

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3456 OF 1988

Shri Shridhar Gangadhar Lonari,
since deceased by his heirs and Lrs.:

1. Shri Ravidnra Shridhar Lonari.
residing at "Konark", 7, Patankar Marg,
Tedke Colony, Nasik.
2. Shri Rajiv Shridhar Lonari,
Since deceased by heirs and Lrs.
- 2A. Smt.Smita Rajiv Lonari,
- 2B. Mr.Nikit Rajiv Lonari,
Petitioner Nos.2A and 2B residing at
B-704, Indigo Park, Survey No.790/1-4,
Near Jogging Track, Sadashiv Nagar,
Nashik- 422 009.
- 2C. Mrs.Vrutika Sumit Karche,
R/at Bungalow No.555, Ankita Bungalow,
Ganesh Nagar, Akluj,
Taluka- Malshiras. ... Petitioners.

V/s.

1. The Nasik Municipal Corporation, Nasik.
2. The Arbitrator, Town Planning Scheme 2,
Kennar Bhavan, 3rd floor, New Bombay 400 014.

3. The Assistant Development Town Planning Officer, Nasik.
4. The Director of Town Planning, Central Building, Station Road, Pune 411 001.
5. The Deputy Director, Town Planning, New Prabhat Cinema, Nasik.
6. The State of Maharashtra through the Secretary to the Government, Urban Development, Mantralaya, Bombay.
7. Ahmedsaheb Fakirsaheb Kokani since deceased by his heirs and Lrs
- 7A. Rafiq Ahmedsaheb Kokani,
- 7B. Farid Ahmedsaheb Kokani,
- 7C. Gulam Mohd. Ahmedsaheb Kokani,
- 7D. Khatina Asif Kokani,
Respondent 7A to 7D residing at
Bldg. No.1327, Phalke Road, Nasik.
8. Usman Fakirasaheb Kokani.
9. Gulam Gaus Fakirasaheb Kokani.
10. Sahibai Fakirasaheb Kokani.
11. Bibibai Fakirasaheb Kokani
since deceased by heirs and Lrs.
- 11A. Alladin Burhansaheb Kokani,
Husband of deceased,
- 11B. Gohar Alladin Kokani,
Son of deceased,

- 11C. Kausar Alladin Kokani,
Son of deceased,
- 11D. Fatima Nadim Kokani,
Daughter of deceased,
- 11E. Najama Akil Kokani,
Daughter of deceased,
Respondent Nos.11A to 11E residing at
Room No.1327, Phalke Road, Nasik-422 001.
- 12. Raviraj Gopal Patil
Since deceased by heirs and Lrs
- 12A. Mr.Bhaiyasaheb Ravirao Patil,
- 12B. Mrs.Mangala Sureshrao Raut,
Respondent Nos.12A and 12B residing at
Rajlaxmi, Kothvale Farm, Patil Nagar,
Siddheshwar Flour Mill, Nasik- 422 008.
- 13. Laxmibai Gopal Patil.
- 14. Gangaram Gopal Patil
Since deceased by heirs and Lrs.
- 14A. Smt.Indumati Gangaram Patil,
- 14B. Mr.Satish Gangaram Patil,
- 14C. Mr.Balasaheb Gangaram Patil,
- 14D. Mr.Subhash Gangaram Patil,
- 14E. Mr.Sunil Gangaram Patil,
Respondent Nos.14A to 14E residing at
House No.4110, Patil Galli, Nasik- 422 001.

15. Sampat Gopal Patil
Since deceased by heirs and Lrs.
- 15A. Smt.Shobhana Sampatrao Patil,
- 15B. Mr.Sharad Sampatrao Patil,
Respondent Nos.15A and 15B
residing at 307/308, DGP Nagar No.2,
Opp. Saptashruni Devi Mandir,
Ambad, Nasik- 422 010.
- 15C. Mr.Anil Sampatrao Patil,
residing at 20, Swar Samruddhi,
Savarkar Nagar, Gangapur Road,
Nasik- 422 013.
- 15D. Mrs.Malti Sambhajirao Parale,
- 15E. Mrs.Shailaja Sureshrao Kothari,
Respondent Nos.15D and 15E
residing at 307/308, DGP Nagar No.2,
Opp. Saptashruni Devi Mandir,
Ambad, Nasik- 422 010. ... Respondents.

Rajesh S. Patil for the petitioner and the applicant.

M.L.Patil for respondent No.1.

Ms.Leena Patil for respondent Nos.7A to 7D and 11A to 11C.

Manish M. Pabale, AGP for respondent Nos.3 to 6.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 7th September 2017.

ORAL JUDGMENT : (PER A.S.OKA, J.)

By this petition filed under Article 226 of the Constitution of India, the petitioner has sought a writ of mandamus for enforcing statutory obligation of the Planning Authority under section 88 read with sections 89 and 90 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act").

