

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.500 OF 2018
WITH
WRIT PETITION NO.1925 OF 2019

Manasi Farms Pvt. Ltd. & Anr. Petitioners
Vs.
Nashik Municipal Corporation,
Nashik & Ors. Respondents

WITH
WRIT PETITION NO.9406 OF 2018

Nakul Agricultural Pvt. Ltd. & Anr. Petitioners
Vs.
Nashik Municipal Corporation,
Nashik & Ors. Respondents

WITH
WRIT PETITION NO.12228 OF 2018

Mansi Farms Private Limited & Anr. Petitioners
Vs.
The State of Maharashtra & Ors. Respondents

WITH
WRIT PETITION NO.12447 OF 2018

Nakul Agricultural Pvt. Ltd. & Anr. Petitioners
Vs.
The State of Maharashtra & Ors. Respondents

WITH
WRIT PETITION NO.12468 OF 2018

Mansi Farms Private Limited & Anr. Petitioners
Vs.
The State of Maharashtra & Ors. Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. P.J. Thorat for the Petitioners in WP-Nos.500/2018, 1925/2019 & 9406/2018.

Mr. Girish Godbole i/by Mr. Akshay Petkar for the Petitioners in WP-Nos.12228/2018, 12447/2018 & 12468/2018.

Mr. B.V. Samant, AGP, for the Respondent-State in all matters.

Mr. M.L. Patil for the Respondent-Nashik Municipal Corporation in all matters.

Mr. P.G. Jagdale for the Intervener.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

DATE : SEPTEMBER 23, 2019

P.C:

1. By these petitions under Article 226 of the Constitution of India, the petitioners have claimed a declaration from this Court that the reservations which have been clamped on lands within the Nashik Municipal Corporation limits, by the Planning Authority in the Development Plan (“**DP**”) stand lapsed and the lands be released from reservation for development in accordance with law.

2. The fundamental premise for this relief, as is clear from Writ Petition No.500 of 2018, is that, the petitioners gave notice under Section 127 of The Maharashtra Regional and Town Planning Act, 1966 (“**MRTP Act**”) calling upon the

Municipal Corporation, Nashik to initiate and complete the procedure of acquisition of the property which is the subject-matter of that petition.

3. Within the statutory time limit no steps having been taken, the Municipal Corporation cannot now take the reservation further and deprive the petitioners of their right to develop the properties in which they have a title or are interested.

4. The documents which are annexed to the writ petition proceed on the footing that, the 2nd petitioner has purchased substantial portion of Final Plot No.541, including a portion admeasuring 6000 sq.mtrs. affected by the reservation of a Primary School in the DP. Out of the portion admeasuring 6000 sq.mtrs. affected by reservation No.365, petitioner No.2-Society allotted this property to petitioner No.1-Company. A Letter of Allotment has been issued in respect of the property admeasuring 6000 sq.mtrs. with the right to claim compensation in respect of the said property from the Municipal Corporation.

5. In this writ petition, there was, while issuing Notice, an order was passed by this Court on 3-4-2019. This writ petition together with other writ petitions was placed before this Court and on 3-4-2019 the following order was passed:-

"1. In three of the writ petitions, namely, Civil Writ Petition Nos.500 of 2018, 1925 of 2019 and 9406 of 2018, we would like to peruse the original records and particularly with the Special Land Acquisition Officer/Collector of the District for the simple reason that Mr. Patil has oral instructions to urge before this Court that reservations after reservations and as crucial and vital as Fire Stations are defeated and frustrated. They do not lapse because what is required under the statute is already done and not as if nothing has been done by the Municipal Corporation. The Municipal Corporation has not only moved an application/proposal but thereafter has been called upon to pay the measurement fees and charges. That is a stage under Section 8 of The Land Acquisition Act, 1894 and that stage comes or is reached only after compliance with Section 6 of the Land Acquisition Act. However, it is urged that because there is no declaration, no measure of this nature or demand of fees or measurement charges will take the matter out of the purview of the Judgment of the Hon'ble Supreme Court of India on the interpretation of Section 127 of The Maharashtra Regional and Town Planning Act, 1966, as it stood earlier and post-amendment.

