner has been put up in the street or part of a street which it is proposed to close, informing the residents of the said proposal, not until the objections to the said proposal, if any, made in writing at any time before the day of the said meeting have been received and considered by the Corporation.

205. Power to make new public streets.

The Commissioner, when authorised by the Corporation in this behalf, may at any time-

- (a) lay out and make a new public street;
- (b) agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the Corporation, and that such street shall become, on completion, a public street, which shall vest in the Corporation;
- (c) construct bridges and sub-ways;
- (d) divert or turn an existing public street vested in the Corporation or a portion thereof.

Another relevant provision is Section 209 which is which the power to acquire premises for improvement of public streets,

the power vested in the Commissioner, to be exercised, subject to the provisions of Section 77, 78, and 79.

“209. Power to acquire premises for improvement of public streets.

(1) The Commissioner may, subject to the provisions of sections 77, 78 and 79,-

(a) acquire any land required for the purpose of opening, widening, extending, diverting or otherwise improving any public street, bridge or sub-way or of making any new public street, bridge or sub-way and the buildings, if any, standing upon such land;

(b) acquire in addition to the said land and the buildings, if any, standing thereupon, all such land with the buildings, if any, standing thereupon, as it shall seem expedient for the Corporation to acquire outside of the regular line, or of the intended regular line, of such street;

(c) lease, sell or otherwise dispose of any land or building purchased under clause (b).

(2) The acquisition of land for providing, extending or improving a place for the parking of vehicles shall be deemed to be acquisition of land for the purpose of providing, extending or improving a public street.

(3) Any conveyance of land or of a building under clause (c) of subsection (1) may comprise such conditions as the Commissioner thinks fit, as to the removal of existing building, the description of new building to be erected. the period within which such new building shall be completed and other such matters.

13 In the light of the statutory scheme, when we have examined the chronology of events , it appear to us with clarity that the Petitioner is the owner of Survey No.38 and 39, Bharatkunj Vasahat in which the Petitioner has constructed a building and at the relevant time, the municipal layout which was prepared and sanctioned showed various open lands, developed plots in and around the suit property. The Petitioner has left certain portion of its plot as compulsory ‘open space’ as contemplated by the layout plan and surrounded its property by a wall for securing the property as well as maintaining the privacy of the members of the Society and the open space was put to use as children playground and a small community hall. The

property is in exclusive use and occupation of the members of the Petitioner Society and being guarded by construction of a wall.

To the northern side of the Petitioner's property is property bearing survey No.37/1/1/2, CS No.149, which the private Respondent claim to have purchased in or around 2009. The Petitioner has placed before us a copy of the layout and the photos of the actual site to give us an idea about the exact location of the property of Mr. Ajit Nahar.

Upon purchase of the property, at the request of Ajit Nahar, the Managing Committee of the Petitioner agreed to accept his offer of Rs.15,00,000/- for providing him access road by allowing a requisite Lease Deed to be executed, however, though the Managing Committee passed the said Resolution, it did not receive approval of the special general body, as it was specifically turned down.

Mr. Godbole has no difficulty in continuing with the statement which is consistent with his stand in the earlier round of litigation, that the said amount can be returned to Respondent No.2 having been accepted in the year 2014 and, therefore, we do not intend to go any further on the said proposal as under Section 205(b), the Commissioner is authorized to make a new public street in consensus with the person who has agreed for making of the street for public use through his land, subject to the stipulations contemplated therein and upon such street being completed, shall acquire the status of 'public street'. Since the stand of the Petitioner from the very beginning was to oppose the laying of 'public street' through its own property, thereby causing reduction in its open space and this being done without granting

any benefit of TDR/FSI or compensation, and we do not assume that the Petitioner society ever agreed for the arrangement of providing access to Ajit Nahar without payment of compensation and at this stage, we deem it appropriate not to carry forward this argument advanced on behalf of Mr.Shah.

