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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3519 OF 2010
WITH
INTERIM APPLICATION NO. 2528 OF 2023

- 1. POPATBHAI HIRJI SHAH,**
Age 50 years, Occ-Business,
Re/at Dhanraj Co-op. Hsg. Society,
1224 Apte Road, H-Building, 4th Floor,
Flat No. 401, Pune 411 004.
- 2. MAHINDRA M KOTHARI,**
Age 62 years, Occ-Advocate,
Re/at Datta Niwas, Subhashnagar,
Lane NO. 2, M.H. Kothari Chowk,
Pune 411 002.
- 3. (A) AJIT PASHANKAR,**
Age Adult, Occ. Business,
(B) NARENDRA PASHANKAR,
Age Adult, Occ. Business,

Both Available at 257, Budhwar
Peth, Pune 411 002.
- 4. NEW VERITIES STORES,**
A partnership firm-through its partner
Babulal Sataji Jadeja, Re/at, 39/A,
Gultekdi Shrikrishna Society,
B-2 Bldg., Flat No. 10,
Shankarsheth Road, Pune.

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5. **PADMAVATI RAJENDRA KATARE,**
Age adult, Occ. Business, Available at
257, Budhwar Peth,
Pune 411 002.
6. **VG GOKHALE & Co,**
257, Budhwarpeth,
Pune 411 002.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
To be served through Government
Pleader, High Court, Bombay.
2. **PUNE MUNICIPAL
CORPORATION,**
Shivaji Nagar, Pune 411 005.
3. **CITY ENGINEER,**
Pune Municipal Corporation,
Shivaji Nagar, Pune 411 005.
4. **CHAIRMAN,**
Standing Committee,
Pune Municipal Corporation.
5. **ADMINISTRATIVE OFFICER,**
Municipal School Board, Pune,
Shivaji Nagar, Pune 411 005.
6. **SPECIAL LAND ACQUISITION
OFFICER No. 15,**
Kshetriya Karyalay, Tilak Road,
Pune 411 030.
7. **PUNE MERCHANT CO-
OPERATIVE BANK LTD,**
257, Opp. Ganesh Temple,
Budhwarpeth, Pune 411 002.

... RESPONDENTS

WITH
WRIT PETITION NO. 3090 OF 2010
WITH
INTERIM APPLICATION NO. 2096 OF 2023
WITH
CIVIL APPLICATION NO. 356 OF 2013

1. **BABULALA SATAJI JADEJA,**
New Verities Stores,
A partnership firm-through his partner,
Babulala Sataji Jadeja, Re/at-39/A,
Gultekadi Shrikrishna Society,
B-2 Bldg, Flat NO. 10,
Shankarsheth Road, Pune.
2. **JAYASHRI DHIRAJ SHAH,**

VG Gokhale & Co,
Through their Proprietor,
Available at 257, Budhwarpeth,
Pune 411 002.
3. **MAHINDRA M KOTHARI,**
Age 59 years, Occ.-Business,
Re/at Datta Niwas, Subhashnagar, Lane
No. 2, MH Kothari Chowk,
Pune 411 002.
4. **RV DHAROD,**
Champion Stores,
Available at 257, Bhudhwar Peth,
Pune 411 002.
5. **MR DHADGE,**

... PETITIONERS

Flower Merchant Age – adult,
257, Budhwarpeth,
Pune 411 002.

~ VERSUS ~

1. **STATE OF MAHARASHTRA**,
Notice to be served through
Government Pleader, High Court,
Mumbai.
2. **PUNE MUNICIPAL
CORPORATION**,
Shivaji Nagar, Pune 411 005
(Notice to be served upon
Commissioner).
3. **CITY ENGINEER**,
Pune Municipal Corporation,
Shivaji Nagar, Pune 411 005.
4. **CHARIMAN**,
Standing Committee,
Pune Municipal Corporation.
5. **ADMINISTRATIVE OFFICER**,
Municipal School Board, Pune.
6. **SPECIAL LAND ACQUISITION
OFFICER No. 15.**

... RESPONDENTS

APPEARANCES

FOR THE PETITIONERS IN BOTH PETITIONS	Mr YS Jahagirdar, Senior Advocate, with Monisha Mane, Bijal Vora, i/b Parinam Law Associates.
FOR INTERVENOR IN IA/2096/2023	Mr Akshay Shinde, with Sudarshan Khawase.

