

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10400 OF 2019

Atur Park-4 Co-operative Housing	]	
Society Limited, a Co-operative Society	]	
registered under the provisions of the	]	
Maharashtra Co-operative Societies Act	]	
Being its Registered Office at:- Pune	]	
Registration No. PNA/PNA(2) HSG(TC)/	]	
7832/2005-06, registered Office at	]	
CTS11/1, Survey No. 477/A/B, 478/A/B.C.]	]	
D1/D2, Naylor Road, Off Magaldas Road	]	
Pune- 411052	]	
through its power of Attorney holder	]	
M/s Atur Sangtani and Associates	]	
through its partner, Rajiv Sangtani,	]	
Age 41, Occ. Business, Address 6 th floor,	]	
Atur Chambers, 24, Moledina Road	]	
Pune- 411001	]	... Petitioner

Versus

- | | | |
|---|---|--|
| 1. The State of Maharashtra |] | |
| (summons to be served on the learned |] | |
| Government Pleader appearing for State] |] | |
| of Maharashtra under Order XXVII, |] | |
| Rule 4, of the Code of Civil Procedure |] | |
| 1908 |] | |
| | | |
| 2. The Special Land Acquisition Officer |] | |
| No. 15, Corporation Ward Officer |] | |
| Jawahar Nehru Stadium, Tilak Road |] | |
| Pune- 411030 |] | |
| | | |
| 3. Collector, Pune, through Office of |] | |
| PLAQ, Collector Compound, |] | |
| Pune- 411001 |] | |
| | | |
| 4. The Asstt. Director of Town Planning |] | |

- Pune Municipal Corporation, Shivaji]
Nagar, Pune -411005]
(summons to be served on the learned]
Government Pleader appearing for State] of Maharashtra under Order XXVII,]
Rule 4, of the Code of Civil Procedure]
1908]
5. Municipal Commissioner,]
Pune Municipal Corporation, Shivaji]
Nagar, Pune- 411005]
6. The Assistant Commissioner]
Land and Estate,]
Pune Municipal Corporation, Shivaji]
Nagar, Pune- 411005]
State of Maharashtra]
7. Deputy Municipal Commissioner]
(Land Acquisition)]
Municipal Corporation]
Pune-411005]
8. The Executive Engineer]
Building Development Control Dept]
Zone IV Pune Municipal Corporation,]
Pune- 411005]
9. The City Survey Officer No. 2]
Mamledar Kacheri, Shukrawar Peth]
Pune-411042] ... Respondents

Mr. Gaurav Potnis a/w Ms. Amrita Kharkar i/b PH. Potnis, Advocate for the Petitioner.

Ms. S.S. Bhende, AGP for Respondent Nos. 1 to 3 and 9/State.

Mr. Rishikesh M. Pethe, Advocate for Respondent Nos. 5 to 8.

Mr. Nitin Desphande, for Intervenor-Atur Park Co-op Housing Society Ltd.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE , JJ.**

**RESERVED ON: 16th FEBRUARY 2023
PRONOUNCED ON : 19th APRIL 2023**

JUDGMENT [Per M.M.SATHAYE, J.]

1. Rule. Learned AGP waives service for Respondent Nos. 1 to 3 and 9. Mr. Pethe, learned Advocate waives service for Respondent Nos. 5 to 8. Mr. Desphande appears for Atur Park Co-op Housing Society Ltd. (Intervenor) who was permitted to attend final hearing and make submissions if necessary, under Order dated 23/02/2021 in Interim Application No. 353 of 2021. Rule is made returnable forthwith. The Petition is heard finally by consent of the parties.

2. This is a Petition filed ostensibly by the Society but through Power of Attorney holder Developer through its partner, under Article 226 of the Constitution of the India, seeking a writ of mandamus directing Respondents (State Government and Pune Municipal Corporation Authorities) to acquire an area of 1891.85 sq mtrs, comprising of 15.70 mtrs wide strip of land on the south side of CTS No. 11/1/A adjoining to the railway track situated at 5,

Koregaon Road, Taluka Haveli, District Pune. The Petitioner also seeks a writ of mandamus directing Respondents to acquire the land under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (For short Fair Compensation Act). The Petitioner in alternative to prayer clause 'A' seeks an order restraining the Respondents from utilising or removing the barricades on the said strip of land. There is one more prayer made in the Petition which is a direction to Respondents to consider alignment of the D.P. road from boundary of the Railway line as per the Development plan.

