

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

WRIT PETITION NO.4911 OF 2006

Shailesh Sahakari Griha Rachana Sanstha MaryadeetPetitioner

Vs.

Pune Municipal Corporation and 5 Ors.Respondents

Mr. V.P. Sawant a/w. Mr. Prabhakar M. Jadhav for the petitioner.

Mr. Rajdeep S. Khadapkar for the respondent nos.1 to 3.

Mr. Manish M. Pabale, AGP for the respondent no.4.

CORAM : A.S. OKA &

SMT. VIBHA VASANT KANKANWADI, JJ

DATE : 9th/16th JUNE, 2017

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

1 The Petitioner is a Co-operative Housing society which is duly registered under the Maharashtra Co-operative Societies Act, 1960. On 13th April 1971, a development permission was granted to the Petitioner by the 1st Respondent – Municipal Corporation under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). A condition being condition no.17 was imposed in the said development permission. The condition was of constructing Development Plan road (for short "DP road") passing through its land as per the alignment given by the Municipal Corporation. It was provided therein that a part of the width of the road constructed shall be treated as a colony road. However, no compensation will be paid by the Pune Municipal Corporation. It is an admitted position that the Petitioner society acting upon the said development permission has completed the

work of development. One of the main questions in this petition under Article 226 of the Constitution of India will be whether in a petition filed in the year 2006, the Petitioner can be permitted to challenge the said condition no.17 imposed in the development permission dated 13th April 1971 on which the Petitioner has admittedly acted upon.

2 With a view to appreciate the controversy, it will be necessary to make a reference to the facts in a nutshell. The Petitioner-society is the owner of the land more particularly described in paragraph 3 of this writ petition.

3 The aforesaid development permission dated 17th April 1971 contains clause No.17 which reads thus.

“The society/Promoter will construct at its/his own cost Development Plan Road passing through/abutting the society's/ Promoters land as per alignment to be given by the Poona Municipal Corporation. These Development Plan Roads should be treated as colony road and their widths and carriageway should be as per standards given below :

These roads should be constructed as per directions of the Development Engineer and should be handed over to the Poona Municipal Corporation subsequently.

Necessary pilot water and drainage lines should be laid on these Development Plan Roads at the cost of the society/Promoters. No compensation will be paid by the Poona Municipal Corporation for these development works as well as for the appropriate width of the colony road for the Development Plan roads, passing through abutting the land.

<i>DP road width</i>	<i>Land width to be treated as colony road width</i>	<i>Width of I.B.M. carriageway to be constructed as colony</i>
<i>60 ft.</i>	<i>30 ft.</i>	<i>20 ft.</i>
<i>80 ft.</i>	<i>40 ft.</i>	<i>30 ft.</i>
<i>100 ft.</i>	<i>40 ft.</i>	<i>30 ft.</i>
<i>above 100 ft.</i>	<i>40 ft.</i>	<i>30 ft.</i>

4 We may note here that there is some controversy about some of the words appearing in the said condition which is being dealt at a later stage. The case made out in the petition is that by September 1974, the Petitioner completed the work of construction of internal layout roads and a completion certificate was issued on 18th September 1974 in respect of the construction of layout roads as sanctioned. According to the case made out in the petition, on 18th December, 1974, the Petitioner society applied to an Officer of the first Respondent - Pune Municipal Corporation (for short "the said Corporation") requesting the said Corporation to take over the roads developed by the Petitioner. Reliance is placed on another representation made by the Chairman of the Petitioner on 24th March 1975. The Petitioner has referred to a notice dated 3rd May 1975 published by the 1st Respondent – Corporation in exercise of powers under Section 224 of the Maharashtra Municipal Corporations Act, 1949 (for short "the Municipal Corporations Act"). According to case made out in the petition, on 17th June 1975, the Assistant Commissioner of the Municipal Corporation issued a direction stating that the internal roads of the concerned survey number excluding Development Plan road (DP road) were taken over by the said Corporation with effect from 2nd June 1975 and the same shall be owned by the said Corporation with effect from that date. The Petitioner has placed reliance on a letter dated 28th June 1975 addressed by it to the City Engineer of the said Corporation in which the Petitioner stated that

