

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

WRIT PETITION NO.9779 OF 2007

Manoharlal Baburam Gupta
Proprietor, Sai Prem Trading
Corporation, Nashik
R/o Rajendra Colony,
Nashik Road

.. Petitioner.

V/s.

1. The State of Maharashtra
Through its Secretary
Urban Development Department,
Mantralaya, Mumbai-32

..

2. The Director of Town Planning
Maharashtra State, Pune.

..

3. The Nagar Panchayat, Shirdi,
Shirdi, Tal.Rahata,
Dist.Ahmednagar
Through its Chief Officer

..

4. The Collector,
Ahmednagar

.. Respondents.

Mr.Shishir Joshi i/b Pritishishir Joshi for the Petitioner.
Mr.A.I.Patel AGP for the Respondent Nos.1, 2 and 4.
Mr.Ajit Dilip for Respondent No.3.

**CORAM : R. M. BORDE AND
N. J. JAMADAR, JJ.**

DATE : 3RD MAY, 2019.

JUDGMENT (PER R.M. BORDE, J.):

1] Heard.

2] Rule. With consent of the parties the petition is taken up for final disposal at the stage of admission. The respondents waive service.

3] Petitioner No.1 is the proprietor of petitioner no.2 – company which is permitted to be deleted in view of the order passed on 4th December, 2015 since the said company became non functional. The name of Petitioner No.2 has been struck off from the record. Petitioner No.1 is the Director of Petitioner No.2 - liquidated company. However, there is no controversy as regards entitlement of Petitioner No.1 to the property in dispute i.e. area to the extent of 60 R out of Survey No.5, CTS N.904 situated at Shirdi, Taluka Rahata, District Ahmednagar, out of total area of 134 R owned by the petitioner. The area to the extent of 60 R portion which was of individual ownership of Petitioner No.1 was part of assets of liquidated company i.e. Petitioner No.2. The original owner of the suit property was one Parasharam Dagdu Gondkar. He tendered an application for conversion of user of property for non-agricultural purpose and by the order dated 6th April, 1984, permission was accorded for change of user. In the month of October 1984, petitioner no.1 purchased the said property from the original owner and accordingly the name of petitioner no.1 was mutated in 7 X 12 extract as well as property register record.

4] Respondent Nos.2 and 3 have prepared the development plan for Respondent no.3 - Nagar Panchayat, Shirdi wherein the development road having width of 15 meters has been proposed and said reservation for D.P. Road affects 60R area belonging to Petitioner. Though, the development plan was finalised in 2005, no steps for acquisition were taken and as such the petitioner proceeded to issue notice within contemplation of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") on 31st May, 2006. Since no steps for acquisition of area under reservation were initiated by the planning authority, the petitioner moved this Court with a request to issue directions to the respondents to release area from reservation and declare entitlement of the petitioner to develop and use the said land, as in case of the adjoining owner, with due approval from the planning authority.

5] The contentions raised by the petitioner in the petition are opposed by Respondent no.3 by presenting an affidavit in reply. It is contended by Planning Authority/Respondent No.3 in an affidavit presented on record that while presenting proposal for sanction of layout plan the petitioner has included the road having width of 6 meters in the plan which is as per building bye-laws. It was the responsibility of the petitioner while sanctioning the layout, to transfer layout road in favour of planning authority free of cost. It is pointed out that the petitioner has failed to transfer the layout road in favour of planning authority and as such he cannot take advantage of

his own wrong. It is further stated that MSRDC has included said road in the first phase development programme and the cost of the said road is decided to be incurred by Saibaba Sansthan, Shirdi. It is contention of the planning authority that it has taken all necessary steps for developing the said property and as such provisions of section 127 of the MRTP Act does not have applicability.

6] It is contended by the Planning Authority that area under reservation is needed for development plan road and both parties have agreed for negotiated settlement of compensation amount.

7] An affidavit in reply has also been presented by the Deputy Director of Town Planning, Nashik Division, Nashik on behalf of Respondent Nos.1 and 2 wherein it has been stated that the development plan road proposed in the plan having width of 15 mtrs. is inclusive of layout plan road, approved and sanctioned, while considering the proposal of the petitioner for according permission to the layout plan of the larger area. It is contended that the petitioner is not entitled to claim compensation for the layout plan road which is a part of the sanctioned layout plan.

