

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

WRIT PETITION NO. 9610 OF 2019

- 1) Vinod Ramnarayan Agrawal,
Age 67 years, Occ. Business and
Agriculture, r/o. 122, Navi Peth,
Jalgaon, Dist. Jalgaon.
 - 2) Smt. Sushila Ramnarayan Agrawal,
Age 82 years, Occ. Household,
R/o. 122, Navi Peth, Jalgaon,
Dist. Jalgaon.
 - 3) Parasmal Champalal Kankria,
Age 72 years, Occ. Business,
R/o. 252, Gandhi Nagar, Jalgaon,
Dist. Jalgaon.
 - 4) Shantilal Champalal Kankria,
Age 68 years, Occ. Business and Agril.
R/o. 109, Gandhi Nagar, Jalgaon,
Dist. Jalgaon.
 - 5) Rajendra Champalal Kankria,
Age 63 years, Occ. Business and
Agril. r/o. 109, Ghandhi Nagar,
Jalgaon, Dist. Jalgaon.
 - 6) Satish Champalal Kankria,
Age 58 years, Occ. Business and
Agril. R/o. B-20, Arihant Co-Operative
Society, Market Yard, Pune-411037
Petitioner Nos. 1 to 6 through their
General Power of Attorney Holder,
i.e. petitioner No. 7.
 - 7) Pramod Ramnarayan Agrawal,
Age 62 years, Occ. Business and Agril.
R/o. 122, Navi Peth, Jalgaon, Dist. Jalgaon.
- ... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through The Secretary,

Ministry of Urban Development
Mantralaya, Mumbai-32.

- 2) The Director of Town Planning
Department Pune.
- 3) The Deputy Director,
Town Planning, Nashik Division, Nashik.
- 4) Assistant Director,
Town Planning Department, Jalgaon.
- 5) Municipal Corporation Jalgaon,
Through its Commissioner.
- 6) Assistant Director, Town Planning
Municipal Corporation Jalgaon, Jalgaon. ... **Respondents**

...

Advocate for the Petitioners : Mr. A.P. Bhandari
A.G.P. for the Respondent Nos. 1 to 4 : Mrs. M.A. Deshpande
Advocate for Respondent Nos. 5 and 6 : Mr. V.D. Gunale

CORAM : **MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : **21.02.2023**
PRONOUNCED ON : **24.04.2023**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally.

2. In this petition under Article 226 of the Constitution of India, the petitioners in substance are seeking the reservation placed on their property bearing Sy. No. 466/2+3 of village Mehrun Tq. & Dist Jalgaon to the extent of 1421.75 square meters reserved for 18 meter wide development plan road of the respondent No. 5-Municipal Corporation as having lapsed as contemplated under Section 127(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter the M.R.T.P. Act).

3. It is averred that the petitioners are owners of the aforementioned entire land and got its layout duly approved when the respondent No. 5 was a Municipal Council, on 19.08.1997. After its transformation as a Municipal Corporation, a development plan was sanctioned by the Government in two phases, first on 07.03.2002 and in respect of the excluded part, on 10.08.2004. In such development plan, a portion to the extent mentioned herein above was reserved for 18 meter wide development plan road. Since no steps were taken towards acquisition of the petitioners' property as is contemplated under Section 126 of the M.R.T.P. Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioners issued a notice as contemplated under Section 127 of the M.R.T.P. Act on 07.09.2017. The respondent No. 6 who is the Assistant Director of Town Planning of the respondent No. 5 Municipal Corporation rejected the notice by his communication dated 16.11.2018 on the ground that since the development plan road is nothing but an existing road from the approved layout of the petitioners' land, its acquisition was not necessary to be undertaken. Hence this petition.

4. The learned advocate Mr. Bhandari for the petitioners would take us through the layout of the petitioners' property as also the development plan of the respondent No. 5-Municipal Corporation and submitted that even if the D.P. road is a part of the layout of the petitioners' property, still it would not vest in the respondent No. 5-Municipal Corporation and if it is made as a part of the development plan as a road, the ordeal of resorting to acquisition as contemplated under Section 126 of the M.R.T.P. Act with the relevant provision of the land acquisition law must follow. He would submit that right to property is a constitutional right guaranteed under Article 300A of the Constitution and cannot be defeated in this manner by showing the internal layout road as a development plan road, except in accordance with the law as laid down under Section 126 of the M.R.T.P. Act and as

interpreted by catena of judgments of the Supreme Court in the matters of
 (1) **Girnar Traders V/s State of Maharashtra and Others; (2007) 7 SCC 555,**
 (2) **Hasmukhrai V. Mehta V/s State of Maharashtra (2015) 3 SCC 154,**
 (3) **Prafulla C. Dave V/s Municipal Commissioner (2015) 11 SCC 90,**
 (4) **Chhabildas V/s The State of Maharashtra and Others (2018) 2 SCC 784.**

5. Mr. Bhadari would further submit that the scheme of Chapter VII of the M.R.T.P. Act of which Section 126 and 127 is a part does not contemplate rejection of a notice under Section 127(1).

