

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14139 OF 2018

Prakash Meghraj Chauhan & Ors.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

-
- Mr. Joel J. Carlos for the Petitioners
 - Mr. R.S. Pawar, AGP for the State
 - Mr. A.A. Garge for Respondent No. 5
-

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

DATE : JUNE 24, 2021.

ORDER: (PER : MILIND N. JADHAV)

Heard learned counsel appearing for the respective parties.

2. By the present Petition, the Petitioners have prayed for the following reliefs:

- "(a) That this Hon'ble Court by Writ in the nature of mandamus or any other appropriate Writ direction or order be pleased to call for the records and proceedings relating to the purchase notice dated 30.06.1997 in respect of CTS No. 246/1, R.S. No. 31, Survey no. 32 A Ward, Khondgewadi, Lonavala and be pleased to declare that the notice dated 30.06.1997 has become absolute and that the Respondent No. 3 be directed to sanction the Building Plans submitted by the Petitioners on the said land in accordance with law without taking the objection of the land being reserved.
- (b) That this Hon'ble Court be pleased to direct / initiate Contempt proceedings against the Respondent No. 3 and Respondent No. 1 for non compliance of the order dated

07.12.2017 passed in Writ Petition No. 3363 of 2015 and order dated 21.04.2008 passed in Writ Petition No. 8963 of 2004 by this Hon'ble Court and be pleased to take action under the Contempt of Courts Act against the said Respondents."

3. The relevant facts necessitated for adjudication of the present petition are briefly stated as under:-

3.1. Petitioners are owners of land bearing CTS No. 246/1, RS No. 31, Survey No. 32A situated at Khondgewadi, Lonavala admeasuring 5186 sq meters (hereinafter referred to as the "**said land**").

3.2. Development plan under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") was sanctioned for Lonavala area in the year 1978. In 1989 Petitioners submitted plans for construction and development on the said land. Respondent No. 3 - Lonavala Municipal Council (for short "**the Municipal Council**") sanctioned the plans submitted by the Petitioners on the said land along with construction of compound wall. Petitioners completed construction of the compound wall in the year 1989 itself.

3.3. In the draft development plan 1994, the said land was reserved for the public purpose of Sports Complex and Community Hall, hence, the Municipal Council refused building permission to the

Petitioners. Petitioners challenged refusal of building permission under Section 47 of the said Act and filed an Appeal before Respondent No. 1 - State. By order dated 22.11.1995, the Appeal filed by the Petitioners was dismissed.

3.4. On 30.06.1997, Petitioners issued a purchase notice under the provisions of section 49 of the said Act. This notice was received by Respondent No. 1 State and the Municipal Council on 02.07.1997. The statutory period of six months as contemplated under the provisions of Section 49(5) of the said Act expired on 02.01.1998. The State Government did not pass any final order either confirming the purchase notice nor refusing to confirm the same. Thus the purchase notice was admittedly deemed to have been confirmed on 02.01.1998 under the provisions of Section 48(5) of the said Act.

3.5. On 03.01.1998, the General Body of the Municipal Council passed a resolution for acquisition of the said land. On 12.02.1998, the Municipal Council applied to Respondent No. 1 State for acquisition of a portion of the said land for the proposed reservation. On 02.01.1999, the statutory limitation period of one year as contemplated under the provisions of Section 49(7) of the said Act expired and therefore by operation of law the said land was

deemed to be released from reservation and available to the owner i.e Petitioners for the purpose of development in accordance with law.

3.6. On 04.01.2000, the Municipal Council submitted a fresh proposal for acquisition of the entire land for the proposed reservation.

3.7. On 03.10.2001, Petitioners submitted plans for building permission under section 44 of the said Act for development on the said land to the Municipal Council. On 28.10.2002, the Municipal Council informed the Petitioners that the said land was under reservation for the proposed public purpose of Sports Complex and Community Hall and called upon the Petitioners to handover possession of the said land by holding private negotiations with the Council. However the Municipal Council did not take any steps to acquire the said land by private negotiations thereafter for a further period of three years.

