

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10827 OF 2017

Vinay Uttamchand Parakh
Age 51 yeas, Occu: Agri. and Business,
R/o. 7, Ganesh Building,
122, Navi Peth, Jalgaon. ...Petitioner

Vs.

1. The State of Maharashtra,
through Secretary, Urban Development
Department, Mantralaya, Mumbai.

2. Collector,
Jalgaon, Taluka and District Jalgaon.

3. Assistant Director
Town Planning Department,
Jalgaon Municipal Corporation,
Jalgaon.

4. Jalgaon Municipal Corporation
Through its Commissioner
Jalgaon Municipal Corporation,
Jalgaon Taluka and District Jalgaon ...Respondents

**WITH
WRIT PETITION NO. 9394 OF 2018**

Chandrashekhar S/o. Javrilal Raka
Age 43 yeas, Occu: Business & Agri.
R/o. Housing Society, Plot 2,
Jalgaon, Tq. & District Jalgaon. ...Petitioner

Vs.

1. The State of Maharashtra,
through Secretary, Urban Development
Department, Mantralaya, Mumbai.

2. The Collector,
Jalgaon, Taluka and District Jalgaon.

3. Assistant Director
Town Planning Department,
Jalgaon Municipal Corporation,
Jalgaon.

4. Jalgaon Municipal Corporation
Through its Commissioner
Jalgaon Municipal Corporation,
Jalgaon Taluka and District Jalgaon

...Respondents

Mr. A. R. Syed, Advocate for the Petitioners,
Mr. P. K. Lakhotiya, A.G.P. for the Respondent Nos.1 & 2 / State.
Mr. V. D. Gunale, Advocate for Respondent No.3,
Mr. Pradip R. Patil, Advocate for Respondent No.4

CORAM : C.V. BHADANG AND

SANDIPKUMAR C. MORE, JJ.

RESERVED ON : 22 JULY 2022

PRONOUNCED ON : 3 OCTOBER 2022

JUDGMENT : (Per C. V. Bhadang, J.)

. Rule in both petitions. The learned counsel for the respective Respondents waive service. Heard finally by consent of the parties.

2. Both these petitions raise a common challenge. As such,

they are being disposed of by this common judgment.

3. The challenge in these petitions, under Article 226 of the Constitution of India, is to the constitutional validity of the Government Resolution dated 5 April 2017 and condition No.4 in respect of EP-66 in Schedule of modification in Government Resolution dated 10 August 2004. The specific challenge is that the condition No.4 in respect of EP-66 by which the land owners are required to surrender / hand over the land under the development plan road (DP Road) with the construction thereon, to the Municipal Corporation, free of cost, at the time of seeking development permission, is violative of Article 300-A of the Constitution of India.

4. The brief facts necessary for the disposal of the petitions may be stated thus-

That the development plan (part) of the extended limits of Jalgaon City was sanctioned on 11 February 2002. While sanctioning the said plan, certain land was excluded. On 10 August 2004, the development plan for the excluded part was sanctioned. For the present purpose, the dispute is only in respect of excluded part (EP-66) stipulating that development permission shall be granted in respect of said part on 'low rise low density' concept subject to certain conditions which includes condition No.4 regarding the land owners surrendering / handing

over the portion under 30 meter wide Development Plan Road (alongwith boundary of Sector VI and VII in Village Mehrun), free of cost to the Corporation.

5. It may be mentioned that the land which is subject matter of these petitions was initially falling in sensitive agricultural zone as per draft development plan as there is a lake better known as 'Mehrun' Lake in the area which is considered to be ecologically sensitive. The Planning Authority had proposed modification of the said land to residential zone with restricted development namely, 'low rise low density', development. The Competent Authority after considering the report of the Officers and the suggestions of the plot owners, in which they had allegedly consented to hand over the land under the development road with its construction free of cost, while seeking development permission, had sanctioned the modification.

6. The Petitioners have interalia challenged the said impugned condition on the ground that there is nothing on record to show that there was any such consent given by the land owners. Secondly, it is contended that any such condition is violative of the constitutional right of the Petitioners under Article 300A of the Constitution of India.

