

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

WRIT PETITION NO. 8168 OF 2010

Shri.Vasant Nandaram Kale	}	Petitioner
versus		
Pune Municipal Corporation	}	
and Ors.	}	Respondents

Mr.Anil V.Anturkar-Senior Advocate with
Mr.Sandeep Phatak I/b. Mr.S.B.Deshmukh for the
petitioner.

Mr.Rajdeep S.Khadapkar for respondent nos.1 to
3.

Mr.Rajesh S. Jadhav I/b. Mr.Purushottam G.
Chavan for respondent nos. 4 and 5.

Ms.Kirti Kulkarni-AGP for respondent no.6
(State).

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

DATE :- APRIL 23, 2019

P.C. :-

1. This writ petition, under Article 226 of the Constitution of India, was initially placed before a Division Bench of this court. After hearing both sides extensively, this court passed the following order on 7th February, 2012:-

“Heard the counsel for the parties.

2. Preliminary objection regarding maintainability of this petition is taken by the counsel appearing for

respondent Nos.4 and 5 on the ground that the petitioner has already resorted to remedy of suit filed in November, 2007, being Reg.Civil Suit No.1876 of 2007, in which, in substance, relief is in the context of the order passed by the Corporation in exercise of powers under Section 205 of the Mumbai Provincial Municipal Corporations Act dated 30th September, 2006 on the basis of Resolution passed by the Corporation dated 25th July, 2006. Although this preliminary objection seems to be attractive at the first blush, on careful consideration of the reliefs claimed in the plaint and the reliefs claimed in the writ petition, in particular prayer clauses (a) and (b), it is found that they are materially different than the reliefs in the suit. We may agree with the argument of respondent Nos.4 and 5 that reliefs in terms of prayer clauses (c) and (d) and consequently (e) could be overlapping with the reliefs claimed in the suit filed by the petitioner in anterior point of time. To that extent, we cannot permit the petitioner to pursue this writ petition.

3. Nevertheless the petition may have to proceed in the context of prayer clauses (a) and (b), which are not the reliefs claimed in the suit filed by the petitioner, and, in any case, the question of validity of Section 205 of the Act of 1949, which has been raised in terms of prayer clause (a) will have to be examined by this Court.

4. The other preliminary objection is taken by the counsel for the Corporation. According to him, the petitioner had filed earlier Writ Petition bearing Writ Petition No.2424 of 2009, praying for identical relief to challenge the decision under Section 205 of the Act of 1949. However, that Writ Petition was disposed of on 12th November, 2009 for the reasons recorded in the said order.

5. In that view of the matter, it is not open to the petitioner to, once again, ask for relief in terms of prayer clause (b) by way of successive petition. Even though there is merit in this submission advanced by the counsel for the Corporation, the grievance of the petitioner in this petition is that, in spite of order dated 12th November, 2009, for almost one year, the Corporation did not take any further steps on the basis of its order dated 30th September, 2006 and, on the other hand, rejected the petitioner's claim for development of the property in question.

6. In this background, the petitioner has now challenged the validity of Section 205 of the Act of 1949, and, as a

consequence thereof, is praying for setting aside the order passed by the Corporation dated 30th September, 2006 on the basis of Resolution dated 25th July, 2006. We may notice that the Corporation, on affidavit, has denied the stand taken by the petitioner of having submitted any proposal for sanctioning Development Plan.

7. Be that as it may, in the context of the grievance of the petitioner, we called upon the counsel for the Corporation to take instructions as to whether the Corporation is intending to acquire the property on the basis of its order dated 30th September, 2006 passed in exercise of power under Section 205 of the Act of 1949 or, in the alternative, would now re-consider the said decision, if it is not intending to acquire the same, so as to take the order dated 30th September, 2006 to its logical end. The counsel for the Corporation prays for time to take instructions. We accede to his request.