14 The most relevant consideration for us is the observation of the Hon'ble Apex Court in light of the clause being included as a condition of layout in the year 1978. On reading of the said clause, we must note that though the Apex Court had expressed that it is a sort of reservation, but on reading of the said clause, we could find that it is a condition subject to which the layout of the Petitioner Society was sanctioned.

As the Hon'ble Apex Court had directed the High Court to determine impact of this clause, on its careful reading, we must note that it is one of the stipulation subject to which the layout was sanctioned and the condition imposed is, that for proper circulation of the road pattern and to have continuity of water and drainage system and other services as well as for the development of adjacent lands, the PMC had a right to permit access and also extension of the internal roads and services through the land under the layout/sub-division that is of the Co-operative Society.

There is no quarrel about the fact that by virtue of the said clause, the PMC had reserved its right to allow access and extension of the internal roads and services from the layout of the Society, but it had a limited purpose i.e. for proper circulation of road pattern so as to have continuity of water and

drainage system and other services. However, in our considered view the said clause do not accrue to the benefit of any other third party landholder and in any case at this stage, when the layout is all developed and the land through which the public road is attempted to be laid, is a portion of the open space of the Petitioner-Society which it is mandatory for it to keep open for all time, as per the Development Control Regulations as well as the norms prescribed by the PMC, we do not construe this condition as a reservation. Reservation in the Development Plan has definitely a different connotation and the aforesaid stipulation is only a condition of layout, but in any case, it do not necessarily lead to a conclusion that when the PMC reserve its right to permit access and extension of the internal road and services to the land of the Petitioner-Society, it must do it free of cost or without granting any TDR/FSI in lieu of compensation.

We must, therefore, declare that the condition stipulated do not amount to any sort of reservation in favour of Mr.Ajit Nahar or for that matter any other adjacent plot holder.

15 Coming to the recourse of the Corporation to Section 205 of the Act, we must note that as per Chapter XIV, all streets within the city being or which at any time become public streets, shall vest in the Corporation and shall be under the control of the Commissioner. The Commissioner is specifically empowered to cause all public streets vested in the Corporation to be levelled, paved, metalled, channelled, sewerred or repaired to ensure proper maintenance.

Section 205 is the power of the Commissioner on being authorized by the Corporation, or on its behalf to layout and make a new public street. The said power also extend to construction of bridges and subways, diversion or turn on existing public street or a portion thereof.

This power of the Commissioner is permitted to be exercised only upon authorization by the Corporation and we find that upon Resolution No.505 being passed, taking a decision to demarcate certain portion of the Petitioner-Society's land to be a public street, the Commissioner thereafter issued a formal order on 15/06/2015 in exercise of the power vested under sub-section (a) of Section 205 of the MMC Act, prescribing that a regular line of street 6.00 meter wide passing through the open space of the sanctioned layout of PWD Employees CHS, Survey No.38, 39, for the property at Survey No.37 H. NO.1/1/2 CTS No.149 with the prior conditional approval of the General Body of PMC vide its Resolution No.505 dated 23/12/2014.

The office order also declared that the regular line of the street mentioned above is shown as A-B-C in red colour on the accompanying plan, with a condition imposed that, 'no compensation for the area under the road shall be paid'.

16 We have no difficulty in recognizing the power of the Commissioner to acquire the premises for improvement of public street, and the learned counsel for the Corporation has specifically conceded to the position in law to the effect that before the road is laid and made a new 'public street' under Section 205, the mechanism prescribed under Section 209 must

precede it unless there exist a stipulation as contemplated in clause (b) of Section 205 i.e. a person agreeing with any person for the making of the street for public use through his land, which shall be entirely at the expense of the person, or partly at the expense of the person or the expense of the Corporation and on completion such a public street shall vest in the corporation.

However, as we have already concluded upon the aspect that the amount of Rs.15,00,000/- which was deposited by Mr. Ajit Nahar which the Petitioner-Society has fiercely resisted throughout the proceedings and in fact the Special General Body itself did not approve the Resolution adopted by the Managing Committee, for us the contingency stipulated in clause (b) has no meaning.