7. The first Respondent has filed an affidavit-in-reply stating that in Sector VI and VII which were part of the earlier regional

plan for Jalgaon – Bhusawal, ‘Mehrun Lake’ and surrounding area with abundant natural greenery was designated as a ‘Regional Park’, in order to prevent pollution / contamination of ‘Mehrun Lake’. Subsequently, the said area was included in the municipal limits of Jalgaon City as an additional area. In view of the proposal by the Planning Authority for modification of the land from sensitive agricultural zone to residential zone being of a substantial nature, a notice dated 11 February 2002 was published while inviting suggestions. The concerned Officer submitted his report through Director of Town Planning Pune, recommending against inclusion of the lands in Sector VI in a residential zone. However, considering the suggestions of the plot owners showing willingness to handover the land under the development road, with its construction, free of cost, while seeking development permission, the Government has in exercise of the powers conferred by sub-section (1) of Section 31 of the Maharashtra Regional and Town Planning Act, 1966 had sanctioned substantial modification / excluded part (EP) of the draft development plan of Jalgaon (additional area) on 10 August 2004 which came into force on 1 October 2004.

8. It is submitted that the construction of the road will benefit the Petitioners also. It is submitted that the Deputy Director of Town Planning was appointed as ‘Officer’ to receive the objections / suggestions. It is submitted that said officer received

suggestions / objections from five persons including Mrs. Vinita Jain and others suggesting to impose conditions on surrendering the land free of cost as the local body was unable to lay the road for want of financial constraints. It is submitted that on the basis of the report submitted by the said officer, the condition No.4 was incorporated. However, the record pertaining to the sanction of the excluded part including affidavits submitted by the land owners have been destroyed in the Mantralaya fire accident on 21 June 2012. It was therefore contended that the same cannot be produced.

9. Respondent Nos.3 and 4 have also filed affidavit-in-reply raising contentions on similar lines.

10. We have heard the learned counsel for the Petitioners and the learned counsel for the Respondents. With the assistance of the learned counsel for the parties, we have gone through the record.

11. It is submitted by the learned counsel for the Petitioners that the condition No.4 is onerous and is in breach of constitutional right of the Petitioners under Article 300-A of the Constitution of India. It is submitted that the said condition is also against Section 126 of the 1966 Act. It is submitted that the Petitioners or their vendors / owners from Survey No.233 had never consented / proposed the condition No.4. It is contended

that the condition No.4 was proposed by the land owners from Survey No.283, 284 and 286 who are not vendors of the Petitioners. It is submitted that there was no waiver of the constitutional / statutory right from the land owners of Survey No.233 and other owners of adjacent survey numbers from Sector VI. It is submitted that there is no provision under the 1966 Act or the Maharashtra Municipal Corporation Act for acquisition / vesting of the land in the Planning Authority, free of cost. It is submitted that said condition is not imposed in pursuance of any declaration under Section 23 nor any public notice was issued under Section 26 of the 1966 Act calling upon objections. A draft development plan of the impugned condition was not submitted under Section 30 of the 1966 Act. On behalf of the Petitioners, reliance is placed on the following decisions.

(i) Pt. Chet Ram Vshist Vs. Municipal Corporation of Delhi¹,

(ii) Vrajlal Jinabhai Patel Vs. State of Maharashtra and Ors.²,

(iii) Ravindra Champalal Khinvsara Vs. State of Maharashtra & Ors.³,

(iv) Avtarsingh Indersingh Sodhi Vs. State of Maharashtra and Ors.⁴,

¹1995(1) SCC 47

²2003(3) Mh.L.J. 215

³In Writ Petition No.461/1994 (Ahmedabad Bench)

⁴In Writ Petition No.5179/2003 (Ahmedabad Bench)

(v) *Tukaram Kana Joshi Vs. M.I.D.C. and Ors.*⁵,

(vi) *P. Dasa Munni Reddy Vs. P. Appa Rao*⁶.

12. The learned AGP and the learned counsel for the Municipal Corporation have submitted that the condition is imposed on the basis of suggestions of the land owners and is valid and binding and the Petitioners as successors of the land owners cannot claim otherwise. It is submitted that the petitions suffer from the vice of delay and laches as the condition is imposed way back in the year 2004 and the present petitions are filed in the year 2017–18. It is submitted that the Petitioners are taking undue advantage of the fact that the relevant record / affidavits giving such suggestions consent has been destroyed in the Mantralaya fire in the year 2012.