2. It is this crucial issue which has to be determined by us. We direct production of all original records by the Nashik Municipal Corporation as also by the Special Land Acquisition Officer/Sub-Divisional Officer/Deputy Collector, Nashik. Both shall file their affidavits as well. The needful be done on or before 20-4-2019 with copies to the other side.

*3. The matters are posted on **22-4-2019** under the same caption."*

6. While passing that order, this Court noted the apprehension of Mr. M.L. Patil, learned counsel appearing for the Nashik Municipal Corporation/Planning Authority that, in the garb of these writ petitions several vital reservations including a Fire Station are sought to be frustrated and defeated. Both the Corporation and the Special Land Acquisition Officer/Deputy Collector, Nashik, were directed to file their affidavits.

7. An affidavit in reply was filed by the State - the Deputy Collector, Land Acquisition No.2, Nashik. In that affidavit, copy of which is at page 101 of the paper-book, the deponent did not make any reference to the proceedings preceding the allotment in favour of petitioner No.1. In fact, that affidavit makes a reference to the correspondence with the Municipal Corporation and seems to project that the Municipal Corporation never made any request, beyond carrying out measurement and that seems to suggest that the Municipal Corporation should initiate the acquisition process, then alone the Collector can step in. The affidavit does not deal with the complaint of the Municipal Corporation with regard to frustration of certain vital reservations.

8. On such an affidavit being filed and a contra stand being noted in the affidavit of the Municipal Corporation, that we had to pass a further order.

9. In the affidavit of 22-4-2019 filed by the Nashik Municipal Corporation, there are, apart from denials, specific assertions that, the writ petition pertains to Final Plot No.541, admeasuring 24 hectares 62.60 ares (comprising of Survey No.750 admeasuring 14 hectares 78 ares, Survey No.751 admeasuring 4 hectares and Survey No.755 admeasuring 5 hectares and 86 ares. They are situated at Nashik as per the

Town Planning Scheme (“**TPS**”) II sanctioned by the Government on 28-11-1985. The Final Plot belonged to Jahuddin Yasinso and 21 others as on the date of sanction of the TPS. The said family, in addition, owns several other lands in Nashik, the details of which are provided in para 4 of this affidavit of the Nashik Municipal Corporation, affirmed by Kiran Pundalik Loney. The total holding of the family was stated to be 583910.60 sq.mtrs. in Nashik Urban Agglomeration on the commencement of The Urban Land (Ceiling and Regulation) Act, 1976 (“**the ULC Act**”). The holders submitted various returns under the ULC Act and while the returns were pending, the TPS was sanctioned. In the TPS, 24 metre wide road was reserved, the extent of which was about 13320 sq.mtrs. As per the General Note appended to the TPS-II, the land under the road stood vested in the Municipal Corporation. There is a reference to the revised DP of Nashik City, sanctioned w.e.f. 16-11-1993 and a further revised DP w.e.f. 9-1-2017. Various reservations were provided for Final Plot No.541 and they have been set out in a chart. After relying upon the chart, it is said that the returns filed by the family under the ULC Act were clubbed together. The information derived is that one order was passed by the Competent Authority but there are other orders. Then there are cases of Mohammad Hasansaheb Khatib and Mohiyoddin Hasansaheb Khatib which were dealt with by a common order of 1-11-1993. These two persons were holding

excess vacant land to the extent of 11053.25 sq.mtrs. Then the Competent Authority scrutinised the returns, calculated the non-vacant and vacant land in the Final Plot totally admeasuring 24 hectares 62.60 ares. Then there was another case of Amiroddin Shekhansaheb Khatib and others where the records were not received by the Municipal Corporation. The lands belonging to these gentlemen were also declared surplus but it appears that they made application to the Government seeking exemption from the ULC Act and there was an order dated 16-1-1995 which granted conditional exemption. Para 9 of the affidavit of the Municipal Corporation, therefore, raises specific assertions that once the conditions were not complied with, the benefit of the exemption order could not have been derived and therefore the lands stood vested in the Government. Such vested lands could not have been dealt with and all transactions in relation thereto are not binding on the Municipal Corporation.

