

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

WRIT PETITION NO. 12846 OF 2015

Shri Bashir Nalband

(since deceased through LRs)

1a. Riyaz Bashir Shaikh & Ors.

...Petitioners

Vs.

Islampur Municipal Council & Ors.

...Respondents

Ms.Preeti B. Walimbe I/b. Bhushan Walimbe for Petitioners.

Mr.Rupesh K. Bobade for Respondent No.1.

Mrs.Madhubala Kajle, 'B' Panel Counsel for Respondent Nos.2 and 3.

CORAM : A.A. SAYED & S.C. GUPTE, JJ.

DATED : 11 SEPTEMBER 2018

P.C. :

This petition concerns compensation payable to the Petitioners for acquisition of their property in pursuance of the provisions of Maharashtra Regional Town Planning Act.

2 The Petitioners claim to be owners of the property, being Survey Nos.159/1B/3, 159/1B/1 and 159/1B/5 within the municipal limits of Islampur Municipal Council. This property is reserved for construction of road under the Development Plan of 1980 for the region. An 80 feet road passes through the property. The Petitioners' case is that Respondent No.1 Municipal Corporation, without following due process of law, directly encroached the property and sought to dispossess the Petitioners. The Petitioners, in the premises, filed a civil suit, being Regular Civil Suit No. 342/2002, in the court of Civil Judge,

Junior Division, Islampur, seeking a perpetual injunction against Respondent No.1 from dispossessing the Petitioners. In the course of the proceedings of that suit, the matter was amicably settled between the parties. Respondent No.1 offered to follow due process of law and acquire the property by private agreement and pay the Petitioners compensation. It was agreed between the parties that the amount of compensation shall be decided by the State through its Department of Town Planning. Since the determination of price of the property would have taken some time, the Petitioners offered to hand over possession of the land to Respondent No.1 under protest. Respondent No.1, thereafter, passed a resolution agreeing to acquire the Petitioners' property on the basis of the compromise but that the amount of compensation would be paid in five instalments. Respondent No.1 also informed the Petitioners that the proposal would be put up before the Town Planning Department after the Petitioners withdrew the suit. The Petitioners thereupon withdrew the suit on 30 July 2008. It is the grievance of the Petitioners that despite the Petitioners having handed over possession of the property to Respondent No.1, and withdrawn their suit, compensation in accordance with the market value of the property was not paid to them. What was paid to the Petitioners was compensation of Rs.17,41,500/- at the valuation of Rs.430/- per sq.mtr. Though the Petitioners accepted this compensation, their case is that they were, at that time, under the impression that the amount was paid to them towards part payment of the compensation. On the Petitioners' application to Respondent No.1 at a later date under the Right to Information Act, the Petitioners were informed that compensation at the rate of Rs.430/- per

sq.mtr. was fixed by the Department of Town Planning and that accordingly, the Petitioners were duly paid the entire compensation in pursuance of the compromise between the parties. The Petitioners, in the premises, have approached this court by the present writ petition, seeking to declare the determination of the compensation as illegal and a mandamus to direct Respondent Nos.1 and 2 to calculate the amount of compensation towards the acquisition of the Petitioners' property as per the prevailing market rate at the time of acquisition and release of the differential amount to the Petitioners.

3 It is difficult to comprehend how the *inter se* dispute between the Petitioners, as land owners, on the one hand and the Respondents, respectively, as the Municipal Corporation and the State, concerning compensation payable for acquisition of land on the basis of a private treaty between the parties can be brought before this court in its writ jurisdiction, in particular reference to the correctness of the valuation of the property. It is not in dispute that the compromise between the parties, which is reflected in the consent letter of the Petitioners addressed to Respondent No.1 Corporation, required the valuation of the property to be determined by the Department of Town Planning. The Petitioners undertook unconditionally to accept such compensation as may be determined by the Department of Town Planning. The compensation has been, accordingly, determined by the Department of Town Planning. Whilst determining the compensation, the Department of Town Planning has taken into account the fact that the property acquired by Respondent No.1 was an undeveloped plot. Considering the Annual Statement of

Rates of 2009, which indicated the land rate of developed land at Rs.940/- per sq.mtr., the rate of Rs.430/- per sq.mtr. for the subject property was arrived at. If the Petitioners had any grievance about the rate determined by the Department of Town Planning not being in accordance with the agreement between the parties, the Petitioners were free to adopt such remedy as might have been permissible to them in law. They could not seek to invoke the writ jurisdiction of this court for enhancement of compensation.

4 There is, accordingly, no merit in the petition. The writ petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)

(A.A. SAYED, J.)