the DP road has been constructed by the Petitioner society at its own costs. It was further stated that the cost of construction and land cost can be paid by the said Corporation at a later stage. A request was made by the Petitioner to the said Corporation to take over the possession of the DP road at the earliest. The Petitioner is relying upon internal correspondence made between the City Engineer of the said Corporation and the Assistant Municipal Commissioner (special) and in particular the letter dated 23rd September 1975 in which it is stated that the issue of giving compensation for DP road land can be settled in future while acquiring the DP road. The reply of the Assistant Municipal Commissioner to the said letter is that the land can taken over only by private negotiations or by land acquisition and therefore, agreement has to be reached about the payment of compensation before taking possession. The Petitioner has referred to a letter dated 11th March 1976 addressed by the City Engineer to the Assistant Municipal Commissioner in which it is recorded that for that part of the width of the DP road which is to be compulsorily developed by the Petitioner as a colony road, no compensation will be payable by the said Corporation. Thereafter, the Petitioner has referred to another public notice dated 24th April 1976 published under Section 224 of the Municipal Corporations Act. It is contended that on expiry of period of 30 days from the date of publication of the said notice, there was no order passed by the said Corporation in accordance with the Section 224.

5 The Petitioner is relying upon a letter dated 20th May 1976 addressed by an Officer of the said Municipal Corporation to the Chairman of the Petitioner in which it was stated that process of taking over DP roads was in progress and the Petitioner was called upon to submit 11 copies of maps.

6 There is a reference in the petition to subsequent correspondence made by the Petitioner. There is a letter dated 9th June 1996 addressed by the Petitioner to the Commissioner of the said Corporation. The said letter is in response to the letter dated 1st November 1995 by which the Petitioner was informed that in respect of a part of the DP road which is taken over under Section 224 of the Municipal Corporation Act, no compensation will be payable. It is contended in the letter dated 9th June 1996 that an area of 7102 sq. meter has been handed over by the Petitioner to the said Corporation without claiming any compensation. However, one Shri Varty, the then Municipal Commissioner had informed the Petitioner that the said Corporation did not have funds, but the Floor Space Index (FSI) can be made available. According to the case of the Petitioner, by a letter dated 3rd February 1997, the said Corporation called upon the Petitioner to submit various documents such as 7/12 extracts etc. Reliance is placed on possession receipt date 7th October 1998 in respect of a portion of DP road taken over by the said Corporation. According to the case of the

Petitioner, the said possession receipt does not record that the remaining area of DP road is of the ownership of the said Corporation. According to the case made out in the petition, on 7th August 2001 an application was made by the Petitioner for grant of TDR in respect of the unconstructed portion of DP road handed over to the Municipal Corporation for which TDR was sanctioned. The Petitioner has referred to a letter dated 30th September 2003 addressed by the Petitioner requesting the said Corporation to grant TDR/FSI in respect of balance portion of the DP road. By a letter dated 10th October 2003, the land department of the said Corporation informed the Petitioner that the remaining part of the DP road was taken over under Section 224 of the Municipal Corporation Act and therefore, the Petitioner is disentitled to any compensation. By a letter dated 6th May 2005, the City Engineer of the said Corporation informed the Chairmen of the Petitioner that the Petitioner did not raise any objection to the notice dated 24th April 1976 issued under Section 224 of the said Act. The City Engineer called upon the Petitioner to disclose whether the Petitioner raised any objection. The letter was replied by the Petitioner on 9th May 2005. In the said letter, it was mentioned that a copy of notice dated 29th May 1976 was sent to the Petitioner on 17th June 1976. It is stated that notice dated 24th May 1976 was not published in the premises of the Petitioner society. We may note here that the Petitioner society through its Advocate issued a notice dated 30th May 2005 under Section 127 of the

MRTTP Act to the said Corporation. By a letter dated 16th August 2005 the said Corporation informed the Petitioner that the purchase notice under Section 127 has been rejected as the portion of DP road has been declared as a public road about 30 year back under Section 224 of the Municipal Corporation Act.

7 As stated earlier, one of the three substantive prayers is for declaring the condition no.17 in the development permission/layout permission as ultra vires the Constitution of India and contrary to the provisions of law. This is the third prayer in the Writ Petition. The first prayer for a declaration that the reservation in respect of an area of 3845 sq. meter of DP road has lapsed on the basis of the notice dated 30th May 2005 under Section 127 of the MRTTP Act. The second prayer in the alternative which is pressed into service is for directing the said Corporation to pay to the Petitioner appropriate compensation for the said land admeasuring 3845 sq. meter out of the 60 fit wide DP road.

