

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7448 OF 2019

KANCHAN VINOD MAYEKAR
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**Mohammad Ajij Shujauddin Pirzade
& Ors.**

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

**ALONGWITH
INTERIM APPLICATION NO. 19507 OF 2022
IN
WRIT PETITION NO. 7448 OF 2019**

Nashik Municipal Corporation

.... Applicant

IN THE MATTER BETWEEN

**Mohammad Ajij Shujauddin Pirzade
& Ors.**

..... Petitioners

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Vivek Salunke, a/w. Mr.Ajinkya Jaibhave, i/b. Mr.Sachin Gorwadkar for the Petitioners.

Mr.M.L.Patil for the Applicant in IA/19507/2022 and for the Respondent no.4 in WP/7448/2019.

Mr.A.A.Alaspurkar, A.G.P. for the State – Respondent nos. 1 to 3.

**CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.**

DATE : 14TH NOVEMBER, 2022

P.C:-

Rule. Learned A.G.P. waives service for the respondent nos. 1 to 3. Learned counsel waives service for the respondent no.4. Rule is made returnable forthwith.

2. The petitioners in this writ petition have prayed for writ of mandamus thereby directing the respondent no.4 to forthwith deposit an amount of Rs.24,06,41,412/- with the respondent no.1 as requested vide communication dated 23rd January, 2018 by the respondent no.3.

3. In the development plan for Nashik City, the land of the petitioners bearing survey no. 197/2C admeasuring area 11,000 sq.mtrs. were reserved for public purpose. The said development plan came into effect on 16th November, 1993. Since no steps were taken by the respondents to acquire the land of the petitioners, the petitioners issued notice under section 127 of the MRTP Act. The respondents did not take any steps to acquire the land granted to the petitioners. However, the petitioners have taken a stand that the acquisition has not lapsed. The respondents are bound to acquire the land of the

petitioners.

4. Mr.Salunke, learned counsel for the petitioners invited our attention to the affidavit in reply filed by the Municipal Corporation on 2nd March, 2020 and submitted that it was the case of the Municipal Corporation itself that the land of the petitioners was required for the purpose mentioned in the said affidavit. He submitted that the respondent Corporation having agreed to acquire the land of the petitioners while opposing the writ petition filed by the petitioners has no option but to acquire the land of the petitioners.

5. Learned counsel invited our attention to the order dated 20th September, 2022 passed by this Court in this writ petition and submitted that after hearing the learned counsel for the parties, this Court has specifically directed the respondent no.4 Corporation to comply with the requisition made by the Deputy Collector vide letter dated 23rd January, 2018 within four weeks from the date of the said order and further directed that upon deposit of such amount, the Deputy Collector shall proceed with the acquisition and to make an award within the time contemplated under the provisions of Land

Acquisition Act, 2013.

6. Learned counsel for the petitioners invited our attention to the averments made in paragraph (8) of the interim application filed by the Municipal Corporation and submitted that this Court had considered the statement made by the Municipal Corporation that the Corporation was not in a position to acquire the land on the ground that the Corporation has precarious financial condition. He submitted that there is no change in the circumstances. This Court thus cannot grant any relief as sought by the Municipal Corporation to modify the order dated 20th September, 2022 on the ground that the Municipal Corporation now does not propose to acquire the land of the petitioners.

7. Learned counsel for the petitioners relied upon the judgment of Hon'ble Supreme Court in ***Miscellaneous Application No. 1572 of 2021 in Civil Appeal No. 5041 of 2021*** in case of ***Supertech Limited vs. Emerald Court Owner Resident Welfare Association & Others*** and in particular paragraph (12) and submitted that in view of the principles of law laid down by the Supreme Court in the said judgment, this

interim application for modification of the order cannot be entertained.

8. Mr.Patil, learned counsel for the respondent Corporation on the other hand submits that the Corporation has expressed its financial difficulty and thus the Corporation having proposed not to acquire the land of the petitioners, the Corporation cannot be forced to acquire the land of the petitioners.

9. In his rejoinder argument, Mr.Salunke, learned counsel for the petitioners invited our attention to various averments made in affidavit in rejoinder and submitted that the Municipal Corporation had sufficient budget for the land for financial year 2018-19 and also 2019-20 and 2021-22 and thus the stand now taken by the Municipal Corporation after more than 30 years of reservation of the land of the petitioners for public purpose cannot be refuse to acquire the land of the petitioners. This averments of the petitioners are not disputed by the respondents.

10. It is not in dispute that the land of the petitioners was reserved for the development plan of Nashik City which came into effect on 16th

November, 1993. We have perused the averments made in the affidavit in reply filed by the respondent no.4 on 2nd March, 2020.

11. In paragraph (6B) of the said affidavit, it is averred that after receipt of notice the standing committee of the Corporation passed resolution being Resolution No. 809 dated 9th December, 2016 wherein it was resolved to handover the matter of the acquisition of the said land to the respondent no.1. Thereafter an agreement/affidavit was submitted to the respondent no.2 by the respondent Corporation with the signatures of the then standing committee members in which it has been clearly stated about the intention of the respondent Corporation to prepare the proposal for acquisition of the land. The respondent Corporation thereafter requested the respondent no.2 by a communication dated 21st June, 2017 to initiate the proceedings under the Land Acquisition Act for acquisition of the land of the petitioners.

12. In paragraph (7) of the said affidavit, it is stated that in view of the action initiated by the respondent Corporation, it is crystal clear that the said land of the petitioners is required by the respondent Corporation for the purpose mentioned in the said affidavit. The

Corporation is ready to give the equivalent value of TDR to the petitioners. It is further stated that it would be in the public interest for the purpose of construction of stadium that the petitioners be directed to accept the TDR instead of insisting for compensation in terms of money.

13. After considering these averments in the affidavit in reply, this Court by the said order dated 20th September, 2022 directed the Municipal Corporation to comply with the requisition made by the Deputy Collector vide letter dated 23rd January, 2018 within four weeks from the date of the said order. The said order has not been impugned by the Municipal Corporation till date.

14. We have perused the averments made by the Municipal Corporation in the interim application filed before this Court. The only reason in the interim application for not acquiring the land of the petitioners is that the Municipal Corporation is not in a position to incur the total expenses of acquiring the land.

15. In our view, the order dated 20th September, 2022 having been

passed after hearing learned counsel for the parties cannot be modified at this stage only on the ground that the Municipal Corporation does not propose to acquire the said land on the ground that the Corporation is not in a position to acquire the said land. The Municipal Corporation has all throughout taken a stand that the land is required for the public purpose while opposing the petition filed by the petitioners and thus now cannot be now allowed to refuse to acquire the land on the ground that the applicant has no finance to acquire the land. Interim application thus filed by the Municipal Corporation is rejected.

16. The Municipal Corporation is directed to comply with the directions issued by this Court on 20th September, 2022 and more particularly in paragraph (6) thereof within two weeks from today.

17. Upon deposit of the amount by the respondent no.4, if any, the Deputy Collector to proceed with the acquisition and to make an award within the time contemplated under the provisions of Land Acquisition Act, 2013.

18. Writ petition is allowed in the aforesaid terms. Rule is made

absolute. No order as to costs.

19. In view of disposal of the writ petition, interim application does not survive and is also disposed off. No order as to costs.

20. Place the matter on board for reporting compliance on **12th December, 2022.**

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]