13. We have carefully considered the rival circumstances and the submissions made.

14. It is a matter of record that the area under Sector VI and VII was earlier part of the Regional Plan of Jalgaon-Bhusaval. In the said Regional Plan ‘Mehrun Tank’ and surrounding area was designated as ‘Regional Part’. This according to the Respondent – State was to prevent the contamination / pollution of ‘Mehrun Tank’, which was ecologically sensitive lake. Subsequently, the area was included in the municipal limits of Jalgaon city, which is

⁵2013 AIR (SC) 565

⁶1974 AIR (SC) 2089

referred to as additional area. The State by virtue of notification dated 11 February 2002 had sanctioned part of the development plan of Jalgaon (additional area) which came into force from 7 February 2002. The planning authority had proposed certain modifications which being of a substantial nature, objections and suggestions were called, which were to be addressed to the Deputy Director of Jalgaon Planning Division Nashik, Nashik. Presently, we are concerned with the condition No.4 of EP-66 which reads thus.

In view of construction of East-West proposed 30 meter wide Development Plan road on the boundary of Section No.VI, VII the land owners of sector No.6 affected by this 30 meters DP Road proposal should handover land under DP Road with its construction to Municipal Corporation free of cost at the time of submitting the Development Permission proposal.

15. The challenge in the petitions is to the said condition principally on the ground that it violates the provisions of the 1966 Act, the Maharashtra Municipal Corporation Act, and in particular is in breach of Article 300-A of the Constitution of India.

16. It further appears that in the year 2000, the Corporation had proposed for grant of Transferable Development Rights

(TDR) in lieu of the area surrendered which proposal has also been rejected by the State vide Government Resolution dated 5 April 2017.

17. The said condition is sought to be supported on the ground that it was suggestion of the land owners while sanctioning the modification that they would surrender the land under the development plan road, with construction thereon, free of cost, while seeking development permission. So far as production of the said record or evidence are concerned, it is claimed that the same was destroyed in the Mantralaya fire in the year 2012.

18. In our view, similar question has been dealt with by the Hon'ble Supreme Court and this Court and the issue may not strictly be *res integra*. In *Pt. Chet Ram (supra)*, the Supreme Court has held that the condition for grant of development permission, that the space reserved for any open space, park, school etc in a layout plan would vest in the Corporation free of cost would not be legal and valid as such condition would amount to transfer of ownership of the site to the Corporation, free of cost, which is impermissible in law. Following observations in para 6 of the judgment are opposite.

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 an judgment are made by 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.

(Emphasis supplied)

19. The Division Bench of this Court in *Vrajlal Patel (supra)*, has held that there is no law which exists, under which ownership in open space, in a layout, would vest or stand transferred in favour of the Municipal Council. In that case, the contention that on passing of the layout, open space automatically vests in the Municipal Council was held to be not tenable.

20. In *Ravinder Khinvasara (supra)*, the Division Bench of this Court after noticing the judgment of the Supreme Court in *Chet Ram Vashist* and in *Basheshar Nath Vs. Commissioner of Income Tax, Delhi and Rajasthan*⁷ had held that the condition stipulating that the owner of the land under a layout plan, shall not claim right or title of whatsoever nature nor shall be entitled to claim any compensation, was not valid and directed the Corporation to initiate proceedings for acquisition. This Court held that the Corporation was not entitled to reserve the land of a citizen without adequately compensating him for the same.

21. It is not necessary to multiply authority on the point but a similar view has been taken by another Division Bench of this

⁷ AIR 1959 SC 149

Court in *Avtarsingh Sodhi (supra)*.

22. Article 300-A of the Constitution of India inter alia provides that no person shall be deprived of his property, save by authority of law.

23. Apart from the fact, whether any such constitutional / statutory right can be waived or not, the Respondents have also not produced any record to show that the predecessors of the Petitioners in land survey No.233 had proposed for surrender of the land under the D.P. Road, free of cost on the spacious ground that the same has been destroyed in the fire in the year 2012. The State has also refused to favourably consider the proposal for grant of TDR. In that view of the matter, we find that the petitions have to succeed.

24. In the result, the following order is passed.

ORDER

(i) The impugned condition No.4 in respect of EP-66 in schedule of modification in Government Resolution dated 10 August 2004 and the Government Resolution dated 5 April 2007 are hereby quashed and set aside.

(ii) It would however be open to the Corporation and the Government to consider the grant of TDR to the Petitioners in lieu of the

surrender of the land (with or without construction)
under the 30 Feet DP Road to the Corporation, in
accordance with law.

(iii) Rule is made absolute, in the aforesaid
terms, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.