3.8. Hence on 13.08.2004 Petitioners filed Writ Petition No. 8963 of 2004 in this Court, *inter alia*, seeking a declaration that the reservation on the said land had lapsed under the provisions of Section 49 of the said Act and sought a direction to the Municipal Council to sanction the building plans submitted by the Petitioners. On

21.04.2008, this Court passed an order dismissing the Writ Petition filed by the Petitioners, the operative portion contained in paragraph Nos. 6 and 7 being relevant is extracted hereunder:-

"6. However, the learned Counsel appearing for petitioners submits that the reservation of the land of the petitioners for public purpose cannot be allowed to remain indefinite. In our opinion, the submission has substance, specially because, the Municipal Council also appears to be eager to acquire the land for the designated public purpose. The learned Counsel appearing for Municipal Council states before us that the Municipal Council is also willing to deposit with the Land Acquisition Officer whatever amount that may be directed by the Land Acquisition Officer for the purpose of acquisition of the land. In our opinion, acquisition of the land of the petitioner will also not adversely affect the interest of the land owner because in view of the provisions of Section 126 of the Act if now a notification under Section 6 of the Act is issued, the land owner would be entitled to market value of the land as on the date of that notification.

7. We have heard the learned Counsel appearing for the State Government. The State Government also does not appear to be averse to the idea of compulsory acquisition of the land for the benefit of planning authority. In our opinion, therefore, the following order would meet the ends of justice:-

It is declared that the such land continues to be reserved for sport complex and Samaj Mandit and the reservation of the land has not lapsed.

The State Government is directed to consider the application submitted by the appropriate authority and to issue notification as required by the provisions of section 126 of the Maharashtra Regional & Town Planning Act, as expeditiously as possible, in any case within a period of three months from today."

3.9. Thereafter by letter dated 25.06.2008, Respondent No. 5 Special Land Acquisition Officer No. 14, Pune informed the Municipal Council about the order passed by this Court on 21.04.2008 and directed steps to be taken for acquisition of the said land and sought deposit of 50% of the approximate market value of the said land with Respondent No. 5. On 12.11.2008, the Municipal Council passed a resolution, *inter alia*, sanctioning a proposal to deposit a sum of Rs.

47,25,600.00 with Respondent No. 5, Special Land Acquisition Officer (being 50% of the approximate price at the then time) for acquisition of the said land. On 06.12.2008, the Council issued a cheque of Rs. 47,25,600.00 and deposited the same with Respondent No. 5.

3.10. However, no further steps were taken for acquisition of the said land by the Municipal Council nor any notification under Section 126 of the said Act was issued by the State Government within three months as directed by the above order or even thereafter.

3.11. On 03.04.2010, Municipal Council once again refused permission for construction and development on the said land to the Petitioners on account of having deposited 50% of the purchase price of the said land with Respondent No. 5. On 20.01.2014, the Municipal Council once again rejected the building proposal submitted by the Petitioners through their Architect for construction and development on the said land.

3.12. Petitioners were therefore constrained to file Writ Petition No. 3363 of 2015 in this Court for the following reliefs:-

"(b) It may be declared that the purchased notice dated 30.06.1997 under section 49 of the Maharashtra Regional & Town Planning Act in respect of Survey No. 32 Khondgewadi Lonawala has become absolute and Lonawala Municipal Council be directed to sanction the building plans submitted by Petitioners on the said land.

- (c) Pending the hearing and final disposal of this petition, Lonawala Municipal Council be directed to consider and process the building plans and development Application in respect of survey No. 32, Khondgewadi Lonawala;
- (d) Pending the hearing and final disposal of this petition, Respondents be restrained from commencing the acquisition proceedings in respect of survey No. 32, Khondgewadi Lonawala."