10. After this affidavit was filed, this group of petitions took a different turn and on 20-6-2019 we made the following order:-

"1. The prayer in Writ Petition No. 500 of 2018 is of a declaration that the reservation of primary school on a plot of land, carved out from Final Plot No. 541, within the limits of Nashik Municipal Corporation, has lapsed and the reservation having thus lapsed, the revenue entries be corrected accordingly.

2. Petitioner no. 1 in this petition claims that it is a company having its registered office at the address

mentioned in the cause title. Petitioner no. 2 is a society registered under the Maharashtra Co-operative Societies Act, 1960, whereas, respondent no.1 is the Planning Authority. Respondent nos.2 and 3 are the Assistant Director, Town Planning and the State of Maharashtra, respectively.

3. A portion admeasuring 6000 square meters out of Final Plot No. 541, totally admeasuring 246400 square meters situated at Nashik within the limits of Nashik Municipal Corporation is styled as the said property. The development plan for Nashik City has been sanctioned by the third respondent by a notification dated 28th June, 1993. The petitioners state that in the said development plan, the properties bearing Survey Nos. 750, 751 and 755/3 situate at Trimbak Road are included in Town Planning No.2 and they are forming part of Final Plot No. 541. A portion admeasuring about 6000 square meters out of this final plot is reserved for primary school.

4. The argument is that Reservation No. 365 for primary school has not been taken to its logical conclusion. A notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966 has been issued and served on the Nashik Municipal Corporation/Planning Authority. It is categorically stated that this reservation having not culminated in the acquisition of the property within the life of the plan, now that reservation lapses and the property stands released from reservation to the extent indicated above.

5. On such a petition, we had expected a response of the Nashik Municipal Corporation to be either that this reservation is taken to its logical conclusion or could not be and therefore, it has lapsed. However, the argument today canvassed on behalf of the Nashik Municipal Corporation is two-fold. It is stated that this writ petition at the instance of the present petitioners itself is not maintainable and that is because the larger property from which this plot is carved out and to the extent indicated above and reserved, was declared as excess vacant land. The land belongs to one Amiruddin S. Khatib. This land having been declared as surplus vacant land, it vests in the State. However, a power of attorney holder of the said Amiruddin Khatib applied for exemption under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 in respect of this excess land for providing plots in accordance with the special dispensation issued by the Government Resolution dated 27th August, 1992. The Government having satisfied itself that the location of the land, the purpose for which it is being proposed to be used and other

relevant factors justified in public interest that it should be exempted from the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and the power under section 20(1)(a) thereof should, therefore, be exercised. To that effect, an order was made on 16th January, 1995 and reference therein is made to several proceedings, including meeting with the said Amiruddin Khatib.

6. Mr. Patil appearing for Nashik Municipal Corporation would submit that the land being subjected to the Urban Land (Ceiling and Regulation) Act, 1976, which was then not repealed, no transaction regarding such a land could have ever been undertaken by the said Amiruddin Khatib or by the present petitioners and they derive no title. Mr. Patil would submit that it is extremely vital for us to ascertain whether the said Amiruddin and consequently the petitioners complied with the terms and conditions of this exemption order or not. If they have not, then, despite the repeal of the Urban Land (Ceiling and Regulation) Act, 1976, it is open for the State Government to initiate proceedings under the said Act (un-repealed) and pass appropriate orders in accordance therewith. In either which way, such land would never go to and could never have been held by the petitioners. At their instance, therefore, no notice, under section 127 of the Maharashtra Regional and Town Planning Act, 1966, could have ever been issued.

7. Alternatively and without prejudice to the above submission, it is argued that the Nashik Municipal Corporation is the Planning Authority. It is showing the position on a part plan of the sanctioned development plan of Nashik Municipal Corporation, a copy of which is at page 45 of the paper book, whereunder, the subject plot (Final Plot No.541), at a corner of the larger plot, is shown as reserved for primary school. However, at page 46 of the paper book, which is part plan of sanctioned development plan of the very city, on 1st July, 2017, this reservation for primary school stands deleted. Therefore, the primary school reservation having been removed, the Nashik Municipal Corporation cannot initiate any proceedings under the Maharashtra Regional and Town Planning Act, 1966 pursuant to the purchase notice, but independent thereof. Presently, no such decision has been taken.

