

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1656 OF 2003

Shamlal Lachhiram Bajaj .. **Petitioner**
Versus
State of Maharashtra and others .. **Respondents**

Mr. R. R. Mantri h/f. Mr. M. K. Deshpande,
Advocate for the Petitioner.
Mr. V. S. Badakh, A.G.P. for Respondent Nos. 1 to
4, 6 and 7.
Mr. S. S. Patunkar, Advocate for Respondent No. 5.
Mr. S. G. Chapalgaonkar, Advocate for Respondent
No. 8.
Mr. Ram B. Deshpande, Advocate for Respondent
No. 9.

WITH
WRIT PETITION NO. 1578 OF 2002

Kedarnath Dwarkadas Mantri .. **Petitioner**
Versus
Municipal Council, Ambad and another.. **Respondents**

Mr. S. S. Bora, Advocate for the Petitioner.
Mr. V. S. Badakh, A.G.P. for Respondent No. 2.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 07th DECEMBER, 2018

PER COURT :

1. The Writ Petition No. 1578 of 2002 is filed
challenging the notice dated 12th April, 2002

issued by the Municipal Council purportedly under Section 51 of the Maharashtra Regional and Town Planning Act, 1966 (*hereinafter referred to 'MRTP Act'*). The Writ Petition No. 1656 of 2003 is filed seeking implementation of the order dated 6th March, 1986 passed by the Collector. So also, seeks cancellation of the order dated 30th December, 1997 regularising the lease in favour of respondent no. 8 - Mr. Kedarnath Mantri.

2. Mr. R. R. Mantri, learned Advocate for the petitioner in Writ Petition No. 1656 of 2003 submits that the petitioner Mr. Bajaj is the owner of land bearing Plot No. 36 of survey no. 84 in the vicinity of Municipal Council, Ambad. The petitioner has constructed the hotel on the said premises under a legitimate permission and is running his business. The learned counsel submits that one Mr. Haribhau Tak, Saraswatibai and Shriram Narayan Tak were allotted plots in survey no. 95/2 adjacent to the plot owned by the petitioner. The said plots were allotted by the

Government as they were project affected persons. The respondent made illegal construction and encroached upon the service road. The petitioner filed complaint. The respondent no. 9 again started encroachment. The petitioner filed complaint before the Lokayukta. Tri-party compromise took place between the petitioner and respondent no. 9 in presence of respondent nos. 2 to 5. Pursuant thereto, the Collector Jalna passed an order on 6th March, 1986. After the order is passed by the Collector thereby directing that land should be made available for the road from the plot allotted to Mr. Haribhau Tak in Survey No. 95 and the plots of Mr. Haribhau Tak and other project affected persons should be shifted towards the south and before making available the land for the road the project affected persons should be allotted the plot. It was also further directed in the said order that the Town Planner, Jalna and the Tahsildar should make a joint inspection and measurement shall be carried out and the

boundaries of the plots shall be fixed. The measurement was undertaken. The measurement map is prepared. It is also observed by the Town Planner under its letter dated 09th May, 1986 that after making available the service road and the road the plots that would remain are triangular in nature and the construction is not viable on the said plots. The learned counsel submits that the respondents unauthorisedly committed encroachment abutting to the same, as such the road as was suggested in the compromise and under the order of the Collector was never made properly available to the petitioner. The respondents are duty bound to make available the road nor they can remain on the same plot which were originally allotted to them as they are required to be shifted to the other place as the other plots are required to be shifted towards the south.

3. The learned counsel further submits that Saraswatibai executed lease deed in favour of Mr. Kedarnath Mantri for a period of 99 years.

The said lease deed is not registered. Moreover, Saraswatibai being an allottee of a plot as project affected person did not have authority to execute lease for 99 years. The order regularising the lease by the Collector, Jalna dated 30th December, 1997 is against the rules and is not permissible. The learned counsel submits that for the loss sustained by the petitioner, the petitioner is entitled for compensation.

4. Mr. Chapalgaonakar, learned Advocate for respondent no. 8 in Writ Petition No. 1656 of 2003 submits that the respondent no. 8 under the registered lease deed dated 03.12.1986 is in possession of Plot No. 2 Survey No. 95/2 allotted to Saraswatibai. The lease deed is for 99 years. The lease deed for the period of 99 years executed in favour of respondent no. 8 by Saraswatibai is regularised by the Collector under order dated 30th December, 1997. The learned counsel submits that the order dated 6th March, 1986 passed by the Collector, Jalna is already implemented by the

Authorities and 25 feet road as per the layout plan is vacant and the possession of the same is also handed over to the Municipal Council. The Panchanama was prepared on 19th June, 1986. The possession receipt is also issued by the Authorised Officer of the Municipal Council on the said date. According to the learned counsel, the respondent no. 8 has also issued notice under Section 127 of the MRTP Act to the Municipal Council. No steps are taken for the acquisition by the Municipal Council. By operation of statute the said reservation stands lapsed.