**FOR RESPONDENTS
NOS. 2 TO 5 PMC IN
BOTH PETITIONS**

**Mr AA Kumbhakoni, Senior
Advocate, with Abhijit P
Kulkarni, Sweta Shah, Krushna
Jaybhay, Gourav Shahane,
Manoj Badgujar, Snehal
Bhanage.**

**FOR RESPONDENT NO. 7
IN WP/3519/2010.**

**Mr Atul Damle, Senior Advocate,
i/b Dushyant Purekar, Rajat
Dedhia.**

**FOR RESPONDENT-
STATE**

**Dr Birendra Saraf, Advocate
General, with PP Kakade,
Government Pleader and MP
Thakur, AGP.**

PRESENT IN PERSON

**Ms Nisha Chavan, Chief Law Officer
of PMC.**

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 16th October 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Heard.

2. These Petitions have unfortunately been pending since 2010. Prayer clauses at pages 24 and 25 in the Writ Petition No. 3519 of 2010 read thus:

“(a) The Hon’ble Court be pleased to issue Rule in this Petition.

(b) The Hon’ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Direction or

Order quashing/setting aside the declaration under Section 6 of the Land Acquisition Act and the resolution passed by the Respondent School Board Numbering 180, reference dated 29-10-2005, Respondent Corporation's General Body bearing Resolution No. 557 dated 21-2-2006 and the Standing Committee Resolution No. 1535 dated 4-1-2008 passed by the Standing Committee of the Pune Municipal Corporation.

(c) The Hon'ble Court be pleased to direct the State Government to quash/set aside the resolution passed by the Respondent School Board Numbering 180 reference dated 29-10-2005, General Body of the Respondent, Corporation bearing Resolution No. 557 dated 21-2-2006 and the Standing Committee Resolution dated 4th January 2008.

(d) The Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Direction or Order directing the Respondent Corporation to provide additional F.S.I to the Respondent developer so as to enable him to construct any hall on the top floor of the property by utilizing such additional F.S.I in the memory of late Mahatma Phule and Smt Savitribai Phule.”

3. Prayer clauses in the Writ Petition No. 3090 of 2010 read thus:

“(a) The Hon'ble Court be pleased to issue Rule in this Petition.

b) The Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Direction or Order quashing/setting aside the resolution passed by the Respondent Corporation's General Body bearing Resolution No. 557 dated 21/2/2006 and the Standing Committee Resolution No. 1535 dated 4.1.2008 passed by

the Standing Committee of the Pune Municipal Corporation.

(c) The Hon'ble Court be pleased to direct the State Government to quash/set aside the said resolution passed by the General Body of the Respondent, Corporation bearing Resolution No. 557 dated 21/2/2006 and the Standing Committee Resolution dated 4.1.2008.

(d) The Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Direction and Order quashing/setting aside notices issued by Land Acquisition Officer No. 15 dated 9/4/2009 under Section 4 so also the notification U/S. 4 published to that effect by the Land Acquisition Act.

(e) The Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Direction and Order quashing/setting aside the notification/declaration under S. 6 of the Land Acquisition Act given under the signature of Commissioner, Pune division and published in a newspaper namely Times of India dtd.18/02/2010.

(f) The Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Direction and Order directing the respondent Corporation to provide additional F.S.I to the respondent Developer so as to enable him to construct any hall on the top floor or the property by utilizing such additional F.S.I. in the memory of late Mahatma Phule and Smt Savitribai Phule.”