8. The matter shall now appear on 5th March, 2012 under caption 'Directions'."

2. In view of this order, now, the petition survives for a limited purpose. Firstly, on instructions, Mr. Anturkar learned senior counsel appearing for the petitioner submits that he does not press the issue of constitutional validity and legality of section 205 of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as "the MMC Act"). The counsel submits that the writ petition survives only for a very limited purpose.

3. The limited purpose is that the petitioner before this court had throughout been maintaining that some part of Survey No. 15 Pashan is in residential zone and some part in the public/ semi-public zone. Some portion of Survey No. 15 Pashan is affected by 18 meters wide Development Plan Road (DP Road) and that is in

existence. So far as Survey No. 12 is concerned, some portion of this survey number is in residential zone and some portion is in the agricultural zone and is affected by 24 meters wide DP Road. This also shows one nala and on the plan.

4. An agreement was entered into, pursuant to which and relying upon clause (4) of the agreement dated 21st March, 2000, the portion mentioned therein was to be used as a road. What this agreement specifies and between the two private entitles is that the portion referred in the same paragraph would be used as a road, but after preparation and finalisation of a layout plan. It is stated that such layout plan of Survey No.15A referred in this agreement was approved on 20th May, 2002. In this layout, the road has been shown from Pashan Green Park Hotel to Someshwar Mandir. The argument is that the width of the road is 9 meters and thereafter, another road of 7.5 meters has been shown. There was a revised layout plan sanctioned on 10th November, 2004 and further plan was sanctioned in respect of Survey No.12/2/2, which shows the open space in the revised layout plan and beyond that a road having width of 9 meters in the approved layout from nala to 24 meters wide DP Road going from Survey No.5 to Survey No.13.

5. Mr.Anrutkar submits that so long as there is a DP Road and properly laid out and used, the petitioner can have no-objection for the petitioner is not concerned therewith. The petitioner is concerned with the attempt made by two corporators of firstly sending a letter requesting the Municipal Corporation to exercise powers under section 205 of the MMC Act. On 28th “April, 2006, the City Improvement Committee passed Resolution No.34 recommending to the General Body to pass a resolution authorising the second respondent to this petition to exercise its powers under this provision of the law. Mr.Anturkar clarifies that insofar as the power of the Municipal Commissioner and the General Body or that of the Improvement Committee, he has no objection and he canvasses no propositions.

6. However, on 30th June, 2006, the City Improvement Committee passed Resolution No.87, under which, the whole proposal was to take from Survey No.12/2/2 and, *inter alia*, open space thereof, another link road. In other words, there would be a road to link the road between the Pashan Green Park Hotel to Someshwar Mandir Road and 24 meters wide DP Road. The road is described as New Link Road in Resolution No.128 dated 25th July, 2006. The General Body also, on 25th July, 2006, resolved and given approval for drawing street lines for the proposed link

road. The procedure may have been set in motion, but what the petitioner is apprehending is that in the garb of exercising powers under section 205 of the MMC Act, the Municipal Corporation will take over a private property/ land claimed by the petitioner.

7. On such an apprehension, firstly, a writ petition, being Writ Petition No.2424 of 2009 was filed in this court by the petitioner and that came to be disposed of on the statement of the Municipal Corporation. It was disposed of by observing that nobody has approached the petitioner demanding possession or acquisition of the land, which is the subject matter of that petition. The petition is, therefore, premature and rejected.

8. Post this petition, Mr.Anturkar submits that information was obtained under the Right to Information Act, 2005 and the reply thereto gives an apprehension to the petitioner that no procedure for acquiring the property would be initiated and the property would be taken straight away.

