

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

**WRIT PETITION NO.9756 OF 2018**

**Ashok Jayavantrao Jadhav and Ors.                      ...      Petitioners**

**Vs**

**The State of Maharashtra and Ors.                      ...      Respondents**

Mr.P.S.Dani, Senior Advocate I/b Pankaj  
Popatrao Devokar for the Petitioners.

Mrs.A.A.Purav, AGP for State-Respondent  
Nos.1 to 3.

Mr.G.S.Godbole a/w Shruti Tulpule I/b  
Ketki Gadkari for Respondent Nos.4 and  
5.

Mr.Ajit J. Kenjale a/w Sohil Gulabani a/w  
Suraj Bansode for Respondent No.6.

Mr.Milind M.Sathaye for Respondent No.7.

**CORAM :- S. C. DHARMADHIKARI &  
B.P.COLABAWALLA, JJ.**

**DATE    :- MARCH 27, 2019**

**P.C. :-**

1.     The petitioners before us are seeking declaration from this Court that the Resolution passed and decisions taken in a General Meeting of 4<sup>th</sup> August, 2018 of the Phaltan Municipal Council be set aside.

2.     The submission of Mr.Dani, the learned senior counsel appearing for the petitioners is that the petitioners may be the

Councillors and they may have attended this meeting, but when colossal waste of public funds is noticed by them, then, merely because the majority has granted permission to acquire a particular land under reservation, without considering the serious consequences and repercussions, particularly on public exchequer, the petitioners can maintain a writ petition.

3. They can maintain it to the extent that the State Government is also refusing to intervene in public interest.

4. Mr.Dani would submit that atleast the later request can be considered and a direction can be given to the first respondent and the second respondent to consider taking action under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965.

5. We are unable to agree with Mr.Dani after perusing this petition and its annexures for more than one reason. Firstly, what has been pleaded in the writ petition is that the sixth respondent to this petition is the owner and occupier of a non-agricultural land and that part of the land was sold. The consideration for that was also obtained as is reflected in the copy of Sale Deed dated 17<sup>th</sup> March, 2011. Thereupon, for and on behalf of the sixth respondent, notice under Section 127 of the

Maharashtra Regional and Town Planning Act, 1966 (For short, “the MRTP Act” ) was issued on 13<sup>th</sup> October, 2015 requesting that the land should be acquired insofar as it is under reservation. In that regard, the development plan of the year 1992 has been referred.

6. It is clear that after receipt of this notice, the Council met and took a decision. That is taken as far back on 7<sup>th</sup> April, 2016. It is then claimed that there is another purchase notice which is issued and that also having been received, the Municipal Council had convened a Special General Meeting. On 15<sup>th</sup> October, 2016, it decided to enhance the compensation for the land. Thus, the compensation is reflected in the petition, but all this is a sheer waste as the public purpose will never be achieved. The land is entirely encroached and, therefore, the public purpose of construction of primary school and playground will never be fulfilled.

7. We do not think that we should interfere in our writ jurisdiction merely because of some apprehensions of the petitioners. There are Resolutions passed and what we have seen is that there is a payment made by the State of certain amount for acquisition of the land under Reservation No.54. Thereafter, for both, Reservation Nos.53 and 54, certain amounts have been

sanctioned pursuant to the Resolution, but the complaint is that contrary to earlier decision, these funds to the extent of Rs.Five Crores are being diverted and for some other purpose. The petitioners have objected to this, but that by itself is not enough for us to intervene in writ jurisdiction.

8. It is clear that the acquisition is yet to come through. It is not certain and atleast today that the sanctioned amount will have to be disbursed in full as a compensation for the acquisition of the land for the compensation in money or cash is not the only mode of compensating the owner or the person interested. The MRTP Act itself envisages acquisition of land and offering of cash compensation or transferable development rights in lieu thereof. Further, if the compensation is determined and an award is made, there are further legal remedies available to the Council and it may contest the claim of compensation, if so advised. Once the public interest is not adversely affected at this stage merely because of the decisions or Resolutions, then, all the more, we are disinclined to grant any relief in this petition. It is entirely misconceived and is, therefore, dismissed.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)