

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.6230 OF 2008

1. Kamal Brijmohan Maniyar,
Age 28 years, Occ. Business
2. Parvatabai Brijmohan Maniyar,
Age 49 years, Occ. Household
3. Manish Brijmohan Maniyar,
Age 23 years,

All R/o Jalgaon, Taluka and
District Jalgaon.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
(Copy to be served on Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad)
2. The Director,
Town Planning, Maharashtra State,
Pune, Town Planning Department,
Central Building, Pune.
3. The Deputy Director,
Town Planning, Jalgaon.
4. The Sub-Divisional Officer,
Jalgaon Division, Jalgaon.
5. The Municipal Corporation,
Jalgaon, through its Chief Officer,
Jalgaon.

... RESPONDENTS

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Shri A.B. Kale, Advocate for petitioner
Mrs. Y.M. Kshirsagar, A.G.P. for respondents No.1 to 4
Shri P.R. Patil, Advocate for respondent No.5
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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 8th April, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. Mr. A.B. Kale, the learned counsel for petitioner submits that, the respondents had issued declaration under Section 6 of the Land Acquisition Act read with Section 126 of the Maharashtra Regional and Town Planning Act on 5.11.1999. As yet, no steps for acquisition have been further taken, the award is not passed. The draft development plan is published on 6.3.1987. On 16.1.1993, revised town planning scheme was submitted. The petitioner filed Writ Petition No.4145/2003 challenging the action of respondents and prayed for release of the land from reservation. This Court, while disposing of the Writ petition, held that, the Government is empowered to issue fresh declaration for acquisition of land subject to modification and that market value of the land shall be the market value as on the date of declaration in official gazette.

According to the learned counsel, on 15.4.2008, Jalgaon Municipal Council passed resolution, resolving to transfer the land in favour of Baheti Pratishthan. The property and reservation is shown for primary school and playground bearing Site No.98 and 99. Instead of proceeding further under the provisions of Land Acquisition Act and passing the award, the respondent is transferring the land to a private party. According to the learned counsel, as yet the award is not passed. Even if no time limit is prescribed under Maharashtra Regional and Town Planning Act, it has to be passed within reasonable time even as per Section 11-A of the Land Acquisition Act.

2. The learned counsel relies on the judgment of this Court in Writ Petition No.3782/1994, dated 9.5.2014 and the judgment of the Apex Court in a case of Ram Chand & ors. Vs. Union of India & ors., reported in 1993 AIR SCW 3479, the judgment of the learned Single Judge of the Karnataka High Court, in case of Chaluve Gowda alias Chikkonu Vs. State of Karnataka & ors., reported in AIR 2014 Karnataka 40. So also the judgment of the Division Bench of this Court at Nagpur in case of Bharat s/o Maganbhai Kheta Vs. Nagpur Improvement Trust, reported in 1992(94) Bom.L.R. 67.

3. Mr. Patil, learned counsel for the respondent Corporation submits that the respondents are intending to acquire the land, the Court may direct the respondents to acquire the land and pass the award. According to the learned counsel, the earlier Writ Petition filed by the petitioner challenging declaration under Section 6 of the Land Acquisition Act has been dismissed. In light of that, the present petition is not tenable. According to the learned counsel, no time limit is prescribed under the Maharashtra Regional and Town Planning Act for passing award. The Maharashtra Regional and Town Planning Act is a self contained Code as held by the Apex Court in 2011 (3) SCC 1 [Girnar Traders Vs. The State of Maharashtra & ors. etc.].

4. We have considered the submissions canvassed by learned counsel for the respective parties. There cannot be any dispute with the proposition that the Maharashtra Regional and Town Planning Act is a self contained Code and Section 11-A of the Land Acquisition Act is not applicable wherein acquisition is sought to be proceeded by declaration under section 126 of the Maharashtra Regional and Town Planning Act read with Section 6 of the Land Acquisition Act.

5. Though no time period is prescribed under the Maharashtra Regional and Town Planning Act for passing the award after declaration under Section 6 of the Land Acquisition Act read with Section 126 of the Maharashtra Regional and Town Planning Act, still the action of the respondents has to satisfy the test of reasonableness. The award cannot be postponed indefinitely or in perpetuity. The present factual matrix as has been culled out above would show that the second declaration under section 126 of the Maharashtra Regional and Town Planning Act read with Section 6 of the Land Acquisition Act was issued on 5.11.1999. Thereafter notice under Section 9 was issued on 31.10.2001. Even objection was raised by the petitioner. Thereafter it appears that, the resolution was passed by the respondent Municipal Corporation, thereby resolving to transfer about 5800 sq. mtrs. of land as per the market value to Kai. Adv. Babanbhai Baheti Pratishthan, Jalgaon. On one hand the Corporation is passing resolution to transfer the part of the land and on the other hand, the Corporation is not taking steps to get the award passed. 16 years have lapsed. The respondent Corporation and the authorities have not taken further steps to pass the award. This Court, in Writ Petition No.4145/2003 filed by the petitioner, had observed that there is no prohibition for a fresh declaration for acquisition of the land subject to the

modification and that the market value of the land shall be the market value as on the date of declaration in official gazette. The respondent Municipal Corporation being a public body, cannot be allowed to sit over the acquisition proceedings for a long slumber. The Apex Court, in a case of Ram Chand (referred supra), had observed that, even Section 11-A of the Land Acquisition Act is not applicable, still, the award has to be passed within a reasonable time. Further, the Division Bench of this Court at Nagpur, in a case of Bharat Kheta (referred supra) has also held that the delay has to be tested on the ground of reasonableness. It would be unreasonable to allow the respondent Corporation to pass the award after a long slumber of 16 years more particularly in the facts of the case that the respondent Municipal Corporation in 2008 passes a resolution to transfer the part of the land at the market value to a Society.

6. Considering the aforesaid conspectus of the matter, it would not be appropriate to allow the respondent to pass an award after 16 years of the declaration under Section 6. The same would be unreasonable more particularly keeping in view the aforesaid facts.

7. In light of the above, Writ Petition is partly allowed to

the extent that declaration under Section 126 of the Maharashtra Regional and Town Planning Act read with Section 6 of the Land Acquisition Act, dated 5.11.1999 is set aside.

8. It is made clear that the respondent Corporation is not refrained from issuing fresh declaration under Section 6 of the Land Acquisition Act read with Section 126 of the Maharashtra Regional and Town Planning Act. It may also take recourse to such other action and proceedings as permissible in law. Rule accordingly made absolute. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)