5. Mr. Deshpande, learned Advocate for Respondent no. 9 adopts the arguments of Mr. Chapalgaonkar and further submits that the petitioner Mr. Bajaj had filed a civil suit against respondent no. 9 for injunction. The Exhibit-5 for temporary injunction was rejected. The appeal was dismissed. The suit was compromised, whereby the petitioner herein accepted the plot of respondent no. 9 adjacent to

his plot. The petitioner suppressed this fact at the time of filing the writ petition. The said compromise is executed on 26th March, 1995.

6. Mr. Bora, learned Advocate for the petitioner in Writ Petition No. 1578 of 2002 submits that the Municipal Council has not disputed the receipt of notice under Section 127 of the MRTP Act. No steps were taken for acquisition for a period of one year, the reservation stood lapsed. In view of that notice under Section 51 under the MRTP Act was not tenable.

7. After having heard the learned counsel for the respective parties it appears that the arena of the dispute is in a very limited compass i.e. the 25 feet road to be made available to the petitioner - Mr. Bajaj. It is not a matter of dispute that the petitioner - Mr. Bajaj is the owner and possessor of Plot No. 36 in Survey No. 84 in the vicinity of Municipal Council, Ambad. It also appears that Saraswatibai, Haribhau and

Shriram were allottees of plots 1, 2 and 3 from Survey No. 95/2 being project affected persons. Their appears to be dispute amongst the parties of the service road to the petitioner - Mr. Bajaj. The dispute went before the Lokayukta of Maharashtra. The compromise took place between Haribhau Tak and the petitioner Mr. Bajaj. Pursuant to the same, the order is passed by the Collector, Jalna on 6th March, 1986. It appears that the Saraswatibai and Shriram were not party to the compromise, however they have not challenged the order dated 6th March, 1986 passed by the Collector, Jalna and the said order appears to have been accepted by all the three allottees of plots 1, 2 and 3 of land Survey No. 95/2.

8. It is clear that the service road has to be made available to the petitioner - Mr. Bajaj from Survey No. 95 as per the said order and the road would be north south. The order states that to the extent of road the allottees of the plot/ respondents will be shifted towards

the south and they should be allotted that much area of the plot. Further the joint inspection was required to be made by Tahsildar, Commissioner and the Town Planner and the boundaries shall be fixed. The map has been prepared. After the measurement the joint inspection has been made. The area to be affected under the 25 feet road has been earmarked and the said area has been handed over in possession of the Municipal Council on 19th June, 1986. The possession receipts also executed by Mr. Chaudhari on behalf of the Municipal Council on 19th June, 1986. The steps pursuant to the order dated 6th March, 1986 has been undertaken. It further appears that there was a dispute between the petitioner - Mr. Bajaj and respondent no. 9 - Mr. Tak. The said suit culminated into compromise. The compromise is not further challenged. The parties are also bound by the same.

9. It would be seen that the order of the Collector has been implemented. If at all after

the land under the service road is taken in possession by the Municipal Council and if any encroachment takes place in the area of the road, Municipal Council shall take action for removal of encroachment in accordance with law and it would be guided by the order of the Collector dated 6th March, 1986.

10. As far as the lease between the Saraswatibai and Mr. Kedarnath Mantri is concerned, Mr. Bajaj is a stranger to the lease. By the said lease it cannot be said that the rights of the petitioner are affected. Of course, if on the basis of the lease deed the order dated 6th March, 1986 passed by the Collector is being transgressed, the petitioner has every right to agitate about the encroachment on the road. However, as far as the private transaction is concerned, the petitioner may not have much say in the same. The lease deed appears to be a registered lease deed and the said lease deed is regularised by the Collector under order dated 20th December, 1997.

11. As far as the prayer of the petitioner - Mr. Bajaj for compensation is concerned the details with regard to the alleged damage / loss sustained are not pleaded. The compensation cannot be awarded for asking. The damage caused or the loss sustained has to be specifically pleaded and proved. The prayer for compensation in absence of details of the loss sustained and / or the damage caused cannot be quantified and awarded.

12. The Writ Petition No. 1656 of 2003 is accordingly disposed of with aforesaid observations.

13. As far as Writ Petition No. 1578 of 2002 is concerned, as observed, the respondent Municipal Council has not disputed the notice received under Section 127 of the MRTP Act. The petitioner has stepped into the shoes of Saraswatibai, the allottee of that land and the said lease is also regularised. The petitioner would be the person interested. Under Section 127 of the MRTP Act, it

is not necessary that only owner is entitled to give notice. The person interested and in occupation is also entitled to issue notice under Section 127 of the MRTP Act.

14. It is also not contended by the respondent Municipal Council that any declaration under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 was at any material point of time issued. The same is not issued till date also. It is by operation of law the consequence mentioned in Section 127 of the MRTP Act about lapsing of reservation takes place. The notice is issued under Section 51 of the MRTP Act on the sole ground that the construction permission is not in consonance with the development plan. The respondents have not disputed about the receipt of notice under Section 127 of the the MRTP Act and not taking effective steps for acquisition. The notice under Section 51 of the MRTP Act, as such, would not be sustained and the same is set aside.

15. Further it is made clear that we have not dealt with the rights of the Municipal Council under Section 54 of the MRTTP Act.

16. The writ petitions accordingly stand disposed of. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

marathe