3.13. By order dated 07.12.2017, this Court disposed of the above Writ Petition, *inter alia*, directing Respondent No. 3 Municipal Council to deposit the amount of Rs. 2,92,74,400.00 within three months and giving a further direction to the State Government to take steps for acquisition of the said land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and issue preliminary notification within four months and pass the Award as early as possible.

3.14. Since the directions contained in the order dated 07.12.2017 were once again (for the second time) not complied with, Petitioners filed the present Petition on 11.09.2018 and are before this Court today in the year 2021.

4. Mr. Carlos, learned counsel appearing for the Petitioners submitted that the Respondents are in clear contempt of the directions contained in the order dated 07.12.2017 in as much as they have not

only failed to comply with the said directions but with blatant impugntiy have disregarded and disobeyed the orders passed by this Court time and again. He submitted that non-compliance of the orders passed by this Court has been repeated for the second time by the Respondents. He submitted that the Petitioners have been fighting a long winded battle since 1997 (i.e issuance of the purchase notice) to develop their land, but have been deprived of the benefit for the past 24 years; that this was the third round of litigation by the Petitioners before this Court in respect of the same subject matter; Petitioners were not averse to their land being acquired if the Petitioners were paid the market value for the said land, however, the delay which is writ large on the face of record in the present case deprived the Petitioners of their legitimate right of development of the said land.

4.1. He submitted that scant regard has been shown to the orders passed by this Court by the Respondents and the orders are flouted and disobeyed with impugntiy. He submitted that having failed to initiate and take steps to acquire the said land right since 2003 and the reservation for the proposed public purpose having being lapsed and more specifically pursuant to the order dated 07.12.2017 Respondent No. 3 Municipal Council having failed to deposit the amount of Rs. 2,92,74,400.00 within the time frame of

three months and the State Government having failed to issue the preliminary notification within four months of passing of the said order, it is now imperative that the relief prayed for in the present petition, namely, prayer clause (a) seeking direction to Respondent No. 3 Municipal Council to sanction the development and construction on the said land in accordance with law be granted. He submitted that the facts are not in dispute, the dates are not in dispute; the inaction on the part of Respondent No. 3 Municipal Council in blatantly violating and disobeying the order of this Court dated 07.12.2017 is clear, as such the petition deserves to be allowed.

5. *PER CONTRA*, Mr. Garge, learned counsel appearing for Respondent No. 3 Municipal Council has referred to the affidavit-in-reply dated 22.06.2021 filed on behalf of the Municipal Council to oppose the present petition and contended that on 02.12.2017, Respondent No. 5 did issue a letter to the Municipal Council, *inter alia*, calling upon the Council to deposit a sum of Rs. 3,40,00,000.00 being 30% of the total compensation amount of Rs. 11,26,41,536.00 in respect of acquisition of the said land according to the ready reckoner rate of the year 2017-18. He submitted that in 2008, Respondent No. 3 had already deposited Rs. 47,25,600.00 and thus, the balance amount of Rs. 2,92,74,400.00 was called upon to be deposited by Respondent No. 5 for taking further steps for acquisition

of the said land under the provisions of Right to Fair Compensation Act, 2013. He submitted that Respondent No. 3 is required to deposit a sum of Rs. 2,92,74,400.00 for which a provision has been made in the budget for the year 2020-21 by the Municipal Council. He submitted that the said subject considering its financial impact shall be placed before the General Body of the Municipal Council in its forthcoming meeting and the President of the Municipal Council was apprised of the same. He, however, submitted that if the said subject / issue is not decided by the General Body in its meeting, then Respondent No. 3 shall initiate appropriate necessary action under the provisions of Section 83A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and thereafter place the same before the President or Chairman for final decision. However he has further submitted that by letter dated 21.06.2021, the provisions of Section 83(1)(a) were now invoked and the President of the Municipal Council has been urged to place the present subject / issue before the General Body for consideration in its forthcoming meeting. He fairly submitted that though the said subject / issue was registered in the register of the Municipal Council on 04.12.2017, however till date it has never been placed on agenda for consideration by the Municipal Council and hence the delay has taken place.

