

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7491 OF 2018

Sanjay Vishnu Shende and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Jayant R. Shah, Advocate for Petitioners.
Shri K. B. Jadhavar, A.G.P. for Respondent Nos. 1, 2 and 5.
Shri Amol S. Sawant, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.
DATE : 11TH OCTOBER, 2019.**

FINAL ORDER :

. Mr. Shah, the learned advocate for the petitioner submits that, the petitioners are owners of land gut No. 15/1 situated at village Chittod, Tq. And Dist. Dhule. The layout of the said land was sanctioned in the year 2008. The commencement certificate was issued in the year 2009. The land of the petitioners is shown in residential zone and 24 meter wide proposed peripheral plan road is passing through the land of the petitioners. The petitioners were required to leave the said land of 24 meter wide development road in the lay out plan. According to the learned counsel, the petitioners are entitled for the compensation of the area affected under the 24 meter development plan road (peripheral road). According to the

learned counsel all the roads under layout are of 9 meters.

2. The learned Assistant Government Pleader for respondents/State submits that, the layout plots are accessible through the proposed road in the layout including 24 meter peripheral plan road. The petitioners have proposed the road in the layout and handed over the same to the planning authority for further maintenance. The said area under road is vests with the Government. Entry is also recorded in the 7/12 extract of the land. The 24 meter peripheral plan road area stated in the petition as of 2154 sq. meters is mentioned separately in the layout. The same is part and parcel of layout roads and is an access to the layout plots. The village Chittod is now included in the limits of Municipal Corporation. Rule 40.3(iii) of the Development Control and Promotion Regulation for D class Municipal Corporation are applicable. If the lawful possession has been handed over, then compensation in the form of TDR is not permissible.

3. According to the petitioners at the time the layout was sanctioned, the area was not within the jurisdiction of the municipal corporation, as such Development Control and Promotion Regulation relied by the respondents would not apply.

4. It appears that in the development plan 24 meter wide D. P. road is shown to pass from the land of the petitioners.

The petitioners submitted layout. In the layout the petitioners are required to provide for 09 meter internal roads, but the petitioners were required to provide 24 meter D.P. road. As per the development plan, it was incumbent upon the petitioners to provide 24 meter wide road instead of 09 meter. In normal case, the petitioners are required to provide only 9 meter wide road as the layout road. Only because 24 meter wide proposed peripheral plan road was shown to pass through the land of petitioners, the petitioners were required to provide for 24 meter wide road. At the time the layout was sanctioned, the property of the petitioners was situated in village Chittod and was not within the limits of municipal corporation. The village Chittod was included in the limits of Municipal Corporation somewhere in the year 2018. The petitioners are entitled for the compensation for the excess land, which the petitioners were required to provide for the development plan road.

5. Mr. Shah, the learned advocate for petitioners accepts that, the petitioners would have been required to keep 09 meter wide internal layout road. In view of that, the petitioners would be entitled for compensation for the area affected in 24 meter wide D. P. road by deducting area for 09 meter road, which the petitioners even otherwise were required to provide.

6. It is trite that, respondents cannot deprive the

petitioners of their property without due process of law. The private land cannot be taken away by the statutory body or the State without paying any compensation more particularly when such land is required to be used by public at large. The area has been left in the development plan road in the year 2007-2008 and that too when the area was under grampanchayat. The regulation No. 40.3(iii) of the Development Control and Promotion Regulation for D Class Municipal Corporation would not apply.

7. In the light of the above, we come to the conclusion that the respondent/State would be liable to pay compensation to the petitioners for the area under the development plan road after deducting the area that the petitioners would have to statutorily provide for the layout road i. e. 9 meter wide road.

8. The petitioners have approached this Court in the year 2018, though the petitioners were required to keep 24 meter wide development road in the layout in the year 2008. The petitioners cannot get the benefit of the delay caused on their own volition. We will have to balance the equities. We observe and hold that, the valuation of the land under the D. P. road deducting the area that the petitioners would have to leave for 09 meter layout road shall be considered as on the date the layout was sanctioned and the petitioners were required to handover the said D. P. road to the respondents/State. We are also

not inclined to provide for any monetary benefits to the petitioners for the period, the petitioners have not taken steps for legal recourse. We would not given any rental compensation or any interest for the period the possession was taken till the filing of petition.

9. In the result, we pass following order.

10. The respondents shall initiate acquisition proceedings for the area of the land affected in the development plan road as per the layout sanctioned to the petitioners in the year 2008 of land gut No. 15/2 situated at village Chittod, Tq. and Dist. Dhule, after deducting the area that the petitioners would have required to provide for 09 meter wide road. The valuation of the said area would be considered as on the date of sanction of the layout. The acquisition proceedings shall be initiated within a period of three (03) months from the date of this order and shall be completed within the period as contemplated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The petitioners would not be entitled for any rental compensation or any interest for the

period the land was taken in possession by the respondents/State and the filing of the petition.

11. In view of the aforesaid observations, the writ petition is accordingly disposed of. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 19