Similar, contentions are raised in the additional affidavit tendered on behalf of respondent no.3 – planning authority. It is contended that the Standardised Building Bye-laws and Development Control Rules for “B” and “C” Class Municipal Councils of Maharashtra are applicable to the Municipal Council, Shirdi. As provided in the aforesaid Development

Control Rules, the petitioner is not entitled to claim compensation except for an area of 3 mtrs. out of total width of road. The petitioner ought to have provided 12 mtrs. road in layout plan as mandated under standardized building bye-laws applicable to the Municipal Councils and since he has failed to provide road having width as prescribed in bye-laws, the petitioner is not entitled to claim compensation. The communication transmitted by the Assistant Director, Town Planning, Ahmednagar on 28th October, 2016 is relied upon for contending that the petitioner is entitled to claim compensation only for 3 mtrs. wide area out of total area required for development plan road.

8] The petitioner on the other hand, contends that Respondent no.3 has canceled the plans and permissions accorded for construction of various buildings, except building No.C-1. Since the plans have been cancelled by the Planning Authority in respect of building A, Shops and parking spaces, except building No.C-1, it is erroneous to contend that the petitioner is not entitled to claim compensation for total area covered by the development plan road.

9] Heard arguments of respective counsel appearing for the parties. An undisputed fact emerges as regards prescription of reservation of an area out of property belonging to petitioner for Development plan road under the final development plan prepared for Shirdi town. It is not a matter of dispute that 15 mtrs. development plan road is prescribed under the final

development plan which affects the property belonging to the petitioner. It is also not a matter of dispute that on consideration of request made by predecessor in title of the petitioner an area to the extent of 13,549.81 sq. mtrs. has been permitted to be converted for non-agricultural purpose in view of order dated 6th June, 1984. It also cannot be controverted that initially on consideration of application tendered by the petitioner, layout plan was sanctioned for development of the area converted for non-agricultural use and in the said sanctioned layout plan 6 mtrs. layout road has been prescribed. The cancellation of development permission in respect of part of layout area at subsequent stage is also brought on record by presenting an additional affidavit by the petitioner. It also cannot be controverted that the respondents do require area prescribed in the development plan for laying down road.

10] The issue that arises for consideration is whether the respondents are justified in restricting the claim of compensation payable to the petitioner in respect of proposed acquisition of area only to extent of 3 mtrs. width of the development plan road. The Respondent - planning authority has contended that since layout plan has been sanctioned at the request of the petitioner wherein 6 mtrs. wide road has been proposed as internal road, the petitioner is not entitled to claim compensation for the said area. Apart from this, it is contended that in view of Standardised Building Bye-laws and Development Control Rules for "B" and "C" class Municipal Councils, the petitioner ought to provide 12 mtrs. layout plan road and for

the said area, he is not entitled to claim compensation and the same has to be handed over to the Planning Authority free of costs. The said area prescribed for layout plan road vests in the local authority, for which no compensation can be claimed. The contentions raised by the planning authority is without any foundation. The issue has already been answered by the Supreme Court and following the decision the Division Bench of this Court has also negated similar contention raised by planning authority claiming dis-entitlement to amount of compensation by land owner for area utilized for Development plan road or open spaces.

11] Reference can be made to the judgment in the matter of *Pt. Chet Ram Vashist vs. Municipal Corporation of Delhi* reported in 1994 DGLS (SC) 990/1995 AIR (SC) 430, decided by Apex Court. The question that arose before the Apex Court was as to whether the Municipal Corporation of Delhi in absence of any provision in the Delhi Municipal Corporation Act, 1957, was entitled to sanction the plan for building activities with condition that the open space for parks and schools be transferred to the Corporation free of cost. It was contention of the Corporation before the Apex Court that area reserved in the final development plan for parks, school etc. was to vest in the corporation without payment of any compensation. It was recorded by the Supreme Court in the judgment that such condition was illegal and invalid and it shall not be permissible in law for corporation to take over the land under reservation free of costs.. In this context the observations of the Supreme

Court recorded in paragraph 6 are relevant and those are as quoted below :

“6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself.