8 There is a reply filed by the said Corporation of Shri Prashant M. Waghmare, City Engineer. Reliance is placed therein on the development permission/commencement certificate dated 13th April 1971 in which condition no.17 has been incorporated. It was contended that there was a reservation for 60 feet wide DP road imposed by the first Development Plan which came into force with effect from 15th August 1966. Reliance is placed on the public notice dated

24th April 1976 issued under 224 of the Municipal Corporation Act. On expiry of 30 days from the date of the said notice, 30 feet wide road out of 60 feet wide DP road became a public street. It was stated that in the year 1998, the Petitioner was granted TDR (Transferable Development Right) in respect of remaining portion of the same DP road which is not covered by condition no.17. It is pointed out that on 7th August 2001, TDR was claimed in respect of that part of the DP road which is covered by condition no.17. It is contended that the condition imposed in the development permission/commencement certificate on 13th April 1971 was never challenged. It is alleged that after a gap of 21 years from the date of taking over possession, the Petitioner claimed TDR in respect of even the area of the DP road covered by condition no.17.

9 At the outset, we may note here that the learned counsel appearing for the Petitioner submitted that the words “well as” after the word “as” in the second last line of the condition no.17 (reproduced in paragraph 3 above) are not found on the permission appended to the sanctioned plan. The contention is that in the copy of the permission which is appended to the sanctioned plan supplied to the Petitioner, the words “well as” are missing and that is how the said words are not found in the condition no.17 which is a part of the petition. To avoid any controversy, we have seen the original file of the said Corporation. We find that in the condition no.17 appended to the signed copy of the

development permission the words “well as” are appearing.

10 The first submission of the learned counsel appearing for the Petitioner is that notwithstanding the condition no.17, the ownership of the portion of the DP road covered by the said condition always continued with the Petitioner. He submitted that the meaning of the said clause is that the Petitioner will not be entitled to recover cost of development of the DP road from the said Corporation and by no stretch of imagination, the condition no.17 can be construed to mean that the Petitioner has given up its right to seek compensation in respect of the said portion of DP road after it is taken over by the said Corporation. He submitted that all along the petitioner was given an impression by the Municipal Corporation that the Petitioner will be entitled to compensation in respect of the land covered by the said portion of DP road. He submitted that by virtue of the condition no.17, the Petitioner cannot be deprived of the ownership of the portion of DP road. He placed reliance on the decision of the Apex Court in the case of *Yogendrpal and Ors Vs. Municipality Bhatinda and Ors*¹. He relied upon another decision of the Apex Court in the case of *Pt. Chet Ram Vashist (dead) by LRS Vs. Municipal Corporation of Delhi*². He also relied upon the decision of a Division Bench of this Court in the case of *State of Maharashtra Vs. Bhimashankar Sidramappa*³. He submitted that the

1. (1994) 5 SCC 709

2. (1995) 1 SCC 47

3. 2009 (4) Bom. C.R.1

condition no.17 will not deprive the Petitioner of the ownership and when the said portion of the DP road was taken over by the Municipal Corporation, the Petitioner became entitled to seek compensation whether in monetary or in any other form such as TDR or FSI.

11 He dealt with the contention of the said Corporation regarding the publication of Public Notice dated 24th April 1976. He stated that apart from the fact that the Petitioner had no knowledge of any such public notice, there is no declaration made under Section 224. He submitted that unless there is a declaration issued under Section 224, the status of the DP road will not be converted into a public road.

12 He also pointed out that there is no document placed on record to show that the said portion of DP road which is covered by the condition no.17 was taken over by the said Corporation under the panchnama or a possession receipt. He accepted that the said part of the DP road is being used by the members of the public. He submitted that even assuming that challenge to condition no.17 fails, taking the said clause as it is, the Petitioner cannot be deprived of compensation as the ownership of the Petitioner continues notwithstanding the condition no.17. In fact the said portion of the DP road ought to have been acquired by the said Corporation. The learned counsel for the said Corporation opposed the petition.

