

WRIT PETITION NO. 7937 OF 2006

Shyamsunder Ramratan Jaju & Ors. .. Petitioners
Versus
Director of Town Planning and Ors. .. Respondents

Mr. C.G. Gavnekar a/w Mr. Ashutosh C. Gavnekar and Mr. Suhas S. Deokar for the Petitioners.

Smt. Madhubala Kajle Panel B Counsel for Respondent Nos. 1 to 5 and 7.

Suresh M. Sabrad for Respondent No. 6.

Mr. Sanjay Janardhan Jadhav Town Planner-II, present in Court.
Mr. Nazeer Ahmed Khurshid Ahmed Draftsman Malegaon
Municipal Corporation, present in Court.

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

DATE : 06 SEPTEMBER 2018.

P.C. :-

1. Heard learned Counsel for the parties.
2. The Challenge in the present Petition is in respect of continuation of Land Acquisition proceedings as well as continued reservation of the Petitioner's land under the Development Plan.
3. We are concerned in the present Petition with plot bearing Nos. 236/4, 236/6, 230/2 and 230/4 at Sangmeshwar, Taluka

Malegaon, District Nashik. There is no dispute that these plots respectively ad-measure 2400 Sq. Mtr., 1150 Sq. Mtr., 1500 Sq. Mtr. and 2400 Sq. Mtr. These lands which formed part of site No. 115/Final plot No. 95 were reserved for construction of a District Court in the Development Plan. It appears that there was a notification issued, under Section 4 of the Land Acquisition Act, in respect of one particular parcel of land forming part of Site No. 115/Final plot No. 95, namely, survey No. 237/4. The notification did not cover any of the survey numbers which form the subject matter of the present Petition. In a challenge from these proceedings before the Supreme court, an order was passed to the effect that acquisition proceedings should be completed. This order obviously did not apply to the present lands. A separate notification appears to have been issued in respect of the present lands under Section 126 of the Maharashtra Regional Town Planning Act. No steps were, however, taken to acquire the lands in pursuance of that notification. The Petitioners and others, in the premises, filed writ Petitions before this Court being writ Petition Nos. 4099 of 2004 and 4345 of 2004, seeking a declaration that the lands no longer formed part of the reservation and a mandamus to direct deletion of the reservation of Site No. 115 from the revised development plan. In the writ Petition, a

Statement was made by the learned Advocate General on behalf of the State Government that the notification under Section 126 of the Town Planning Act, would be withdrawn, subject to the State's right to acquire the lands under the Land Acquisition Act. An affidavit was filed on behalf of the State by one Sarita Narke, Special Land Acquisition Officer, taking a stand that the Petitioners had served a purchase notice after receipt of proposal of acquisition from the acquiring body, resulting into commencement of acquisition proceedings by issuance of a Section 4 notification. After considering the contentions of the parties, a Division Bench of this Court, by its order dated 04-05-2005, observed that, as far as the particular plot forming part of Site No. 115 was concerned, there was admittedly no declaration under Section 6 of the Land Acquisition Act, within the time set out under that Act, after issuance of notification under Section 4, and consequently the notification ought to be treated as lapsed. Insofar as the notification under Section 126 of the Maharashtra Regional Town Planning Act is concerned, the Court noted the statement of the learned Advocate General that the notification had stood withdrawn. The Court noted that there was no further notification under the Land Acquisition Act in respect of the subject plots of land. Considering, however, that the State

proposed to initiate proceedings for acquisition of the lands *inter alia* in the light of the directions of Supreme Court as also the fact that the lands were reserved for District Court, the Division Bench thought it proper to pass the following order :-

“The Respondent No.5 through its officers to take steps at any rate within six months from today based on the proposal sent by the District Court as set out in the affidavit of Sarita Narke. If the notification under Section 4 is not issued by the Respondent No.5 within the time granted, the Petitioners will be free to apply for development of the property in accordance with the Rules and Regulations.

Rule made absolute accordingly in both the petitions, no order as to costs.”

4. It is not in dispute that in pursuance of this order, the only notification issued under Section 4, in respect of four plots of land, which are concerned with in the present Petition, was in respect of land ad-measuring 1756 Sq. Mtr. from survey No. 236/4 and 329 Sq. Mtr. from survey No. 236/6. These lands, together with the adjoining lands, have been accordingly acquired for the purposes of

construction of the District Court. It is also not in dispute that the District Court has been fully constructed and the entire complex has been operational and enclosed in a compound wall.

5. From the foregoing narration what emerges is that out of the four lands, with which we are concerned in the present Petition, only two lands were notified under Section 4 in pursuance of the order of the Division Bench referred to above, and even as regards those lands, the notification was restricted to certain designated areas as indicated above. Since the other lands have not been subjected to acquisition, by issuing any notification under Section 4 of the Land Acquisition Act, as required by the Division Bench of this Court, the acquisition proposal in respect of these lands should be treated as lapsed. As of date, there is, in other words, no proposal for acquisition under the provisions of the Maharashtra Regional Town Planning Act or the provisions of the Land Acquisition Act. Such proceedings as were taken out earlier had to be treated as lapsed even on the day when the Division Bench passed its order on 04-05-2005. Considering, however, that

the land was required for the purposes of the District Court, a special concession was made by the Division Bench allowing the State to issue a notification under Section 4, if any, if at all these lands were required for construction of the District Court. As we have noted above, the only notification was in respect of the lands specified above, and in pursuance of that notification, the acquisition process has been duly completed and the District Court has been fully constructed. There is accordingly no case for proceeding with the acquisition either under the provisions of the Maharashtra Regional Town Planning Act or under the provisions of the Land Acquisition Act for the rest of the lands.

6. Accordingly, Rule is made absolute and the Petition is allowed, by declaring that the lands, namely, 644 Sq. Mtr. forming part of survey No. 236/4, 821 Sq. Mtr. forming part of survey No. 236/6 and the entire parcels of land bearing survey Nos. 230/2 and 230/4 are not subject to any acquisition proceedings and the Petitioners are free to apply for development of these lands in accordance with law.

7. It is clarified that if, in future, any of these lands are required for the purposes of extension of the District Court complex, the State shall resort to acquisition under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if such proposal for acquisition is sent by the Principal District Judge.

8. The Petition is disposed of in the above terms.

(S.C. GUPTE, J.)

(A.A. SAYED, J.)