The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

12] In case of *Vrajlal Jinabhai Patel since the deceased through LRs and Anr. vs. State of Maharashtra and Others reported in 2003 (4) Bom.C.R.724*, the issue that arose for consideration was as to whether the open space provided under sanctioned layout automatically vests in the Municipal Council. It was argued by the Municipal Council that firstly it is entitled to allot open space to others for user in accordance with bye-laws and secondly the said area of open space vests in Municipal Corporation free of cost. Relying upon the provisions of Bye-law No.14 of the Standardised Building Bye-laws and Development Control Rules of “A” Class Municipal Councils of Maharashtra framed by the Government of Maharashtra in exercise of powers conferred under sub-section (1) of Section 323 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, the action was sought to be justified. It was contended in the alternative, relying upon Clause 14.3 that area under the road and the open space was required to be handed over to the planning authority for development of the same for nominal amount of Re.1/- as a condition to sanction of

the layout plan and the said area automatically vests in Municipal Council. The Division Bench while dealing with contentions, concluded thus :

“Rule 14.3 which is a delegated legislation cannot confer a power of acquisition of the open space under the layout. Under Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law. The authority of law means by or under any law made by a Competent Authority. No law made by the legislature was shown to us under which the ownership in the open space could be vested or transferred to the Municipal Council whether by payment of compensation of Re.1/- or otherwise”.

13] The Court, accordingly, allowed the petition. In the instant matter also, the respondents have failed to point out any rule or provision of law entitling them to claim transfer of area reserved for development plan road free of cost by the owner, to the planning authority. Merely because, the area is shown in the approved layout plan it does not automatically vest in the Planning Authority for its utilisation as the development plan road. The ownership of individual is not lost merely because the land area is specified in the final development plan reserved for specified purpose. There are restrictions, by virtue of inclusion of an area in the development plan and specifying the same for public purpose and the land owner would not be

entitled to use said area for any purpose other than specified in the development plan. However, the ownership of area under reservation in final development plan does not vest automatically in the planning authority. The reservation prescribed under the development plan also comes to an end on fulfillment of requirement provided under section 127 of the MRTP Act. In the instant petition, the petitioner has already issued a notice under Section 127 of the MRTP Act and the respondents have not taken steps for acquisition of area specified in the final development plan belonging to the petitioner.

14] In view of the judgment of the Apex Court in *Girnar Traders vs. State of Maharashtra and Others* reported in 2007 (7) SCC 555, the steps of acquisition means issuance of a notification under Section 126(2) read with the declaration under Section 6 of the Land Acquisition Act. Admittedly, no such steps have been taken by the Planning Authority or Development Authority. However, since the Respondent – Planning Authority and Development Authority have agreed to fix market value of the area under acquisition by entering into negotiations, we grant one more opportunity to the respondents to make an attempt to arrive at a negotiated settlement. It would be open for the respondents to take steps and acquire the area either by entering into negotiations and after payment negotiated value of land or by way of compulsory acquisition within a period of one year from today. The respondents shall, within the period of one year from today pay the amount of

compensation in respect of area under reservation and sought to be acquired for the development plan road (without making any deductions in respect of area therefrom) either by way of negotiated settlement of compensation or if the negotiations do not yield any result, by taking steps for compulsory acquisition and ensure declaration of award and payment of compensation within prescribed time frame of one year. If the respondents fail to pay compensation and acquire the property under reservation within one year from today, the said area belonging to petitioner and prescribed for development purpose under the final development plan prepared for Shirdi Municipal Council shall stand lapsed and the land under reservation shall be available to the petitioner for use as in case of adjacent land under the relevant plan. In such eventuality State Government shall notify lapsing of reservation in official gazette as specified in Section 127(2) of MRTP Act.

15] Rule is, accordingly, made absolute in aforesaid terms. There shall be no order as to costs.

(N. J. JAMADAR, J.)

(R. M. BORDE, J.)