13 We have carefully perused the averments made in the petition, the annexures to the petition and reply filed by the Pune Municipal Corporation. We have already quoted the condition imposed in the commencement certificate of 13th April 1971. The condition provides that the Petitioner will construct at its own cost DP Road passing through/abutting its land as per alignment to be given by the said Corporation. It is further provided therein that the DP Road shall be treated as a colony road. It is further provided that these roads should be constructed as per the directions of the Development Engineer and should be handed over to the Municipal Corporation subsequently. It is stated therein that necessary pilot water and drainage lines should be laid on the DP Road at the cost of the Petitioner. It is stated that no compensation will be paid by the said Corporation for the said development work as well as for appropriate width of the DP road treated as colony road passing through/abutting the said land. It is mentioned that out of width of 60 feet DP road, width of 30 feet shall be treated as a colony road.

14 One of the contentions of the learned counsel for the Petitioner is that the clause provides that no compensation will be paid by the said Corporation on account of cost of development incurred by the Petitioner and infact there is no clause to the effect that compensation will not be paid for handing over the possession of the

land covered by the said road. After having carefully perused the third part of the condition, we are unable to agree with the said submission. There are three parts of the said condition. The first part requires petitioner to develop the DP road passing through its property as per the alignment given by the said Corporation under the directions of the Development Engineer of the said Corporation. It was provided that the said DP road should be treated as a colony road. The width of the colony road is also mentioned therein. In case of 60 feet wide DP road, the colony road will have the width of 30 feet. The second part is that the road should be handed over to the said Corporation subsequently. Third part requires that necessary pilot water and drainage lines should be laid on DP road at the cost of the Petitioner. Third part specifically states no compensation will be paid by the Municipal Corporation (a) for these development works and (b) for appropriate width of the colony road passing through or abutting the land. Thus, no compensation is payable not only on account of development carried out by the Petitioner of the DP road but also on account of width of the colony road out of the DP road. The same condition gives the width of the DP road and the width which will be treated as a colony road. It is provided that in case of DP road with the width of 60 feet, the road width to be treated as colony road will be having width of 30 feet. In case of DP road having width of 80 feet, 100 feet or above 100 feet, the land width to be treated as a colony road will be 40 feet. There is no dispute that, as far as the

remaining portion (after excluding colony road) of the land of the Petitioner shown as DP road is concerned, compensation in terms of TDR/FSI has been granted. The condition in the development/commencement certificate thus clearly provides that after developing a part of the DP road as a colony road, the Petitioner will hand over the possession thereof to the Municipal Corporation and is not entitled to any compensation on account of cost incurred on development and as well as for the width of the colony road to be handed over to the said Corporation.

15 To the affidavit in reply of the Municipal Corporation, a photocopy of the letter dated 18th December 1974 addressed by the Chairman of the Petitioner's society to the Assistant Engineer, Lands and Estate, the Pune Municipal Corporation has been annexed. The subject of the said letter is DP road made by the Petitioner society. By the said letter, the Chairman of the Petitioner society called upon the said Officer to take possession of the roads made by the Petitioner. In the said letter, there is no reference to any demand for compensation in relation to the colony road which was to be handed over to the said Corporation.

16 To the petition, the Petitioner has annexed a letter dated 28th June 1975 addressed by the Petitioner society to the City Engineer of the Municipal Corporation. In the said letter, again a request was made to take possession of DP road. In the said letter, it is stated by the

Petitioner that expenses incurred by the Petitioner for construction of DP road and cost of the land can be paid subsequently, but the Municipal Corporation should not delay taking over possession of the DP road. There is a letter dated 1st November 1995 (Exhibit G2 to the petition) addressed by the Assistant Engineer of the Municipal Corporation to the Secretary of the Petitioner society by which the Petitioner society was clearly informed that no compensation will be payable to the Petitioner. There is a letter dated 9th June 1996 addressed by the Chairman of the Petitioner to the Municipal Commissioner in which it was contended for the first time that while handing over the area of 76527 sq. feet (7102 sq. meters), the Petitioner did not demand compensation from the Municipal Corporation. It is alleged that Municipal Commissioner Mr. Varty informed the Chairman of the Petitioner that the said Corporation does not have funds, but FSI can be made available. There is a letter dated 10th October 2003 issued by the Assistant Engineer of the said Corporation to the Chairman of the Petitioner stating that the Petitioner will not be entitled to seek any compensation.

