

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5499 OF 2009

Vasant Rajaram Sankpal. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents

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Shri Satyajeet A. Rajeshirke for the Petitioner.
Shri A.A. Alaspurkar, AGP for the Respondent Nos.1 to 4.
Shri G.M.Savagave for the Respondent No.5.

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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 31ST JULY 2017

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

1. On the Application made by the Petitioner's father on 22nd July 1983, a recommendation was made by the Assistant Director of the Regional Town Planning of Kolhapur for grant of permission to layout submitted by the Petitioner's father in respect of the land bearing Gat No.217. One of the conditions was that before grant of final permission/sanction of layout, the roads, open spaces and drains as shown in the layout will be developed by the Petitioner's father and handed over to the fifth Respondent Kurundwad Municipal Council for maintenance as provided in the Development Plan. As disclosed in the affidavit filed by the fifth Respondent, the Petitioner's father addressed a letter dated 9th June 1986 offering Municipal Council to hand over

possession of road and plots. Accordingly, by a Resolution dated 26th June 1997 (Exhibit-B to the Petition) passed by the General Body, the said Municipal Council was authorized to take over possession of the premises in question. The letter dated 30th June 1987 addressed by the Petitioner's father to the Chief Officer records that an area of 25,380 sq. ft. covered by the road and open space admeasuring 13,700 sq. ft. was handed over by the Petitioner's father to the fifth Respondent Municipal Council. This fact is also noted in the letter dated 16th September 1987 addressed by the Chief Officer of the fifth Respondent to the Tahsildar.

2. The grievance in this Petition under Article 226 of the Constitution of India is that the fifth Respondent has taken over the possession of the area required for 60 feet Development Plan Road without following the due process of law and that the compensation has not been paid to the Petitioner.

3. The submission of the learned counsel appearing for the Petitioner is that the Development Plan Road taken over is not a part of the layout plan. He submitted that in case of similarly situated persons where there was a similar layout sanctioned, the fifth Respondent has granted compensation to them by acquiring land required for Development Plan Road. He submitted that even assuming that the Development Plan Road forms part of a layout, in view of the decision

of the Apex Court in the case of *Pt. Chet Ram Vashist v. Municipal Corporation of Delhi*¹, the condition of requiring surrender of land without payment of compensation is illegal. He would, therefore, submit that a writ of mandamus be issued directing the fifth Respondent to restore the land taken over from the Petitioner for the purposes of Development Plan Road and to pay compensation to the Petitioner.

4. We have considered the submissions. A layout of the land bearing Gat No.217 was submitted by the Petitioner's father for sanction. The Assistant Director of the Regional Town Planning, Kolhapur by his letter dated 22nd July 1983 addressed to the Chief Officer of the fifth Respondent recommended for giving temporary approval to the layout. The condition No.5 provided that before grant of final permission, roads, drains, open spaces shown in the layout shall be developed by the Petitioner's father as required by the requirements of Development Plan and the same be handed over to the fifth Respondent Council. On 7th November 1983, the Collector in exercise of power under Section 44 of the Maharashtra Land Revenue Code, 1966 granted non-agricultural permission in respect of the land bearing Gat No.217. The said order refers to the recommendations made by the Assistant Director of the Regional Town Planning, Kolhapur, on 22nd July 1987.

1 AIR 1995 SC 430

5. The Petitioner's father on 9th June 1986 offered the possession of the Development Plan Road to the fifth Respondent. Accordingly, the possession thereof was taken over by the Municipal Council as is evidenced by the documents marked as Exhibit-7 and Exhibit-8 to the affidavit in reply of the fifth Respondent.

6. The first issue is whether the Development Plan Road having the width of 60 feet was a part of the layout. From the Plan annexed as Exhibit-A to the Petition, which is a copy of the layout subject matter of communication dated 22nd July 1983 which was approved by the Chief Officer of the fifth Respondent, prima facie, it appears to us that a part of the Development Plan Road admeasuring the area of 60 feet has been shown as a part of layout. The issue whether the entire area of 60 feet Development Plan Road was a part of the sanctioned layout is a disputed question of fact. For resolving the said issue, recording of evidence will be necessary.

7. The decision in the case of *Pt. Chet Ram Vashist* will not help the Petitioner as the Petitioner's father voluntarily accepted the conditions incorporated in the communication/order dated 22nd July 1983 of surrendering roads and open spaces to the fifth Respondent Municipal Council. The surrender has taken place in the year 1987. After a lapse of 22 years, in this Petition of the year 2009, we cannot

permit the Petitioner to contend that the condition imposed in the year 1983 was illegal. Moreover, there is no such challenge in the Petition.

8. Therefore, the Petitioner will have to adopt a remedy before the Civil Court and establish that the 60 feet wide Development Plan Road was not a part of the sanctioned layout. If the Petitioner establishes that it is not a part of the sanctioned layout, it follows that the fifth Respondent will have to initiate acquisition proceedings in respect of the area taken over from the Petitioner for 60 feet wide Development Plan Road. If the Petitioner fails to establish that the area covered by the Development Plan Road is not a part of the sanctioned layout, the Petitioner will not be entitled to any relief.

9. Subject to what is observed above, we decline to entertain this Petition and the same is disposed of. Remedy of the Petitioner of approaching the Civil Court is expressly kept open. If the Petitioner approaches the Civil Court, the concerned Court is bound to note that the present Petition is filed on 23rd June 2009 and the same remained pending till today.

10. The Rule is accordingly discharged.