6. In substance, Mr. Bhandari would submit that even if there is an existing internal road from a layout, it would not automatically vest in the Municipal Council under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and the Standardised Building By-Laws and Development Control Rules of the Municipal Councils as has been laid down in the matter of **Vrajlal Jinabhai Patel since deceased through his legal heirs Smt. Jagrati Vrajlal Patel and anr. Vs. State of Maharashtra and others; (2003) 3 Mh.L.J. 215.** He would also place reliance on following decisions to buttress his submission :

- 1) **Ravindra Champalal Khinvasara Vs. State of Maharashtra and others, in Writ Petition No. 461 of 1994, decided on 23 & 27 September, 2010.**
- 2) **Avtarsingh s/o Indersingh Sodhi Vs. The State of Maharashtra and another, in Writ Petition No. 5179/2003 with WP/5183/2003, decided on 6th May, 2014.**
- 3) **Pt. Chet Ram Vashist (dead) by L.Rs. Vs. Municipal Corporation of Delhi; A.I.R. 1995 SC 430.**
- 4) **Vijay Deepchand Chordiya and others Vs. The State of Maharashtra and anr.; in Writ Petition No. 8212/2010 decided on 5th December, 2017.**
- 5) **Pravin Vasudeo Khadke & others Vs. The State of Maharashtra and others; in Writ Petition No. 5605/2012 decided on 20th March, 2014.**

7. Lastly Mr. Bhandari would refer to the decision in the matter of **Pt. Chet Ram Vashist (supra)** and points out that even imposition of a condition that the open spaces earmarked for parks and schools while according sanction to a layout plan does not automatically vest these spaces in the Municipal Corporation.

8. Per contra, Mrs. Deshpande the learned A.G.P. referring to the affidavit in reply filed by the Assistant Director of Town Planning on behalf of the respondent Nos. 1, 2, 3 and 4 which are the State of Maharashtra through Ministry of Urban Development, Director of Town Planning, Deputy Director of Town Planning Nashik Division and the Assistant Director of Town Planning, Jalgaon, submitted that there is no dispute that a portion of the petitioners' property has been affected by 18 meter wide development plan road. Even there is no dispute about service of the notice under Section 127(1) of the M.R.T.P. Act and also about the denial of the respondents to resort to acquisition of the portion of the petitioners' land affected by the development plan road.

9. However, she submitted that a layout in respect of petitioners' land Survey No. 466/2+3 was approved on 15.12.1981. Its total extent is 16700 square meters. Non-agricultural use permission was accorded by the Collector subject to the conditions mentioned therein. A 12 meter wide strip of land was to be used as a road and the development plan of the respondent No. 5-Municipal Corporation merely earmarks this 12 meter wide strip along with 6 meter wide strip from another land totaling 18 meter wide strip as a development plan road. She, therefore, submits that even the petitioners would be using the same road to reach the main road and cannot be allowed to have a cake and eat it also.

10. Mrs. Deshpande would further submit that the development control regulations which are applicable to the 'D' class Municipal Corporations in Maharashtra have been sanctioned by the State Government vide notification No. TPS-1812/CR-112/12/DCR-D-Class/UD-13 dated

20.09.2016 which is applicable to the respondent No. 5-Municipal Corporation. She would submit that as per Rule No. 40.3 in cases where layout has already been sanctioned and layout roads are incorporated as development plan roads prior to coming into force of these regulations are not eligible for grant of transfer of development rights (TDR). She would, therefore, submit that there is no necessity to resort to acquisition as a strip of land from the sanctioned layout is being incorporated into a development plan road and even the petitioners are not entitled to the TDR.

11. Learned advocate Mr. Gunale would adopt the arguments of Mrs. Deshpande.

12. We have carefully considered the rival submission and perused the papers. There is not much of a dispute as far as the facts are concerned. The petitioners proposal for layout was sanctioned in which *inter alia* a 12 meter wide strip of the eastern side was approved to be kept as a layout road. In the sanctioned development plan of the respondent No. 5-Municipal Corporation, a development plan road has been shown wherein this strip of 12 meter wide eastern side from the petitioners' property from the sanctioned layout has been integrated. The fact that this portion of the petitioners' property is to the extent of 1421.75 square meters has not been controverted by the respondents.