4. On the face of it, these reliefs cannot be granted. Principally, both challenge a notification under Section 6 of the Land Acquisition Act, 1894 (“**the LA Act**”) on the basis that there is no ‘public purpose’ involved. No such challenge can be sustained.

5. The Petitioners themselves are not the owners of the property in question, which is situated at Budhwar Peth, Pune. The property belonged and belongs to the Bhide family. The land owners have never challenged the acquisition. These Petitions accept that the Petitioners are tenants in the property. This is the first issue in the Petitioners' way.

6. In light of this, it is not necessary to consider the development history of the land in question. There are various dates and events going up to 2004 or 2005. The Notification under Section 6 is at page 153. It is dated 13th February 2009. A translation is at page 153 A.

7. It was preceded by a Section 4 Notice under the LA Act. It specifies land in the schedule and says that the lands are required for a public purpose as specified in that schedule. The public purpose is the acquisition of what is described as Bhidewada for a national memorial.

8. Mr Jahagirdar for the Petitioners contends that there is no national 'monument' either possible or proposed here and, in any event, the necessary steps to declare the area covered by the Section 6 Notification as an archaeological site, a national monument or a historical monument have never been taken in accordance with law. It is his submission that those steps were required to be taken. There is also a challenge in the Petition to the Resolutions passed by the Municipal School Board, the 5th Respondent, being Resolution No. 180, dated 29th October 2005, the Municipal Corporation General

Body Resolution No. 557 dated 21st February 2006 and the Standing Committee Resolution No. 1535 dated 4th January 2008 of the Standing Committee of the Pune Municipal Corporation. The School Board Resolution No. 180 says that the property was where the first girls' schools was started by Savitribai Phule and Mahatma Phule. It was, therefore, proposed to be converted or to be recognized as a National Memorial (the word used in Marathi is 'स्मारक'). The General Body Resolution of 21st February 2006 and the other Corporation Resolution, including the 4th January 2008 Standing Committee Resolution at page 131, were all in furtherance of this avowed public purpose.

9. The only argument canvassed before us is that the public purpose stated in the Section 6 Notification of 16th February 2010 and in the Notices under Section 4 on 9th April 2009 has never been realised and is not justified.

10. But this is not the frame of the law when it comes to questions of public purpose under the LA Act. The power to forcibly acquire a property is part of the police power of the State. The principles governing compensation are set out in statute such as the earlier LA Act and now, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 ("**the RTFC Act**"). The State may always notify land for acquisition for one purpose and may change that public purpose without there being a resultant invalidation of the Section 6 Notification issued under the LA Act. It is not necessary for the acquiring authority to show a nexus between the stated purpose of the acquisition and any

historical background. A Division Bench of this Court considered substantially the same issue though under the Maharashtra Village Panchayat Act 1959, in *Ashok Maruti Rawoot v State of Maharashtra*.¹ The Division Bench held that it is entirely in the discretion of the authority to decide the purpose of the acquisition and whether or not it should be used as a Memorial.

11. The law in this regard is well settled. There is enough authority to indicate that a memorial, a monument, or any other mark or built structure is sufficiently a public purpose. There is no law that states that a public purpose must only be a public utility, such as a dam or a bridge. The business of the Government concerns a wide range of activity and also has to deal necessarily with public and popular sentiment and the emotive needs or desires, expectations and demands of citizens. That honouring the persons is part of the power and authority of the State Government is well settled: *BMC v Ramchandra Laxman Belosay*,² *Kanaiyalal Maneklal Chinai v State of Gujarat*,³ and *Annarao Baloba Gaikwad v Solapur Municipal Corporation*.⁴

12. It is also clear that it is the sole discretion of the Government to determine what is and is not a public purpose. That discretion is absolute. The issuance of a Section 6 Notification is purely an

1 2013 SCC OnLine Bom 329 : (2013) ()Mah LJ 733. We may note, just out of interest, that Mr Jahagirdar appeared for the Respondents in that matter.

2 1959 SCC OnLine Bom 26 : AIR 1960 Bom 58 : (1959) 61 Bom LR 1129..

