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

WRIT PETITION NO.8212 OF 2010

1. Vijay Deepchand Chordiya,
   Age 54 years, Occu. Business,

2. Sau. Chhaya Vijay Chordiya,
   Age 53 years, Occu. Housewife

3. Vipin Vijay Chordiya,
   Age 30 years, Occu. Business

4. Vishal Vijay Chordiya,
   Age 31 years, Occu. Business

5. Shailesh Sharadrao Wani,
   Age 37 years, Occu. Agri.

6. Chandrashekhar Sharadrao Wani,
   Age 32 years, Occu. Agri.

All R/o Mahavir Society,
Adarsh Nagar, Mohide Road,
Near Nayantara Guest House,
Jalgaon ... PETITIONERS

VERSUS

1. The State of Maharashtra
   (through its Secretary,
   Urban Development Department,
   Mantralaya, Mumbai – 32)
   (Copy to be served on
   Government Pleader, High Court
   of Bombay, Bench at Aurangabad)

2. The Commissioner,
   Jalgaon Municipal Corporation,
   Jalgaon, at Jalgaon,
   District Jalgaon ... RESPONDENTS

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Shri Anand P. Bhandari, Advocate for petitioners
Mrs. V.S. Choudhary, A.G.P. for State
Shri P.R. Patil, Advocate for respondent No.2

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CORAM: RAVINDRA .V. GHUGE AND SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 16th November, 2017

Date of pronouncing judgment : 5th December, 2017

JUDGMENT (PER SUNIL K. KOTWAL, J.):

1. This petition is filed under Article 226 of the Constitution of India to direct the respondents to pay compensation of the land of the petitioners bearing Survey No.168/2A, situated at Mehrun, Taluka and District Jalgaon admeasuring 3291.585 sq.mtrs., reserved for 15 mtrs. and 30 mtrs. Development Plan Road (hereinafter referred to as "D.P. Road"), or to direct the respondents to give the petitioners Transferable Development Rights (hereinafter referred to as 'TDR') in respect of the said land as per rules applicable in the year 2017. The respondent No.1 is the State of Maharashtra and respondent No.2 is the Commissioner, Municipal Corporation, Jalgaon.

2. We have heard the strenuous submissions advanced by Mr. Bhandari, learned counsel for the petitioners, learned A.G.P. for respondent No.1 and Mr. Patil, learned

counsel for respondent No.2.

3. The admitted facts in between the parties are that, the petitioners are owners of Survey No.168/2A, admeasuring 00.94 R, situated at Mehrun, Taluka and District Jalgaon. The petitioners had submitted an application for a lay-out plan, to respondent No.2 for the use of 6525 sq.mtrs. area of the above said land for residential purpose. On 14.12.2001, the respondent No.2 accorded temporary sanction for a lay-out subject to the condition that, out of Survey No.168/2A, 3291.585 sq.mtrs. area shall be kept open for D.P. Road and this reserved area shall be transferred in favour of respondent No.2 free of cost. The petitioners were also directed to obtain N.A. permission from the Collector, Jalgaon. Accordingly, on 14.3.2002, the petitioners obtained N.A. permission from the Collector, Jalgaon to use 6525 sq.mtrs. area out of Survey No.168/2A for residential purpose.

4. On 7.8.2002, the respondent No.2 granted final sanction to the lay-out plan submitted by the petitioners on the condition that the open space left in the lay-out plan for the development plan road shall be handed over to respondent No.2 free of cost.

5. Due to the apprehension that, if 3291.585 sq.mtrs. area is not surrendered in favour of respondent No.2 free of cost, the lay-out plan will not be sanctioned, the petitioners accepted the condition imposed by the respondent No.2 only under duress. In fact, such condition is unconstitutional. Therefore, on 31.6.2004, the petitioners issued a purchase notice under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the MRTP Act) to respondent No.1 to acquire the above said area and to pay the necessary compensation to the petitioners. However, on 4.12.2004, respondent No.1 issued a letter to the petitioners and informed that the land under 15 mtr. and 30 mtr. Development Plan Road (hereinafter referred to as the D.P. Road) admeasuring 3291.585 sq.mtrs. was surrendered in favour of respondent No.2 free of cost and, therefore, the said land cannot be acquired. The petitioners were suggested to approach respondent No.2 for obtaining TDR in lieu of the area under D.P. Road.

6. Therefore, on 21.6.2008, the petitioners issued a legal notice to the respondents to start land acquisition proceedings in respect of 3291.585 sq.mtrs. area, reserved for 15 mtr. And 30 mtr. D.P. Road. However, the respondents did not pay any heed to it. Thereafter, on a number of dates,

reminders were issued to the respondents. As no action was initiated for acquisition of the above said area under reservation for the D.P. Road, the petitioners were constrained to file this Writ Petition.

7. Learned counsel for the petitioners submitted that, though a legal opinion was given by the learned counsel for the respondent No.2 that compensation for land reserved under the D.P. Road needs to be paid to the petitioners, respondent No.2 did not take any action. He has drawn our attention towards the letter dated 21.8.2009, issued by respondent No.2 to respondent No.1, soliciting directions for grant of TDR to the petitioners instead of compensation, towards the area reserved under the D.P. Road, as respondent No.2 was unable to pay compensation due to financial crisis.