8. At the same time, we have invited Mr. Patil's attention to a Certificate of Tenure and Title, a copy of which is at page 41 of the paper book, which shows Final Plot No. 541 and owners' names show that of Khatibs. Secondly, what we have noted is a sketch of

Final Plot No.541 at page 42 of the paper book and thirdly, extract of the Draft Revised Development Plan 2016-2036-Report. Now, as against Plot No.365, the initial entry was "primary school" and the extent to which the land was reserved for this primary school was 6000 square meters. Now that has undergone a change. It has become Reservation No.218-public amenity and the area is revised to 6760 square meters. The remark is that this is "Retained as relocated by Nashik Municipal Corporation for public amenity". The reservations below, namely Reservation Nos. 367 and 368, initially styled as garden and High School are worded as "park" and "Educational Amenity" and areas have also changed.

9. *Before the Municipal Corporation could respond, an affidavit in reply has been filed by the Deputy Collector, Land Acquisition – 2 and he says that with regard to the proposal for acquisition for a primary school, there is a request received from the Nashik Municipal Corporation on 6th October, 2015, which cannot be said to be a coincidence, because the notice, copy of which is at page 16 of the paper book, is issued on 12th June, 2015. Upon its receipt, possibly, some proposals may have been forwarded. Then, the order under section 34 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was passed and the Deputy Collector, Special Land Acquisition No. 2 has been delegated the powers for acquisition under the new law. Thereafter, the matter has progressed up to the stage of taking joint measurements. Thereafter, there is correspondence with the Deputy Director of Town Planning and the Nashik Municipal Corporation.*

10. *With this background, we have two queries. Firstly, how does the Nashik Municipal Corporation now contend and in the teeth of this correspondence carried out with the Special Land Acquisition Officer that the powers under the Urban Land Ceiling Act can still be exercised given the nature of the conditions on which the exemption was granted and secondly and alternatively, if the Final Plot No. 365 is no longer reserved for primary school or that reservation stands renamed and relocated, then, whether this correspondence was really unnecessary, but still carried out.*

11. *When we raised these two queries, Mr.Patil stated that the officers of the Nashik Municipal Corporation so also the Collectorate of Nashik District are not responding adequately. This is but a sorry state of affairs. Time and again we have warned the State*

that reservations meant for the public cannot be surrendered in this manner, much less allowed to lapse. We want to know whether there is any deliberate or intentional act of anybody, including the officials, and that is why there is this resultant state of affairs.

12. We, therefore, call upon the Special Land Acquisition Officer No.2, the Deputy Collector as also the Collector of the district to place before this court all original records and files. It is clear that at one time, the Collector was the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976. We also direct the Commissioner of the Nashik Municipal Corporation to depute a senior-level officer to remain present with all original records and furnish an explanation, particularly as regards pages 45 and 46 of the paper book. Let the needful be done. The above officials shall remain present on 12th July, 2019.

13. Stand over to 12th July, 2019."

11. It was surprising for us that Mr. Patil made a consistent complaint that the office of the Collector and the Special Land Acquisition Officer is not producing the entire record for perusal of this Court nor is it providing copies of the relevant documents from the same to the Municipal Corporation. That these two public bodies brought their ugly disputes and differences and total non-cooperation before this Court compelled us to pass further order on 12-7-2019.

12. After that order, Mr. Patil says that he had received the complete set of documents and equally inspection was taken but rejoinder affidavit was sought to be filed to a further affidavit of the Municipal Corporation. Thus the affidavit of the Municipal Corporation which was already on record was not

rejoined to and that affidavit of the Municipal Corporation, according to Mr. Patil, was not complete without the inspection. Hence, we allowed a rejoinder affidavit to be introduced and in that rejoinder affidavit the petitioners seem to suggest that reliance on the urban land ceiling proceedings is totally irrelevant and uncalled for. The petitioners are not at all trying to get over those proceedings or the binding orders therein. They have dealt with the lands which belong to them exclusively. The title to these lands has been derived by the petitioners after the Letter of Allotment and that Letter of Allotment in turn is based on proper transactions with the family and undertaken by petitioner No.2. It is therefore urged that we should not allow the Municipal Corporation to urge anything that is directly conflicting with its stand as reflected in the correspondence with the Collector and the affidavit of the State. The Planning Authority is desperately trying to get over the above materials.