17 There is a reply filed by Mr. Prashant Madhukar Waghmare, City Engineer of the Pune Municipal Corporation to this petition. In the said reply, reliance is placed on a public notice dated 3rd May 1975 by the Municipal Corporation declaring all the colony roads as public streets under Section 224 of the said Act. It is stated that in the present

case, reservation was for 60 feet wide DP road out of which 30 feet wide road was to be treated as a colony road. Therefore, the Assistant Municipal Commissioner (Special) submitted a note dated 25th March 1976 to the Municipal Commissioner for taking over 30 feet out of 60 feet wide DP road. It is stated that after the approval of the Municipal Commissioner, a public notice dated 24th April, 1976 was issued under Section 224 of the said Act inviting objections and suggestions. It is contented that the copy of the said notice was duly received by the then Chairman of the Petitioner but no objections were received from anybody including the Petitioner. It is therefore, contended that in view of Section 224, on expiry of 30 days from the said notice, the said colony road was declared as a public street and the possession thereof was taken over on 24th May 1976. It is contented that after the gap of 21 years, on 2nd June 1997 the Petitioner claimed TDR by addressing a letter to the Municipal Commissioner.

18 Thus, the possession of the portion of DP road shown as colony road was handed over by the Petitioner way back in the year 1976. Admittedly, the Petitioner did not demand compensation at that time as is clear from the letter dated 9th June 1996 of the petition (Exhibit H). We may note here that on 1st November 1995 (Exhibit G-2 to the petition) the said Corporation had conveyed to the Secretary of the Petitioner that as the possession has been taken under Section 224 of

the said Act, compensation will not be payable. The petitioner in this petition filed in the year 2006 is now making a grievance about non payment of compensation. We note that the possession of the remaining portion of DP Road (except the colony road handed over earlier) was taken over by the said Corporation on 7th October 1998 for which the Petitioner has been admittedly compensated by giving TDR.

19 In our view, under condition no.17 of the commencement certificate, the Petitioner was under an obligation to develop a part of the DP road, which was to be treated as a colony road and the Petitioner was under an obligations to hand over possession thereof to the Municipal Corporation without claiming any amount towards the cost of construction and cost of land. The Petitioner acted upon the commencement certificate/ development permission dated 13th April 1971 in which the said condition was incorporated. As stated earlier, the Petitioner parted with possession of the said land in the year 1976. The Petitioner cannot challenge the condition no.17 in the permission granted in the year 1971 after acting upon the same.

20 After taking advantage of the development permission in which the said condition was imposed, the Petitioner cannot claim any compensation in terms of money or TDR or FSI in respect of one colony road. It is too late now to claim that even if possession is taken over in terms of condition no.17, the ownership of the Petitioner society

continues. The surrender of the said portion of land has taken place in the year 1976. The Petitioner did not surrender the land by recording protest. The Petitioner did not claim any compensation at that time, as noted earlier. In respect of remaining portion of the land of the Petitioner, which was reserved as a DP road (except the one treated as colony road) which was taken over, the Petitioner has received compensation to its satisfaction. In view of condition no.17 of the development permission of the year 1971, it is not now open to the Petitioner to claim that any portion of the colony road is owned by it. Therefore, none of the submissions made by the Petitioner have any merit. Even assuming that in other similar cases, compensation/FSI/TDR has been granted in respect of colony roads notwithstanding a similar condition, it will not create any right in favour of the petitioner. In view of the delay and the conduct of the petitioner, none of the decisions relied upon will help the petitioner.

21 Now coming to the reliefs claimed in the petition. The first prayer is for a declaration that the reservation for 60 feet by DP road has lapsed. The said prayer cannot be granted as in respect of a part of the land of the Petitioner covered by DP road, the Petitioner has already received compensation and the other part has been surrendered in terms of the condition imposed in the commencement certificate.

Prayer clause (b), which is the prayer in the alternative, is for directing the Municipal Corporation to pay compensation for the land which was to be treated as a colony road. For reasons we have recorded above, the said prayer cannot be granted.

Prayer clause (c) seeks a declaration that condition no.17 is ultra vires the Constitution and contrary to the provisions of law. As stated earlier, the said condition is imposed in the commencement certificate dated 13th April 1971. The Petitioner acted upon the commencement certificate without any protest and without challenging the said condition. The petitioner carried out development on the basis of the said permission. Considering this conduct, the Petitioner is dis-entitled to dispute the correctness of the condition no.17. Even otherwise, in this petition filed on 14th July 2006, it is too late in the day now to challenge the condition no.17 incorporated in the commencement certificate dated 13th April 1971. Hence, even this relief cannot be granted.

22 Accordingly, writ petition rejected. Rule is discharged with no order as to costs.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)