

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

WRIT PETITION NO.12224 OF 2017

Shri Shashikant Shamrao Mane ... Petitioner.

Versus

The Municipal Corporation of
City of Kolhapur ... Respondent.

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Mr. Akshay Petkar for the Petitioner.
Mr. S.S. Patwardhan for Respondent Nos. 1.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 17th November, 2017.

P.C. :

By this writ petition, the petitioner seeks a declaration that the action on the part of the respondent-Corporation and its authorities of entering and encroaching upon the agricultural land of the petitioner, admeasuring 770. sq. mtrs. out of 2 hectares and 46 are in Gat No.696 is illegal. The petitioner seeks an order or direction restraining the respondent-Corporation from laying the drainage pipeline below the land admeasuring 770 sq. mtrs.

According to the petitioner, who claims to be the protected tenant of 2 hectares 49 R of land in Gat No.696, the Corporation authorities had illegally entered into the land of the petitioner, admeasuring 770 sq. mtrs. and had laid the drainage pipelines. It is stated that the Corporation would not be entitled to lay the drainage pipelines below the land of the petitioner, admeasuring 770 sq. mtrs. without acquiring the same by taking the recourse to

the relevant enactment. It is submitted that a suit was filed by the petitioner against the respondent-Corporation, restraining the Corporation from utilizing the land of the petitioner for a public road without acquiring the same and a permanent injunction is granted in favour of the petitioner, restraining the respondent from constructing the D.P. road on the land of the petitioner, without following the due process of law. It is submitted that despite the injunction, granted in favour of the petitioner, the respondent-Corporation is laying the drainage pipelines in the land of the petitioner in contravention of the Maharashtra Municipal Corporation Act. It is stated that a direction may be issued against the respondent-Corporation to acquire the land of the petitioner, if the Corporation intends to lay the drainage pipelines or construct the D.P. road.

Mr. Patwardhan, the learned counsel for the respondent-Corporation has tendered the affidavit in reply on behalf of the Corporation in the Court today and the same is accepted on record. It is stated in the affidavit in reply that the Corporation does not intend at this stage, to construct the D.P. road. It is stated that the drainage pipelines are laid in a part of the land of the petitioner by taking recourse of the provisions of Section 155 of the Maharashtra Municipal Corporation Act. It is stated that the Commissioner is empowered to carry out the Municipal drains across or under any street or any place laid out as or intended for a street and since the part of the land of the petitioner under which the drainage pipelines are laid is earmarked for the D.P. road under the final development plan, no fault can be found with the action on the part of the Corporation of laying the drainage pipelines.

On hearing the learned counsel for the parties and on a perusal of the relevant provisions of the Maharashtra Municipal Corporation Act, it appears that the prayers made by the petitioner in the instant petition cannot be granted in exercise of the writ jurisdiction. A statement is made by the learned Counsel for the Corporation that the Corporation is not constructing the D.P. road on the land of the petitioner at this stage. It is stated that as and when the land of the petitioner would be required for the D.P. road, the Corporation would take appropriate steps for the acquisition of the land under the relevant Act. We find that the Corporation has merely laid the drainage pipelines beneath the land owned and possessed by the petitioner. The power to make drains and lay the pipelines flows from the provisions of the Section 155 of the Act. We find that the Commissioner is empowered to carry any Municipal drain across or under a street or any place which is intended for a street. The provisions clearly show that the Commissioner is empowered to carry any Municipal drain through an existing street or a place which is intended for a street. The final development plan clearly shows that the part of the land of the petitioner is earmarked for the D.P. road. It would be apparent from the final development plan that the land of the petitioner is intended to be used as a street in view of the final development plan. We have perused the definition of the term 'street' as is defined in Section 2(63) of the Act. The said definition would not come to the rescue of the petitioner for canvassing that the land of the petitioner cannot be intended to be used as a street as the public did not have a right of passage or access to the land of the petitioners uninterruptedly for a period of twenty years. As is

defined in Section 2(63) of the Act, the street can be any road, land, footway, subway, etc. over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years. It is not necessary that if there is uninterrupted access for a period of twenty years on a road, land, footway then only it would be termed as a street. Since the powers under Section 155 are invoked by the respondent-Corporation merely with a view to lay the drainage pipelines under the land which is intended to be used as a street, the petitioner cannot claim that the land should be first acquired and then only the drainage pipelines be laid. If the petitioner has suffered any loss or damage to his land which the petitioner is using as an agricultural field, the petitioner has other remedies. It would not be possible for this Court in exercise of the writ jurisdiction to direct the Corporation to pay any compensation or damages to the petitioner for laying the drainage pipelines in the agricultural field of the petitioner. The petitioner may avail the appropriate remedy, if so advised. Since the land of the petitioner is not being used as a public street and since the respondent-Corporation is not constructing the D.P. road on the land of the petitioners as on this date, the petitioner cannot seek the acquisition of his land.

With the aforesaid observations, we dispose of the writ petition with no order as to costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)