9. We have heard Mr.Anturkar, who submits that there is a definite connotation in law, in the sense, the law defines a street, private street and public street distinctly. Section 205 permits laying of a public street. However, section 205 itself enables the Municipal Corporation, while laying down such a street or making

a new public street, to agree with any person for the making of a street for public use through the land of such person, either entirely at the expense of such person or partly at the expense of such person and partly at the expense of the Corporation, and that such street shall become, on completion, a public street, which shall vest in the Corporation. However, that proposal is nowhere to be seen. What Mr.Anturkar submits and based on the apprehension of the petitioner that the Commissioner being authorised by the Municipal Corporation to layout and make a new public street on the private property, he would include in the public street a portion of the land which is privately owned and situate in a private layout, without paying any compensation. The apprehension is that the reply to the query under the Right to Information Act, 2005 is that no notice is required to be given and nothing is required to be paid for taking over such right.

10. Mr.Khadapkar appearing for the Municipal Corporation, relying on the affidavit in reply, submits that presently there is nothing that the petitioner can apprehend and he could not have maintained the second petition on the same cause of action. Hence, the petition be dismissed. In the same breath, what Mr.Khadapkar submits is that as far as Survey No.12/2/2 belonging to respondent nos. 4 and 5 is concerned, the layout in

respect thereof was sanctioned on 5th January, 2006 on the basis of 24 meter DP Road and the 9 meter internal road from the same survey number. The said layout was sanctioned prior to the impugned order made on 30th September, 2006 and as such no benefit thereof was claimed or granted by the Municipal Corporation while sanctioning layout plan. The said road is in existence and none can dispute that, but the General Body Resolution, according to the petitioner, proceeds on the footing that there is a proposal to takeover the land. That is being taken over without paying any compensation.

11. On 25th July, 2006, the Municipal Corporation resolved that Survey No.12/2/2 is a property having an open space. Out of this open space, there could be a link road which would link Pashan Green Park Hotel to Someshwar Mandir Road and 24 meters wide DP Road. This link road can be of 7.5 meters width in the same portion, but margins will have to be acquired so as to create a proper road. This road is necessary bearing in mind the increasing vehicular traffic and which is going to further rapidly increase. It is in these circumstances that section 205 of the MMC Act can be resorted to. The Resolution, beyond saying that section 205 should be resorted to, does not indicate that no compensation will be paid.

12. It is evident from the scheme of the law that by section 205 which is falling under Chapter XIV titled as “Streets” with sub-heading “Construction, Maintenance and Improvement of Streets”, there is a power to make new public street. That the Commissioner can exercise when authorised by the Municipal Corporation in that behalf and at any time. However, there is a distinct power to acquire premises for improvement of public streets. That is conferred by section 209 and there is a distinct power to prescribe street lines. What section 202 clarifies is that all streets within the city or which at any time become public streets, except which, on the appointed day, vest in the Government or which, after the said day, may be constructed or maintained by an authority other than the Corporation and the pavements, stones and other materials thereof shall vest in the Corporation and be under the control of the Commissioner. For this section to apply and to the subject land, it will be first necessary to designate it as a public street. Merely prescribing a new line or street line on both sides of any public street by itself means nothing in the case of a private property. After all the procedure is complied with then alone the street would be designated as a new public street.

13. We do not think that a link road, which the petitioner is apprehending, would be laid by taking recourse to section 205 and over a private land, would vest the land in the Municipal Corporation straight away. The Municipal Corporation would have to abide by these provisions and bearing in mind the distinction that is made by the municipal legislation itself. Once it defines the “public street”, “private street” and “street” generally, but each of these words are placed in the definition section distinctly, then, the apprehension of the petitioner has really no legal basis. All the more when the clarification that we have given with reference to the legal provisions would demonstrate that presently the petitioner need not rush to the conclusion that he is divested of his right, title and interest in the land. The petitioner has not been divested of that right, title and interest in the manner known to law. Today, there may be a street in the layout, but it is a private street. That is defined to mean something which is not a public street and public street is distinctly defined to mean something which is levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public fund, or which, under the provisions of section 224, is declared to be, or under any other provision of this Act becomes, a public street.

14. In these circumstances, with the above clarification and without examining any larger controversy, this writ petition is disposed of.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)