6. Respondent No. 5 the Special Land Acquisition Officer, No. 14, Pune has filed his affidavit-in-reply dated 28.02.2020, *inter alia*, contending that the Assistant Director of Town Planning, Pune Branch Pune has informed the Respondent No. 5 that the entire land reserved for the public purpose in the sanctioned development plan of Lonavala should be acquired and not part of it as proposed by the Municipal Council; hence Respondent No. 3 was informed vide letter dated 28.06.1999 to re-submit fresh acquisition proposal for the entire land under reservation; that the Municipal Council was repeatedly informed and communicated vide letters dated 02.12.2017 and 07.04.2018 for depositing 30% of the total compensation amount in compliance of the order dated 07.12.2017 passed in Writ Petition No. 3363 of 2015, however the Municipal Council has not deposited the said amount and hence further steps for acquisition could not be proceeded by the State as per law.

7. We have perused the pleadings and the material on record. Submissions of the counsel have been on pleaded lines.

8. At the outset, it may be mentioned that there is no dispute or ambiguity in so far as the facts narrated above are concerned. It is an admitted position that this Court has passed two specific orders namely order dated 24.02.2008 and order dated 07.12.2017, *inter*

alia, directing the Municipal Council and the State Government to take steps for acquisition of the said land for the reserved public purpose of Sport Complex and Community Hall. The stand of the Municipal Council at the time of passing of both the aforesaid orders by this Court has been specifically noted by this Court in the said orders. It is pertinent to note that in the order dated 21.04.2008 in paragraph No. 6 the stand of the Municipal Council has been specifically noted and taken cognizance of by this Court as follows:

"6 *However, the learned counsel appearing for the petitioners submits that the reservation of the land of the petitioners for public purpose cannot be allowed to remain indefinite. In our opinion, the submission has substance, specially because, the Municipal Council also appears to be eager to acquire the land for the designated public purpose. The learned counsel appearing for Municipal Council states before us that the Municipal Council is also willing to deposit with the Land Acquisition Officer whatever amount that may be directed by the Land Acquisition Officer for the purpose of acquisition of the land....."*

8.1. Thus though the Municipal Council had shown its willingness to deposit whatever amount that may be directed to be deposited as far back as on 21.04.2008, the said statement / undertaking recorded by the Court has never been fulfilled till date and on 21.06.2021 a diametrically opposite stand is now adopted by the Municipal Council by invoking the provisions of Section 83(A) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 whereby in view of the financial impact on the budgetary provision of the Municipal Council the proposal for deposit

of 30% of the market value shall be placed before the President or the Chairman of the Municipal Council for a decision. This stand adopted by the Municipal Council is stated to be rejected especially in view of the order dated 07.12.2017 passed by this Court in Writ Petition No. 3363 of 2015. By the said order the Municipal Council was directed to deposit Rs.2,92,74,400.00 within a period of three months and the State Government was directed to take steps for acquisition of the said land and issue the preliminary notification within 4 months. The 4 month period expired on 06.04.2018. However until today there has been complete inaction and omission on the part of the Municipal Council as well as the State Government. Not a single letter or correspondence has been addressed either by the Municipal Council nor the State Government. There is admitted non-compliance of the directions contained in order dated 07.12.2017 not to mention that this non-compliance is the second instance of breach of order passed by this Court.

8.2. Though in a similar manner the Municipal Council and the State Government had committed breach of the earlier order dated 21.04.2008, this Court had given a second opportunity to the Municipal Council and the State Government on their insistence and undertaking that the said land would be acquired and the monies would be deposited for the purpose of acquisition. The order dated

07.12.2017 has been blatantly violated by the Municipal Council and the State Government thereby resultantly causing prejudice to the Petitioners rights in the said land. In the order dated 21.04.2008 it was categorically noted by this Court that the submission of the Petitioners that the reservation of the said land cannot be allowed to remain indefinite has substance. This fact is required to be equally balanced with the right of the acquiring body i.e. the Municipal Council requiring the said land for the reserved public purpose. The acquiring body i.e. the Municipal Council is required to act within the four corners of law and more specifically when a statutory provision relating to implementation of the power of eminent domain is concerned.

