

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7083 OF 2019

Anwar Sikaandar Momin & Ors.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

- Mr. D.V. Sutar a/w Ms. Vallari Jathar and Nirmal Pagaria for the Petitioners.
- Ms. M.P. Thakur, AGP for the State.
- Mr. Akshay P. Shinde for Respondent No.5.

**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : SEPTEMBER 30, 2021.

P.C.:

1. The above Writ Petition is filed by the Petitioners, *inter alia*, seeking the following reliefs:-

- "(a) This Hon'ble Court be pleased to call for relevant record and proceedings from the office of respondent No.5 and after going through the same, direct the Respondents to initiate acquisition proceeding regarding the area in land bearing Gat No. 249, 250, 251, 252 situated in Ichalkaranji Municipal Council limit reserved for 12 mts. D. P. Road as per the Second Revised Development Plan sanctioned by respondent No.1 on 24.5.2012 in accordance with the provisions of Maharashtra Regional Town Planning Act 1966 and complete the same expeditiously.
- (b) Pending the hearing and final disposal of this writ petition this Hon'ble Court be pleased to direct the Respondents to initiate acquisition proceeding regarding the area in land bearing Gat No. 249, 250, 251, 252 situated in Ichalkaranji Municipal Council limit reserved from 12 mts. D. P. Road as per the Second Revised Development Plan sanctioned by respondent no.1 on 24.5.2012 in accordance with the provisions of Maharashtra Regional Town Planning Act 1966.

2. The Petitioners have submitted as follows :

2.1. That the land bearing Gat Nos. 249A, 250, 251/1, 252/A and 252/B ("the said lands") were owned by various private owners and falls within the area of Respondent No. 5 - Ichalkaranji Municipal Council which is also the

Planning Authority. Sometime in the year 1985, the Development Plan was published by Respondent No. 5 and the said lands along with other adjoining lands situated in Shahpur were reserved for public purpose. As per the said development plan, a portion of the said land was reserved for the construction of D.P. Road of 12 M width.

2.2 According to the Petitioner, Respondent No. 1 - State by its letter dated 24.05.2012 granted sanction to the second revised development plan which was subsequently published in the year 2012 by Respondent No. 5. As per the revised development plan, the land adjoining Gat Nos. 249A, 250, 251 and 252 situated ahead of Madhuban Society facing the north-south corridor through which the D.P. Road passes are owned by private parties. Subsequently over the years, Respondent No.5 acquired various adjoining lands for the purpose of construction of D.P. Road.

2.3 However, some portion of this D.P. Road going through the said lands belonging to private parties is not yet acquired by Respondent No. 5 - Council. In fact, various pieces and parcels of land from northern and southern side is acquired but the portion of approx. 300 feet is yet to be acquired. The Petitioners are having houses facing this road i.e. the said unacquired portion. The Petitioners are facing problems to commute through this road since the Petitioners are allowed only to walk through the said lands by the private owners of the said unacquired portion of lands and

are not allowed to take any vehicle upto their house, the Petitioners have to leave their vehicles on one side of the acquired portion of land and thereafter walk towards their respective houses. Respondent No. 5 has failed and neglected to acquire the said portion of land, hence, the Petitioners have time and again approached Respondent No. 5 and requested them to take appropriate steps to acquire the remaining balance portion of the said lands belonging to private parties.

2.4 The Petitioners vide their representations dated 26.06.2005 and 01.09.2005 requested Respondent No. 5 to do the needful in the matter. By reply dated 09.11.2005, Respondent No. 5 informed the Petitioners that after acquisition of the land, further procedure will be followed for the development of the said D.P. Road. Also the Petitioners and others have submitted their representation to Respondent No. 2 - Collector, Kolhapur and pointed out the inconvenience caused to them due to the inaction on the part of Respondent No. 5 in acquiring the land for the purpose of construction of the said D.P. Road. By letter dated 06.09.2010, Respondent No. 2 informed the Petitioners that their representations have been forwarded to Respondent No. 5. Thereafter, by letter dated 22.02.2010 Respondent No. 5 informed the Petitioners that necessary procedure would be followed after taking approval from the General Body of Respondent No.5 in that regard. However, till date, no steps are taken for acquiring the

remaining balance portion of the said lands for completing the construction of the said D.P. road.

2.5 It is the case of the Petitioners that in spite of the assurance given by Respondent No.5 to take proper steps for acquiring the land for the said D.P. Road, Respondent No.5 failed and neglected to take steps between 2010-2016.

2.6 Again on 05.05.2016 and 25.09.2017 the Petitioners submitted their representations to Respondent No. 5 and requested that the portion of D.P. road going through the said lands be acquired after following the due procedure so that construction of the entire D.P. road can be completed. Respondent No. 5 was of the express view that for the aforesaid purpose of completion of construction of the D.P. road, acquisition of the said lands is a mandatory requirement and hence, Respondent Nos. 1 to 4 are required to forthwith take the necessary steps, and that Respondent No.5 is ready and willing to compensate the original owners of the said lands. Respondent No.5 therefore passed a resolution on 17.04.2017 to forward the proposal for acquisition of the said stretch of land for the purpose of D.P. road of 12 M situated ahead of Madhuban Society facing north-south corridor, through which the D.P. road is to pass, in accordance with and as per the provisions of Section 126 of the MRTP Act, 1966 and Right to Fair Compensation and

Transparency in Acquisition of Land Act, 2013. The resolution was proposed to be forwarded to Respondent No. 2 - Collector, Kolhapur and Respondent No. 4 - Special Land Acquisition Officer for the purpose of acquisition and for further recommendations and inquiry with respect to the amount of compensation payable to the owners of the said lands.

2.7 By letter dated 30.01.2019, the Petitioners again made a representation before Respondent No. 5 stating their difficulties.

2.8 The Petitioners state that despite the resolution dated 17.04.2017 passed in the General Body Meeting of Respondent No. 5 and despite a further representation dated 30.01.2019 made by Petitioners to the Respondent No.7, no steps are taken by the Respondents for acquisition of the said lands, to determine the compensation payable to the owners of such lands and construction of the D.P. Road. Due to the inaction on the part of the Respondents and the inordinate delay in completing the acquisition proceedings and construction of development of the D.P. Road, the Petitioners are facing grave difficulty and inconvenience resulting into filing of the above Writ Petition before this Court.

3. We have heard the learned Advocate appearing for the Petitioners, learned AGP and learned Advocate appearing for Respondent No. 5. Respondent Nos. 6 to 18 are not present despite service. Learned Advocate

for Respondent No. 5 states that Respondent No. 5 has no objection in complying with prayer clause (a).

4. In view of the facts set out herein above, the Writ Petition is disposed off in terms of prayer clause (a) referred to in paragraph 1 above.

5. The Advocate for the Petitioners shall forthwith serve a copy of this order on Respondent Nos.6 to 18 to enable them to move this Court within 15 days from the date of service of this order, if they are aggrieved by this order.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]

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