17 The only recourse, that remains now available to the Commissioner acquiring the land required for the purpose of opening a new public street and for this purpose, it is expedient for the Corporation to acquire the said land in the manner prescribed in Section 77, 78 and 79.

Section 77 has set out the procedure for acquisition of immovable property, which authorize the Commissioner to acquire the property on behalf of the Corporation by Agreement on such terms and at such rates or prices or rates, which is approved by the Standing Committee. If, however, the property could not be acquired by an Agreement, and if it is required for public purpose, in such case, upon an Application for the Commissioner made with the approval of the Standing Committee and subject to the provisions of the Act, the

proceedings shall be undertaken for providing the same on behalf of the Corporation, if such property or easement land was need for public purpose within the meaning of the Land Acquisition Act.

However, this provision is accompanied with a provision for payment of amount of compensation to be awarded and subsection (3) of Section 78 clearly contemplate that the amount of compensation to be awarded and all other charges incurred in the acquisition of any such property, shall subject to other provisions of the Act, be forthwith paid by the Commissioner, and thereafter, the property shall vest in the Corporation.

Another mode by which the property can be acquired is stipulated in Section 79 which deals with disposal of property either by sale, letting out or hire, but we are not concerned here with the said provision.

18 As the Corporation is conscious of the fact and in fact it has made an Affidavit on oath to the effect that the property will have to be acquired, as it belongs to the Petitioner-Society and necessary procedure will have to be followed, but the insistence of the Corporation that the Resolution/declaration by the Commissioner as public street must continue to govern the property, as it is only when the Corporation has decided to declare it as 'Public street', the procedure of acquisition shall follow.

We do not agree with Mr.Shah or the learned counsel Mr.Khadapkar on this submission.

A reading of the Scheme contained in Chapter XIV would make it evidently clear that though it is the power in the Commissioner to layout and make new public street, if this is passing through a property of any individual and like in the present case the property in possession of the Petitioner-Society, then the Corporation is left with no other alternative but to acquire the property by following the procedure under Section 77/78 and it is even open for the Petitioner Society to contest the claim of 'public purpose' as upon the Corporation making a proposal to the State Government, subject to it being satisfied that the acquisition is for a public purpose as contemplated under Land Acquisition Act, the procedure for acquisition shall be initiated.

It is too early for us to determine as to what shall be the objection raised by the Petitioner-Society and what stand the Corporation will adopt in demonstrating that it is a public purpose, as it would depend upon how many people would have access to the said street or it is only to be constructed for the benefit of Respondent No.2, as according to the provision of the Act, 'public street' is definitely distinct from 'private street' and it is defined in the Statute to mean any street, which is levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public fund or which under the provisions under Section 224 is declared to be a 'public street', definitely connoting that public has access to the said street.

Therefore, in our view, it is not for us to determine as to whether the contention of the Corporation that it is a 'Public street' shall be accepted and we deem it appropriate to permit

the Corporation to initiate steps for acquiring the land which it proposes to declare as public street, by identifying the same and forwarding proposal to the State Government and it is only upon acquisition and payment of the necessary compensation/benefit either in form of TDR/FSI, the Petitioner should be divested of the property which is in its possession and which forms part of its open space.

Applying the principle of 'eminent domain', if the State Government is of the view that the property needs to be acquired for a larger public good, it is in the light of the decision of the Apex Court in *Bernard Francis Joseph & Ors. vs. Government of Karnataka & Ors.*¹, the land may be acquired, but after paying the necessary compensation.