8.3. In the present case, this Court has in two specific orders passed on 21.04.2008 and 07.12.2017 noted that the acquiring body requires the land for the reserved public purpose and if it is so then steps need to be taken for acquisition of the said land for the public purpose without prejudice to the rights of the Petitioners. The Petitioners being the owners of the said land have repeatedly brought to the notice of this Court the limitation and statutory provisions under the said Act, viz the provisions of Section 49 relating to purchase notice given by the Petitioners and the statutory effect thereof. There is no contest on the said aspect. This Court has

therefore in the order dated 07.12.2017 accepted the statements made by the Municipal Council and the State Government and passed a specific order which is not complied with till date and *prima facie* it now appears that the Municipal Council is not in the position to comply with the said order.

9. We may further state that the affidavit-in-reply dated 22.06.2021 filed by the Chief Officer of the Municipal Council is once again vague and does not answer the principal question. The affidavit is filed stating that a provision has been made in the budget for the year 2021-22 in respect of considering deposit of the balance amount of Rs.2,92,74,400.00. The affidavit does not explain compliance or non-compliance or the reasons for non-compliance of the order dated 07.12.2017 and on the contrary seeks further time to complete the procedure for acquisition without assigning any specific reason. That apart paragraph No. 4 of the affidavit states that the provision made in the budget for considering deposit of the aforesaid amount has been placed before the General body and if the same is not decided by the General Body then further necessary action would be taken under the provisions of Section 83(A) Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 for placing the same for final decision before the President or the Chairman of the Municipal Council. However in paragraph No. 6 of the said affidavit it is stated

that the provisions of Section 83(A) have been invoked by the Municipal Council on 21.06.2021. Thus the stand adopted by the Municipal Council in paragraph Nos. 4 and 6 is diametrically opposite and contradictory in nature.

9.1. It may be noted that though the present petition was filed in the year 2018, the Municipal Council has taken action in compliance of the directions contained in the order dated 07.12.2017 only on 21.06.2021. The Municipal Council has treated the order dated 07.12.2017 passed by this Court with utter disdain and impugntiy. In the letter dated 21.06.2021 annexed at Exhibit 'C' to the affidavit-in-reply dated 22.06.2021 filed by the Municipal Council it is categorically stated that the aforesaid issue was entered as an agenda item in the agenda registrar of the Municipal Council since December 2017 however the same has never been considered as an agenda item in any of the meetings of the Municipal Council held so far. This stand of the Municipal Council clearly shows that the proposed acquisition of the said land is not accorded any priority and it is only when this petition is heard in 2021 that the letter dated 21.06.2021 is issued by the Chief Officer of the Municipal Council to the Meeting Superintendent of the Municipal Council to place the above subject as an agenda item and bring it to the notice of the President or Chairman of the Municipal Council for a decision.

10. Again, though this Court has specifically directed the Municipal Council on 07.12.2017 to deposit the amount of Rs. 2,92,74,400.00, the affidavit-in-reply filed in the present petition states that provision has been made in the budget for the year 2021-22 in respect of the same. If the Municipal Council was desirous of acquiring the said land, all such steps should have been taken within a period of three months from the passing of the above order and / or this Court should have been approached in the event of any delay in depositing the amount or completing the procedure for acquisition. The Municipal Council has acted with no urgency whatsoever and such omission on the part of the Municipal Council shows that there is no priority accorded to acquisition of the said land for the reserved public purpose.