13. Now we have a curious situation because a sur-rejoinder is filed to the affidavit in rejoinder and the Municipal Corporation says, through the same deponent, that the disclosures from the urban land ceiling record would reveal that the title in the lands claimed by the petitioners is not capable of being passed on to them. There is a categorical assertion that at least on 1-11-1993 four returns under the ULC

Act were finalised. There could not be a transaction of sale in favour of petitioner No.2 and reliance is placed on Section 5(3) of the repealed ULC Act. It is claimed that permission to convert the land from Occupancy Class II to old tenure was passed by the Collector on 31-12-1993. That order was in respect of Survey No.750, admeasuring 14 hectares 64 ares. All these transactions of sale are after the alleged Draft DP was published in the Maharashtra Government Gazette on 27-7-1989 whereunder the above area of 125141 sq.mtrs. was converted from agricultural zone to yellow zone and consequently became urban/vacant land and the provisions of Section 5(3) of the ULC Act became applicable. Resultantly, all the transactions of sale in favour of the Estate Co-operative Housing Society and allotment of portions of lands to the members of this Co-operative Society, without submitting fresh returns including therein all lands held earlier, are void. Thus the assertion is that the transactions are *void ab initio*. The other serious issue is that, there was a systematic fraud and perpetrated on the public as well while dealing with this land and permitting the tenancy to be changed. This affidavit of 16-9-2019 contains several factual assertions and the stand therein is sought to be supported by relying on certain documents.

14. The petitioners' Senior Counsel would apply for time

to file a sur-sur-rejoinder but given the nature of the dispute, we do not think that any useful purpose will be achieved by granting adjournment. A sur-sur-rejoinder to be filed and taken on record would only mean this Court would be drawn into an adjudication of the dispute on title to the immovable property/land. In our limited jurisdiction we could not have undertaken such an exercise. More so, when we find that the Collector's affidavit made no reference to the ULC proceedings and those under The Maharashtra Land Revenue Code, 1966, the DP and the subsequent exercise. Therefore, the version of two public officials being not identical, all the more complicated our task.

15. We are, therefore, of the firm view that the adjournment as sought by Mr. Jahagirdar cannot be granted. The petitioners would have to first establish their right, title and interest in the immovable property. They would have to establish and prove that the lands acquired by petitioner No.2 from the family were not affected by the ULC proceedings or any orders made therein. That these families could have, therefore, transferred their right, title and interest in the land in favour of petitioner No.2 which, in turn, could have allotted the plots to its members. This will have to be done because it is for the first time that the Municipal Corporation is raising a serious dispute with regard to the title of these lands. It is claiming that

the petitioners are neither owners nor persons interested and hence at their instance no notice under section 127 of the MRTP Act could ever have been issued. When the issue of fraud and a cloud on the title to the property are sought to be raised in answer to the relief of declaration claimed in this writ petition, in such circumstances, it would be fair, just and proper to dispose of this petition by granting liberty to the petitioners to bring appropriate proceedings before the appropriate Forum to establish their right, title and interest in the lands. In such proceedings the petitioners can rely upon the affidavit(s) filed by the Municipal Corporation and assert that their title to the lands was never disputed previously by the Planning Authority and such a dispute is sought to be raised for the first time in answer to the reliefs claimed in the present petitions. We have no doubt in our mind that the appropriate Forum would take note and due cognizance of this assertion and pass appropriate orders after hearing both sides in accordance with law. The appropriate Authority/Forum/Court will have to pass orders, thus, on all issues including on the bar of limitation, if any, in bringing the action. We do not express any opinion and leave it entirely to that Forum to decide the issues that may arise on account of the rival assertions and the pleadings of parties.

16. With the above observations, Writ Petition No.500 of 2018 is disposed of without expressing any opinion on merits of

the controversy raised.

17. Since the facts, prayers and grievances in the connected writ petitions being similar to the one in Writ Petition No.500 of 2018 and that petition having been disposed of by recording the reasons as above, the connected writ petitions are also disposed of in the same terms.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)