19 Mr. Godbole has also relied upon the decision of Apex court in *Kolkata Municipal Corporation & Anr. vs. Bimal Kumar Shah & Ors.*² where with reference to Section 352 of the Calcutta Municipal Corporation Act, it was held that the power only allow the Municipal Commissioner to identify the land required for streets/parks and the use of the word 'may acquire' in Section 352 does not constitute the statutory power of compulsory acquisition and the compulsory acquisition must proceed only under Section 527 of the enactment and relevant observation of the Apex Court in para 35 and 36 reads to the following effect :-

“35. Returning to the legal submissions of the counsel for the appellant Corporation, as we have noticed that Section 352 does not provide for any procedure whatsoever, we reject the contention that it

1 (2025) 7 SCC 580

2 (2024)10 SCC 533

contemplates the power of acquisition. We have already held that Section 352 is only intended to enable the Municipal Commissioner to decide whether a land is to be acquired for public purpose. The power of acquisition is in fact vested with the State under Section 53⁷ and it will exercise it, in its own discretion, whenever the Municipal Commissioner makes an application to that effect. We have also agreed with the decision of the High Court that Section 363 is not a provision for compensation for compulsory acquisition. In this context, we have also held that a valid power of acquisition coupled with the provision for fair compensation by itself would not complete and exhaust the power and process of acquisition. Prescription of the necessary procedures, before depriving a person of his property is an integral part of the "authority of law", under Article 300-A and, Section 352 of the Act contemplates no procedure whatsoever.

36. We are not referring to the detailed facts of the case involving multiple rounds of litigation where the respondents have taken inconsistent stands about the ownership and acquisition of the property. There is no doubt in our mind that the exercise of the power is illegal, illegitimate and has caused great difficulty to the respondent land-bearer."

20 From the stand adopted by the Respondent-Corporation in their Affidavit, it can be discerned that even the Corporation is conscious of the fact that it will have to acquire the land of the Petitioner-Society for the purpose of making a 'New public street'. The power exercised by the Commissioner, upon being authorized by the Corporation would require acquisition of the land in terms of Section 78 of the MMC Act, under which the land can be acquired for a public purpose, within the meaning of the Land Acquisition Act, 1894. The only point of difference, which the Corporation want to press into service is, that the 'Public street' having been once declared the procedure will follow and in contrast the contention of the Petitioner is, it is only after acquisition of the land, the power under Section 205 of the MMC Act shall be exercised and it shall be declared as a 'Public street' by the Commissioner.

21 We find ourselves to be in agreement with the contention on behalf of the Petitioner-Society and this we infer on the basis of the provisions contained in Chapter XIV of the MMC Act, when the Commissioner on being authorized by the Corporation is empowered to layout and make a 'New public street', but this definitely contemplate acquisition of the land, since it belong to the Petitioner-Society and it is part of its open space and is intended to be acquired for the purpose of providing access to the private Respondent. Since the Corporation is also agreeable that the land deserve to be acquired before it is put to use as 'Public street' and since we upheld the contention advanced on behalf of the Petitioner-Society, we deem it appropriate to set aside the decision of the Corporation to declare the land of the Petitioner-Society as 'Public street' and this being done by passing Resolution No. 505 dated 23/12/2014 declaring the property as 'Public road' under Section 205 of the MMC Act. Consequently, the Office Order issued by the Municipal Commissioner on 15/06/2015, thereby demarcating the regular line of street passing through the open space of the sanctioned layout of the Petitioner, is also quashed and set aside.

However, we permit the Pune Municipal Corporation to take such appropriate steps on the Application of Mr.Ajit Nahar seeking access to his property i.e. Survey No.37/1/1/2, CTS No.149, and we direct that the said request shall be considered subject to ensuring compliance of the procedural formalities to be followed before the access road is treated as 'Public street' and power under Section 205 read with Section 209 of the MMC Act,

shall be strictly exercised subject to the provisions of the MMC Act.

22 In light of the remand order passed by the Hon'ble Supreme Court, we declare that merely because of the layout condition introduced in the year 1978, Respondent No.2 is not entitled to have an access without the Corporation following the due process of law, which include payment of compensation, which shall be determined by the State Government, when it arrives at a conclusion that granting access would serve the public purpose.

The amount of Rs.15,00,000/- which is deposited with the Petitioner-Society is directed to be refunded to Respondent No.1 Ajit Nahar, with interest at the rate of 6% p.a. and we expect this amount to be refunded within a period of six weeks from today.

Writ Petition is made absolute in the aforesaid terms.

[ASHISH S. CHAVAN, J.]

[BHARATI DANGRE, J.]