11. For all the above reasons the said land belonging to the Petitioners cannot be frozen indefinitely due to the inaction and omission on the part of the Municipal Council. The statutory provisions of the said Act namely the provisions of Section 49 read with the provisions of Section 126 relating to lapsing of reservation of the said land therefore need to be consider. The Petitioners have invoked the said provisions in prayer clause 'a' of the petition which

reads thus:

"(a) That this Hon'ble Court by Writ in the nature of mandamus or any other appropriate Writ direction or order be pleased to call for the records and proceedings relating to the purchase notice dated 30.06.1997 in respect of CTS No. 246/1, R.S. No. 31, Survey no. 32 A Ward, Khondgewadi, Lonavala and be pleased to declare that the notice dated 30.06.1997 has become absolute and that the Respondent No. 3 be directed to sanction the Building Plans submitted by the Petitioners on the said land in accordance with law without taking the objection of the land being reserved."

11.1. In the above facts and circumstances, the Petitioners have sought a declaration that their purchase notice dated 30.06.1997 be declared to have become absolute and the building plans be sanctioned in accordance with law without raising the objection of reservation. Though the relief in prayer clause 'a' is not worded in the most comprehensive manner, however having regard to the Petitioners' case, the orders dated 21.04.2008 and 07.12.2017 passed by this Court, the admitted non-compliance of the orders by the Municipal Council and the State Government the Petitioners' said land cannot be allowed to remain in a frozen state indefinitely. There is a purpose behind enactment of the limitation period contained in the provisions namely Section 49 read with Section 126 of the said Act which has been elaborately dealt with by this Court in its order dated 21.04.2008 while granting relief to the Municipal Council as also in the order dated 07.12.2017 by giving a further opportunity to the Municipal Council and the State Government to acquire the said land. The facts pertaining to the present case as stated herein above are

extremely gross. Though there is admitted non-compliance and breach of the Court order dated 07.12.2017 by the Municipal Council as well as the State Government, we are not inclined to grant prayer clause 'b' or pass any direction to that effect.

11.2. The Municipal Council being a statutory body has now vide its letter dated 21.06.2021 placed on record that a decision in respect of budgetary allocation to deposit 30% of the acquisition amount with the State Government by the acquiring body is yet to be taken and the same is pending to be taken either before the General Body and / or the President / Chairman. It is further submitted by the Municipal Council that the aforesaid subject involves policy and financial impact. This has to be tested specifically and cannot be kept vague. If the said land is required to be acquired today, the market value of the said land as per today's ready reckoner would have to be calculated. Admittedly the market value of the said land as per the ready reckoner rate for the year 2017-18 (when the order dated 07.12.2017 was passed) was Rs. 11,26,41,536.00. The said market value must have definitely increased by the year 2020-21. Thus the Municipal Council would therefore require to deposit 30% of the market value for the said land as on date with the Special Land Acquisition Officer under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013 and only thereafter further steps for acquisition could be taken.

11.3. However considering the letter dated 21.06.2021 and the provisions of Section 83(A) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 the Municipal Council is yet to take any decision whatsoever on considering whether to deposit 30% amount of the market value for the said land as on 2017-18. This gross delay on the part of the Municipal Council especially in the teeth of the order dated 07.12.2017 cannot be countenanced and pardoned. However in the present case though the purchase notice dated 30.06.1997 has been correctly given there is complete inaction on the part of the State Government to take recourse to acquisition of the said land. The State Government's action is dependent on the deposit of the market value amount by the Municipal Council who is the acquiring body. In the present case, in view of the directions contained in the order dated 24.02.2008 and 07.12.2017 having not complied with till date and no plausible explanation given by the Municipal Council and the fresh stand taken by the Council under Section 83(A) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, it is evident that the said land is not required by the Municipal Council for the proposed public purpose. Hence in view of the above discussion

and findings, the present petition is allowed in terms of prayer clause 'a' reproduced in paragraph 2 above.

12. Writ petition stands allowed in terms of prayer clause 'a'.
However, there shall be no order as to costs.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]