2. A brief reference to the factual aspects will be necessary. The predecessor of the writ petitioner was the owner of plot of land bearing original plot No.157-A admeasuring 2860 sq.meters. The original plot number was assigned as per the Town Planning Scheme, Nasik No.II under the provisions of Chapter-V of the MRTP Act. It is not in dispute that the draft plan of the town planning scheme was prepared by the erstwhile Nasik Municipal Council under the provisions of the Bombay Town Planning Act, 1915. After coming into force the MRTP Act, an Arbitrator was appointed as provided in Chapter-V. The said town planning scheme was sanctioned with effect from 1st January 1986. As disclosed in the affidavit-in-reply filed by Shri V.N.Chaudhari, Assistant Director of Town Planning, Nasik, under the final Town Planning Scheme, final plot No.103 admeasuring 2,810 sq.meters was allotted to the petitioner in lieu of original plot No.157-A held by the original petitioner.

To the said affidavit of Shri V.N.Chaudhari, a plan forming part of the sanctioned final Town Planning Scheme has been annexed. It is stated in the affidavit by the Assistant Director of Town Planning that there is no alteration of the boundaries of final plot No.103.

3. The original petitioner is relying upon various letters addressed by him to Nasik Municipal Corporation which is the Planning Authority within the meaning of the MRTP Act. The petition discloses that there were encroachments on the final plot No.103 which were not removed. Therefore, a writ of mandamus was prayed in two parts. The first part proceeds on the basis that the boundaries of final plot No.103 have undergone a change. The second part of the prayer is for placing the original petitioner in the vacant possession of final plot No.103 after removal of the encroachments thereon. There is a specific prayer for summarily evicting the hutment dwellers of Sahavas Nagar which is allegedly set up by the allottee of final plot No.104-B.

4. In the affidavit-in-reply filed by Shri V.N.Chaudhary, Assistant Director of Town Planning, there is a categorical statement made that there is no change in the boundaries of final plot No.103 as described in the original award of the Arbitrator. However, it is categorically stated that the boundaries of the final plot No.103 have been substantially changed in the supplementary award with reference to the original award published by the Arbitrator in the year 1973.

5. During the pendency of this petition, there are subsequent events which are material for consideration. Apart from the affidavit filed by the Planning Authority, the legal representatives of the original petitioner have placed some subsequent events on record by filing Civil Application No.2109/2016. The Planning Authority has filed two affidavits. The first affidavit is of Shri Aakash Tikaram Bagul, Assistant Director of Town Planning of Nasik Municipal Corporation which is dated 25th July 2017 and the second affidavit is of Shri Rohidas M. Bahiram, Deputy Commissioner (Slums) of the Planning Authority which is dated 8th August 2017. To the affidavit of Shri Aakash Tikaram Bagul, a copy of the agreement dated 15th December 1995, signed by the original petitioner as well as the allottees of the final plot nos.104-A and 104-B and entered into with the Planning Authority, has been annexed. We note here that there is no dispute between the petitioners and the Planning Authority about the execution of the said agreement. The said agreement contains a recital that on the parts of three final plots there are slums and, in fact, that part of three final plots (Final Plot nos.103, 104-A and 104-B) has been declared as a slum within the meaning of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Slum Act"). The agreement records that the owners of the said three final plots agreed to hand over total area of 2,472 sq.meters to the Planning Authority to enable the Planning Authority to clear the remaining portions of three final plots by accommodating the slum dwellers on the portion of the three final plots admeasuring 2,472 sq.meters. The agreement reveals that out of total area of 2,818 sq.meters

of final plot No.103, the petitioner agreed to surrender an area of 978 sq.meters to the Planning Authority. In fact, these facts have been disclosed in Civil Application No.2109/2016 filed by the present petitioners. The said Application discloses that a scheme was prepared by the Planning Authority of proposed redevelopment of Sahavas Nagar Slum under Valmiki Ambedkar Aawas Yojana. It is stated that the said scheme was implemented through the Maharashtra Area and Housing Development Authority (MHADA) and, in fact, around 38 slum dwellers have already been shifted to houses built by MHADA. The affidavit further records that the scheme known as Valmiki Ambedkar Aawas Yojana has been closed by the State Government. In fact, a Resolution was passed by the General Body of the Planning Authority on 17th November 2011 by which it was resolved to place the allottees of the said three final plots including final plot No.103 in possession of their respective plots.

6. In the affidavit-in-reply filed by Shri Rohidas M. Bahiram on behalf of the Planning Authority, it is pointed out that as per the Valmiki Ambedkar Aawas Yojana, 110 tenements were to be constructed by MHADA, out of which only 37 tenements were constructed and slum dwellers were placed in possession of the same. It is stated that subsequently MHADA stopped further construction as the scheme was abandoned by the State Government. The affidavit further states that a survey of the slum on the said three final plots was conducted as per Pradhanmantri Aawas Yojana when it was found that there were 99 slum dwellers eligible for allotment of premises in the said scheme.