13. Even there is no dispute regarding issuance of notice under Section 127(1) of the M.R.T.P. Act on 07.09.2017 and that it was responded by way of rejection. It is not the case of the respondents about any steps having ever been initiated towards the acquisition of the petitioners property to the extent of the portion affected by the development plan road by issuing any notification under Section 126 of the M.R.T.P. Act and declaration under Section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within 10 years from the development plan coming into force. There cannot also be dispute that the petition has been filed on

04.07.2019.

14. At the outset it is necessary to note that irrespective of the other aspects touching the merits of the petitioners' claim, even on the facts which stand admitted on record, the notice contemplated under Section 127(1) of the M.R.T.P. Act was served on the respondents on 07.09.2017. By reply dated 09.10.2017 the respondent No. 6 called upon the petitioners to submit the documents which were duly tendered and in response, by another reply dated 16.11.2018, by the impugned communication the respondent No. 6 rejected the notice. It is apparent that all the documents demanded in reply to the notice dated 09.10.2017 namely 7/12 extract of the revenue record, map, N.A. permission and attested copy of the sanctioned layout were already annexed to the notice dated 07.09.2017. Therefore, it cannot be said that the notice was deficient in any respect. To this extent the submission of the learned advocate Mr. Bhandari deserves to be accepted.

15. However, the notice under Section 127(1) was issued on 07.09.2017 and the petition has been filed on 04.07.2019 that is within 24 months of the date of notice. By virtue of the amendment in Section 127 which came into effect from 29.08.2015 vide Section 7 of the Maharashtra Act 42 of 2015 a period of 24 months from the date of service of the notice has been kept as a window for the planning authority to take steps towards acquisition. It is trite that this statutory period is mandatory and the decisions are in plenty.

16. In the matter of **Prafulla C. Dave (supra)** which has been referred to and relied upon by a full bench of this Court in the matter of **Madanlal Zumberlal Nahar and others Vs. The Chief Officer Municipal Council Beed and others**, in Writ Petition 2260/2010 with WP 4232/2008 decided on **13.03.2023**, though in a little different context, this period has been held to be mandatory.

17. Pertinently, in the matter of **Hasmukhrai (supra)**, the period that was consumed by way of pendency of the petition was held to be entitled to be considered by way of tagging to this statutory period. However, in the matter of **Chhabildas (supra)**, it has been emphatically held that the decision in the matter of **Hasmukhrai** and even a similar view taken by the Supreme Court in the matter of **Chhabildas** was in exercise of the powers under Article 142 of the Constitution which powers the High Court does not have. Therefore, when the petition has been filed on 04.07.2019, even before expiry of 24 months of service of notice under Section 127 on 07.09.2017 as is appearing on acknowledgment in the copy of the notice (Exh. 'D'), we are afraid, the petitioners are not entitled to seek any declaration regarding lapsing of reservation.

18. In view of these observations the matter is liable to be dismissed. However, we are recording the observations even on merits just to avoid any possible remand, in case the Supreme Court takes a different view than what we are taking consequent to the aforementioned facts and circumstances.

19. The decision in the matter of **Pt. Chet Ram Vashist (supra)** in our considered view seals the fate of the matter. Merely because the portion from the sanctioned layout of the petitioners' land has been earmarked as a layout road, that does not automatically vest with the respondent No. 5-Municipal Corporation. In view of the above mentioned decisions mentioned in para 6 (supra) cited on behalf of the petitioners, some of which in turn have been rendered by following the ratio laid down in the matter of **Pt. Chet Ram Vashist**, this strip of 12 meter wide land admeasuring 1421.75 square meter will not vest in the respondent No. 5-Municipal Corporation. As has been laid down in the matters of **Girnar Traders, Prafulla C. Dave (supra)**, there is no alternative for the respondent No. 5-Municipal Corporation but to resort to its acquisition. However, no steps as contemplated under Section 126 of the M.R.T.P. Act read with the relevant provision of the land acquisition law having been taken within 10 years of

the development plan coming into force, the consequences would be inevitable, but for the fact that the petition has been filed without waiting for 24 months of service of notice under Section 127(1) on the respondent No. 5-Municipal Corporation.

20. We need not even go into the aspect as to if the petitioners are entitled to claim transfer of development rights in lieu of the monetary compensation. Once it is held that the petitioners land to the extent of the portion affected by the development plan road will not automatically vest in the respondent No. 5-Corporation, irrespective of the approved regulations regulating a TDR, once the respondent No. 5-Municipal Corporation decides to earmark the portion of the petitioners' property for a development plan road, either it will have to resort to acquisition or may have to offer TDR to them.

21. Be that as it may, since the petitioners notice issued under Section 127(1) of the M.R.T.P. Act though valid, the petition having been filed within 24 months of service of that notice it would not culminate into creation of any right in the petitioners on the date of the petition. It is clearly a premature petition.

22. The Writ Petition is dismissed.

23. The Rule is discharged.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-