

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5080 OF 2015

Shaikh Ibrahim S/o. Shaikh Maula Sahab,
Age : 70 Years, Occu. : Pensioner,
R/o. : Times Colony, Aurangabad,
Taluka and District : Aurangabad

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through Department of Urban Development,
Mantralaya, Mumbai 400 032
2. The Municipal Corporation of Aurangabad,
Through,
Municipal Commissioner,
Aurangabad Municipal Corporation,
Aurangabad
3. The Municipal Commissioner,
Aurangabad Municipal Corporation,
Aurangabad
4. Assistant Director of Town Planning,
Aurangabad Municipal Corporation,
Aurangabad

.. **Respondents**

Shri Devdatta P. Palodkar, Advocate for the Petitioner.
Shri B. V. Virdhe, A. G. P. for Respondent No. 1.
Smt. M. A. Deshpande, Advocate for Respondent Nos. 2 to 4.

CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.
DATE : 27TH JULY, 2016.

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

1. Rule.

2. Rule returnable forthwith. With the consent of learned counsel for respective parties taken up for final hearing.

3. The Petitioner claims to be the owner of an area admeasuring 53 R from survey No. 194/1, Part, situated at Harsool, Aurangabad. The Petitioner submitted the lay out plan for sanction. As per the sanctioned lay out an area admeasuring 458.50 Sq. Mtr. is covered by internal roads. According to the Petitioner, an area of 983 Sq. Mtr. is affected by two development plan roads. According to Mr. Palodkar the learned counsel, at the time of sanction of the lay out the Respondent directed the Petitioner to execute the relinquishment deed of an area covered by the internal roads, open spaces, the Petitioner as such executed relinquishment deed to that effect. According to the learned counsel, the Petitioner had not relinquished his title with regard to the area under the development plan road. The learned counsel submits that, the Petitioner represented with the Respondent for compensation in respect of the area under the development plan road. Further, the Municipal Corporation for the first time on 6th March, 2007 mutated its name in the relevant revenue record as the owner over an area covered by the development plan road. The Petitioner had also issued notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act, 1966. In fact, though the said notice was titled as notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act, 1966 the Petitioner was claiming compensation for the said land. The learned counsel submits that, in August, 2009 the Urban Development Department and the Assistant Director of Town Planning directed the Municipal Corporation, Aurangabad to submit the proposal for acquisition of the land covered by development plan road. However, the Assistant Director of Town Planning communicated that the area under the development plan road is transferred to the Municipal

Corporation, Aurangabad pursuant to the relinquishment deed and the name of the Municipal Corporation is mutated and now the land covered under the development plan road is owned by the Municipal Corporation, Aurangabad. The learned counsel submits that, the Respondent Corporation cannot claim title over the land owned by the Petitioner though, the same is under the development plan road as per the development plan. According to the learned counsel, the Petitioner is entitled for compensation in respect of said area covered under the development plan road. The learned counsel submits that, the Petitioner is even agreeable to receive the T. D. R. as per the policy of the Respondent – Municipal Corporation, Aurangabad.

4. Mrs. Deshpande, the learned counsel for Respondent Nos. 2 and 3 submits that, the relinquishment deed is executed in the year, 1999 and the Petitioner approached this court after long slumber of 15 years, on the ground of delay and laches the Petitioner is not entitled for any reliefs. According to the learned counsel, the recital of the relinquishment deed are explicitly clear and the title under the development plan road is transferred to the Municipal Corporation, Aurangabad. Now after 15 years the Petitioner cannot turn around and contend otherwise. The learned counsel further submits that, in any case the Petitioner is benefited because of the development plan road as he would be entitled to use his plotable area for commercial purpose and because of the development plan road he is not required to keep internal road.

5. Mrs. Deshpande, the learned counsel further submits that, even, as per the schedule of the said relinquishment deed it is clear that the rights under the development plan road are also relinquished.

6. We have considered the submissions.

7. The thrust of the Respondent is on the relinquishment deed said to have been executed by the Petitioner on or about 26th Day of October, 1999. Para 2 of the said relinquishment deed deals with relinquishing the rights and title over the internal roads and open spaces in respect of the land under the lay out survey No. 194/1, Part at Harsool. The said relinquishment deed does not specifically deal with relinquishing the rights under the development plan road. In para 3 of the said relinquishment deed the reference is to the lanes, drains, culverts alongwith land and material therein. Be that as it may, for the first time the Municipal Corporation got its name mutated in respect of the land covered under the development plan road in the year, 2007 and the Respondent - Corporation for the first time in the year, 2007 claimed that it is the owner of the property under the development plan road. It would be worth considering that even in August, 2009 the Urban Development Department and the Assistant Director of Town Planning, Aurangabad directed the Municipal Corporation, Aurangabad to submit proposal for acquisition in respect of the land covered by the development plan road and thereafter, the corporation has resiled. As far as land covered under the development plan road is concerned the corporation cannot claim the land unto itself free of cost. The corporation is required to pay compensation in respect of the said land covered under the development plan road. This court vide its order dated 6th May, 2014 in Writ Petition No. 5179 of 2003 and 5183 of 2003 has held that, even if, the land is under the development plan road in the lay out the owner of the said lay out is entitled for the compensation.

8. Considering the fact that the area owned by the Petitioner is covered under the development plan road the Petitioner would be entitled for the compensation. The relinquishment deed is

executed in the year 1999. The corporation got its name mutated in the year 2007. The writ petition is filed in the year 2015. The valuation of the writ land will have to be considered of the year 1999. In view of that, we pass following order -

ORDER

A] The parties are at liberty to arrive at compensation amount by private negotiations or Respondent Corporation may also consider the grant of T. D. R. as claimed by the Petitioner. In case the Municipal Corporation, Aurangabad is ready to give T. D. R. then Petitioner shall accept the T. D. R. in lieu of compensation as he has agreed for the same.

B] In case, the private negotiations do not fructify then, the acquisition proceedings shall be commenced by the Respondents as per law within a period of six (6) months from the date of this order. In that event the market value of the land affected in the D. P. road shall be considered of the year 1999.

C] Save and except claim made in this petition we have not considered any other submissions.

9. Rule is accordingly made absolute on above terms. No costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]