

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5254 OF 2002

1. Ambabai Namdeo Raut (deceased),
Through her Legal representatives-
Ashok s/o. Karbhari Pawar,
Age : 45 years, Occ. Agri.,
r/o. Saraswati Colony, Ward No.7,
Near Devakar Wasti, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar
2. Jitendra Rupchand Kasliwal,
Age : 34 years, Occ. Agri.,
r/o. Near Bus Stand, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar
3. Surendra Bhagchand Kasliwal,
Age : 34 years, Occ. Agri.,
r/o. Near Bus Stand, Shrirampur
Tq. Shrirampur, Dist. Ahmednagar ..Petitioners

Vs.

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32
2. Collector,
Ahmednagar, Dist. Ahmednagar
3. Municipal Council,
Shrirampur,
At post Shrirampur,
Dist. Ahmednagar
4. Arbitrator,
Town Planning Scheme Shrirampur,
Dist. Ahmednagar ..Respondents

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Mr.P.R.Patil, Advocate for petitioner

Mr.A.S.Shinde, AGP for respondent nos.1, 2 and 4

Mr.V.S.Bedre, Advocate for respondent no.3

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.
DATE : JUNE 13, 2017**

ORAL JUDGMENT (*Per T.V. Nalawade, J.*) :

This petition is filed seeking relief of giving directions to the respondents to pay compensation of Rs.1.33 Crores to the petitioner before taking possession of the land of the petitioner bearing Survey No.2139 situated at Tq. Shrirampur, Dist. Ahmednagar so also for further relief like giving directions to de-reserve the land of the petitioner, etc.

2. Both sides are heard.

3. It appears that the land of the petitioner came to be reserved in the year 1979 for a play ground. It is the contention of the

petitioner that in the year 1992, she had applied to the local body for deleting her land from the scheme due to some peculiar circumstances. It is the case of the petitioner that the local body has passed a resolution in favour of the petitioner, but the scheme continued under the provisions of the Maharashtra Regional Town Planning Act, 1966 ("the Act", for short). It is the case of petitioner that the respondents are now showing undue haste and they are trying to take possession of the land of the petitioner when they are not showing interest in taking possession of the lands of other landowners. In view of this grievance, the aforesaid reliefs are claimed.

4. The submissions made by the learned Counsel for the parties would show that the procedure, as laid down under Sections 72 onwards of the Act is being followed. Even an objection was filed by the petitioner before the Arbitrator, however, the said objection came to be rejected by

the Arbitrator, which decision has been challenged by the petitioner before the appellate Authority and the appeal is still pending.

5. While invoking writ jurisdiction, this Court is expected to consider the facts like, whether the authority concerned has jurisdiction to do the act and whether, the procedure, as laid down by the statute, is being followed. The provisions of Sections 83 and 89 of the Act show that powers are vested with the Town Planning Authority to take possession of the land for a town planning scheme. An appeal is provided under the Act and such appeal has also been filed by the petitioner.

6. The learned Counsel for respondent no.3 – Municipal Council placed reliance on the observations made by this Court while deciding **Writ Petition No.4971 of 2003 (Shashikant s/o. Shivram Boravake and ors. Vs. The State of**

Maharashtra and ors.) by judgment dated 16.07.2014. In the said judgment, this Court has considered the procedure which is expected to be followed when there is objection of present nature.

7. In the present case, however, it can be said that the petitioner is trying to stall the entire scheme provided under the Act. It can also be said that the Writ Petition itself is premature, as even the objection is not finally decided by the appellate authority. The authority is expected to act fairly and it is not expected from it to have a discriminatory approach. The authority cannot pick and choose and proceed only against one party, though there are provisions to act in particular circumstances. This Court hopes that the authority will act fairly.

8. However, the reliefs claimed by the petitioner in this petition cannot be granted by this Court in view of the provisions of the

aforesaid special enactment.

9. With the aforesaid observations, the Writ
Petition is disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

kbp