3 (1969) 3 SCC 456.

4 (2004) ()Mah LJ 101.

executive exercise. It is not susceptible to judicial review: *Daulat Singh Surana v First Land Acquisition Collector*.⁵

13. We need say nothing about the entitlement of the Petitioners to compensation. Dr Saraf, learned Advocate General, says that compensation was earlier offered but was refused. We return no finding and make no observation in that regard either. But the Award could not be passed because of the present challenge in these proceedings. It is, however, well settled that even if an acquisition is initiated under the LA Act, because of the specific provisions of the Right to Fair Compensation Act, compensation may well be an entitlement under the later Act. This will depend on the facts and circumstances of this case: *Aligarh Development Authority v Megh Singh*,⁶ and *Jairam Gangaram Burke v State of Maharashtra*.⁷

14. We reject Mr Jahagirdar's argument that the acquisition has lapsed in the 10 years since these Petitions have been filed. Not only does the explanation to Section 11A of the LA Act clarify this position, but there is an order of 8th December 2010 which says that the time spent in the Petition can be considered at the time of declaring the Award, if any. In any case, even without these two references, it is clear that the act of the Court (and in this we include the act of the Court in not dismissing these Petitions on the very first day of hearing) cannot possibly prejudice the Government. The correct test however is this that on the dates when these Petitions were filed the acquisition had not lapsed. If the Government has

5 (2007) 1 SCC 641.

6 (2016) 12 SCC 504.

7 2017 SCC OnLine Bom 1835 : 2017 (5) MhLJ 354.

stayed its hands since because of the service of the Petitions, that cannot count towards a lapsing.

15. There is some controversy here. There is an order of 8th December 2010 which says that since the matter is pending and the corporation is unable to take possession, the time spent in the Petition would be taken into account at the time of the Award. It hardly seems to us just to hold that a Petitioner can challenge a Section 6 Notification and then claim that because the stay that the Petitioner obtained was later the Notification had lapsed simply because the Government, perhaps out of deference to this Court and not wanting to overreach the Court, took no further steps. Or it may be that for certain reasons that are not fully reflected in the order of 8th December 2010, the Respondent itself was unable to take possession and therefore the Court made the order that it did saying that the time spent in the Petition could be considered at the time of making the Award.

16. The learned Advocate General asked us to take a note of a communication addressed to the Special Land Acquisition Officer that due to an understanding between the parties that during the pendency of these Writ Petitions, the Award would not be passed. It is pointless for Mr Jahagirdar to say that this communication is internal to the Government. It refers to an understanding between the parties to the Petitions. We cannot understand why the Petitioners persist in this line of argument that a stay order was obtained at a much later date and by that time the acquisition had lapsed. The stay order was obtained by the Petitioners. If the

acquisition had lapsed, there was no reason for the Petitioners to have obtained a stay in the first place. The argument is self-defeating and unacceptably mischievous: first, tenants come to court challenging the public purpose of a land acquisition notification; the government stays its hands in passing an award; it instructs the authority not to proceed and says this is on an understanding in court; the court makes an order saying the time spent would be reckoned at the time of the award; then the Petitioners apply for and obtain a stay; and now they contend that the acquisition has now 'lapsed' — and, in any event, lapsed before the stay (which, if true, meant that no stay would be required at all). Indeed, the stay order itself is a complete answer to any case of lapsing, viewed from either perspective.

17. The argument that the site first be declared as a monument before acquisition is entirely without substance and is only to be stated to be rejected. It proceeds on the basis that what is being proposed here is a 'monument' when Mr Kumbhakoni is at some pains to point out not once but at least half a dozen times that it is a proposal for the construction of a *memorial*, completely outside any statutory protection for monuments or archaeological sites.

18. The Petitions are entirely without substance. Both are rejected. All interim and ad-interim orders are vacated.

19. Any pending Interlocutory Applications stands disposed of as infructuous.

20. In the facts and circumstances of the case, there will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)