8. The learned counsel for the petitioners submitted that, in view of total inaction on the part of respondents, the petitioners are entitled to TDR prevalent in the year 2017.

9. The learned counsel for respondent No.2 did not dispute the above discussed contentions of the petitioner. His submission is that, the claim of the petitioner is stale and under letter dated 4.12.2004, a suggestion was already given

to the petitioner to approach respondent No.2 for the allotment of admissible TDR/ Floor Space Index (FSI).

10. In the wake of the above referred undisputed facts in between the parties, the only question for determination is whether the claim of the petitioner can be entertained though it is stale and whether, as per the condition included in the sanction of lay-out, respondent No.2 can get the area free of cost, which is reserved for the D.P. Road, under the development plan.

11. Learned counsel for the petitioners has placed reliance on **Pt. Chet Ram Vashist (dead) by L.Rs. Vs. Municipal Corporation of Delhi** reported in **AIR 1995 (SC) 430**, wherein the Hon'ble Apex Court, while considering Sections 312 and 313 of the Delhi Municipal Corporation Act, 1957, has observed in paragraph Nos.5 and 6 as under :

> *"5. . . . . . . There is no provision in this chapter or any other provision in the Act which provides that any space reserved for any open space or park shall vest in the Corporation. Even a private street can be declared to be a public on the request of owners of the building and then only it vests in the Corporation. In absence of any provision, therefore, in the Act the open space left for school or park in a*

private colony cannot vest in the Corporation. . . . . Section 313 which empowers the Commissioner to sanction a lay-out plan, does not contemplate vesting of the land earmarked for a public purpose to vest in the Corporation or to be transferred to it. The requirement in law of requiring an owner to reserve any site for any street, open space, park recreation ground, school, market or any other public purpose is not the same as to claim that the open space or park so earmarked shall vest in the Corporation or stand transferred to it. Even a plain reading of sub-section (5) indicates that the land which is subject matter of a lay-out plan cannot be dealt with by the owner except in conformity with the order of the Standing Committee. In other words the Section imposes a bar on exercise of power by the owner in respect of land covered by the lay-out plan. But it does not create any right or interest in the Corporation in the land so specified. The resolution of the Standing Committee, therefore, that the area specified in the lay-out plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law.

6. Reserving any site for any street, open space, park, school etc. in a lay-out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The *effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in the nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned lay-out plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred in the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for parks and school was an order for transfer without there being any sanction for the same in law."*

12. Even in Ravindra Champalal Khinvasara & anr. Vs.

The State of Maharashtra & ors. (Writ Petition No.461/1994), and in **Vrajlal Jinabhai Patel, Since Deceased through his L.Rs. Smt. Jagrati Vrajlal Patel & anr. Vs. State of Maharashtra & ors.** reported in **(2003) 3 Mh.L.J. 215**, the Division Bench of this Court has considered the trite law laid down in "Pt. Chet Ram Vashist" (supra) and held that, under Article 300-A of the Constitution of India, no person shall be deprived of his property except by authority of law. The authority of law means by or under any law, may, by a competent legislature.

13. Even after going through the provisions of the Maharashtra Municipal Corporations Act and the M.R.T.P. Act, we do not find any specific provision which provides for an automatic vesting of the property in the Municipal Corporation only by reservation of land under a development plan. Accordingly, we hold that, only by obtaining an agreement under duress from the petitioners, respondent No.2 cannot acquire ownership rights over 3291.585 sq.mtrs. area reserved for 15 mtr. And 30 mtr. D.P. Road.

14. Our attention was also drawn to the legal opinion dated 29.1.2009, given by the counsel for respondent No.2, wherein respondent No.2 was informed that, in view of the law settled by this Court and the Hon'ble Apex Court, respondent

No.2 is bound to pay compensation to the petitioners for 30 mtrs. and 15 mtrs. wide road reserved under the development plan. Thereafter, even respondent No.2 issued a letter to respondent No.1 on 21.8.2009 and solicited directions to grant T.D.R. to the petitioners instead of payment of compensation. Apart from this letter correspondence, even under Section 126(1) of the M.R.T.P. Act, respondent No.2 can acquire the land under D.P. Road and in lieu of compensation amount, can grant TDR/ FSI to the petitioners. Taking into consideration the repeated request letters, legal notice dated 21.6.2008 and reminders dated 20.9.2008 and 10.3.2009, issued by the petitioners to the respondents, the claim of the petitioners cannot be rejected on the ground of delay and laches.

15. From the above mentioned facts, circumstances and reasonings considered by us, we are of the view that the petition deserves to be allowed. In the result, the petition is allowed.

16. We direct the respondent No.2 Jalgaon Municipal Corporation to initiate proceedings for acquisition in respect of the subject land which is owned by the petitioners bearing Survey no.168/2A, situated at Mehrun, Taluka and District Jalgaon, as shown in the development plan of the Jalgaon Municipal Corporation, and complete the same as early as

possible, preferably within a period of two years from today.

17. As there is an inordinate delay on the part of respondent No.2 to consider the legitimate claim of the petitioners, we direct respondent No.2 to grant TDR/ FSI benefit to the petitioners in accordance with the rules prevalent on the date of filing of the petition i.e. 5.8.2010.

18. Rule is made absolute in the abovesaid terms. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

fmp/