7. The learned counsel appearing for the petitioner invited our attention to the provisions of sections 88 to 90 of the MRTP Act relying upon various decisions including the decision of the Apex Court in the case of *Municipal Corporation of Greater Bombay v. The Advance Builders India Pvt. Ltd.*¹. He urged that it is the statutory obligation of the Planning Authority to hand over vacant and peaceful possession of final plot No.103 to the petitioner after removing all the encroachments thereupon. He submitted that the Planning Authority has failed to comply with the said obligation.

8. The learned counsel appearing for the Planning Authority submitted that all the steps were taken to ensure that vacant possession of the final plot, after surrender of an area of 978 sq.meters by the petitioner, is handed over to the petitioner. He submitted that for accommodating the slum dwellers on final plot no.103, MHADA was to develop a housing scheme. He submitted that MHADA has left the scheme incomplete after placing 37 occupants in possession of the newly constructed premises. He submitted that the Municipal Corporation which is the Planning Authority is now trying to implement Pradhanmantri Aawas Yojana for accommodating the slum dwellers on final plot no.103. He submitted that the Planning Authority will also try to take recourse to Sections 11 to 13 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "Slum Act"). He submitted that

1 AIR 1972 SC 793

only in view of the failure of MHADA to complete the project that the Planning Authority could not hand over possession of the final plot. Learned AGP relied upon the affidavit-in-reply filed by Shri V.N.Choudhary, Assistant Director of Town Planning, Nasik and submitted to the orders of the Court.

9. We have given careful consideration to the submissions. In view of clause (b) of section 88 of the MRTP Act, final plot no.103 vests in the original petitioner. On this aspect, there is no dispute between the parties. In case of *Municipal Corporation of Greater Bombay v. The Advance Builders India Pvt. Ltd.* (supra), the Apex Court had an occasion to consider the provisions of Section 53 of the Bombay Town Planning Act, 1954 which are *pari materia* with section 88 which contained clauses (a) and (b) which have been virtually reproduced in clauses (a) and (b) Section 88. However, the Apex Court has interpreted clauses (a) and (b) Section 53 of the old Act which are now forming a part in Section 88 and held that it is the statutory obligation of the Planning Authority to remove all the encroachments on the final plot and give the vacant possession thereof to the allottee. In fact, section 89 of the MRTP Act empowers the Planning Authority to pass orders of summary eviction. Under section 90 of the MRTP Act, various powers have been conferred on the Planning Authority to implement the provisions of the said scheme. The power include the power to pull down the structures in the area included in the said scheme.

10. Therefore, there is no difficulty in holding that the Planning Authority was under obligation to place the original petitioner in vacant possession of final plot no.103. However, it is not disputed by the petitioners that under the agreement dated 15th December 1995, executed by the original petitioner and the allottees of final plot Nos.104-A and 104-B, the original petitioner agreed to surrender an area of 978 sq.meters out of total area of final plot No.103. It is true that on the surrendered area, MHADA started redevelopment scheme which could not be completed. Suffice it is to that after voluntarily surrendering an area of 978 sq.meters to enable the Planning Authority to rehabilitate thereon the slum dwellers on the remaining part of final plot, now under writ jurisdiction the petitioner cannot seek the vacant possession of entire area of 2,818 sq.meters as prayed in the petition but can seek possession of only an area of 1,840 sq.meters.

11. The learned counsel appearing for the Planning Authority has pointed out various options which are available to the Authority to evict the unauthorized occupants and rehabilitate those who are eligible for rehabilitation and it is stated that only 37 slum dwellers have been rehabilitated and for handing over vacant and peaceful possession of the final plot, this Court will have to grant a reasonable time to the Planning Authority. We. Accordingly, propose to grant time till the end of year 2018.

12. Hence, we pass the following order:-

O R D E R

- (i) We direct the first respondent to place the petitioners in vacant possession of a portion admeasuring 1,840 sq.meters out of final plot No.103, under the Town Planning Scheme, Nasik on or before 31st December 2018. We make it clear that the petitioners will be disentitled to seek the possession of an area of 978 sq.meters which is covered by the agreement dated 15th December 1995;
- (ii) We also make it clear that the area of 1,840 sq.meters out of final plot No.103 will be placed in possession of the petitioners after removing all the encroachments thereon;
- (iii) It will be always open for the Planning Authority to invoke relevant provisions of the Slum Act including Sections 11 to 13 thereof. It will be open for the Planning Authority to implement Pradhanmantri Aawas Yojana and rehabilitate the affected persons by providing them benefits of the said scheme;
- (iv) Rule is made absolute on the above terms.
- (v) All the pending civil applications do not survive and stand disposed of accordingly.
- (vi) All the concerned to act on an authenticated copy of this judgment and order.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)