PETITIONER'S CASE :

3. The case of the Petitioner is summarised as under. The Petitioner is a Co-operative Housing Society duly registered under the provisions of the Maharashtra Co-operative Societies Act. The Petitioner-Society is an owner of 8177 sq mtrs of land out of area admeasuring 28012 sq. mtrs. bearing CTS No. 11/1/A, which land was conveyed in the name of the society by the registered Conveyance Deed dated 28th July 2018. According to the Petitioner-Society, on the South side of the property, there is a strip of land which is 15.7 sq. mtrs wide, admeasuring 1891.85 sq. mtrs.,

adjoining railway track, which comprises of internal road having a width of 10.85 mtrs and the society garden having width of 4.85 mtrs which is shown in the sanctioned lay-out plan of the society. According to the Petitioner, the internal road is partially overlapped by Development Plan Road ("DP Road" for short) having width of 12 mtrs which is now shown in the Development Plan of the year 2017 abutting railway line.

4. On 15/10/1987, the Developer purchased Survey No. 11/1 from Sir Shapoorji Burjorji Broacha Charity Trust. From the year 1987 till filing of the Writ Petition, the entire CTS No. 11/1 was developed in 4 phases and multiple lay out plans have been sanctioned.

5. In the year 1987, when the first lay out plan was sanctioned, an area admeasuring 7111.12 sq. mtr, was required to be handed over to the Government as part of requirement under Urban Land (Ceiling and Regulation) Act, 1976 ("Ceiling Act" or "ULC" for short). By an order dated 17/02/1990, an exemption order was passed under Section 20(1)(a) of the Ceiling Act. This order was passed after handing over another plot bearing survey no. 228/5 at

Lohegaon admeasuring 18000 sq mtrs. By this exemption order, the area admeasuring 7111.12 sq. mtrs. was exempted.

6. In the year 2001, the promoter got the area measured from the department of Land Record because when the first lay out plan was sanctioned, the area was not properly shown. Under this measurement and demarcation plan, boundary of CTS No. 11/1/A is shown extended upto railway line.

7. The area which was incorrectly shown in the first lay out plan was finally corrected by Collector's order dated 25th March 2004, under which the area is increased from 26703 sq. mtrs to 28012 sq. mtrs. and the boundary of CTS No. 11/1/A was extended upto railway line.

8. On 25/09/2006, the developer paid Rs. 18,86,500/- as premium for utilisation of FSI of internal roads admeasuring 1308.74 sq. mtrs. On 29/09/2006, the next lay out plan was sanctioned after correction of area and payment of premium for FSI under internal road. In this lay out plan, internal road on the south side between society building and society garden was shown. After the last lay out plan was sanctioned, a development plan was

finalised in the year 2017 which shows boundary of DP road passing through the subject matter land as abutting to railway line. As per this development plan, the D.P road overlaps on the society garden and partially on the internal road since the alignment of the D.P road has been changed in the year 2017 development plan.

9. It is contended that some-time in March 2019, the internal road on the South side of the society was opened on either side for the convenience of the society members to access both sides (Koregaon Park road and Naylor road). However, it was found that this road was being used by non-members of the society for illegal activities such as drinking alcohol, smoking, playing loud music etc. and therefore for the safety and security of members, the Petitioner-Society took steps for closing the said internal road by putting up necessary board prohibiting tress-passers and thereafter by raising barricades. On 28/03/2019, Petitioner-Society addressed a letter to Sr. Inspector of Koregaon Park Police Station informing the said development and again the similar letter is issued on 27/04/2019.

10. It is the case of the Petitioner-Society that barricades raised by it was forcibly removed by the Officers of Pune Municipal

Corporation and few people sent by local Corporator. It is contended that on 03/06/2019, the members of Petitioner-Society were called to the office of Municipal Corporation for discussing the issue including compensation for the society. It is alleged that since no further meaningful steps were taken by the Respondents including the office of Collector and Municipal Corporation, Petitioner addressed a letter to Pune Municipal Corporation on 12/06/2019. It is further alleged that the issue had been kept unresolved by the Respondents and they were neither taking steps to acquire the said strip of land for D.P. road nor allowing the Petitioner-Society to put up barricades and protect its internal road.

11. On the aforesaid case, the Petitioner-Society has filed the present petition seeking various prayers as narrated above.

RESPONDENTS' CASE :

12. An Affidavit-in-Reply affirmed on 20/02/2021, is filed by the Executive Engineer of Pune Municipal Corporation on behalf of Respondent Nos. 5 to 8 i.e. Pune Municipal Corporation and its officers. The case of Pune Municipal Corporation, inter alia in short is that by present petition, the Petitioner-Society is indirectly seeking

cancellation of condition no. 6 of exemption order dated 03/09/1988 and condition no. 5 of exemption order dated 17/02/1990 passed under Section 20(1)(a) of the Ceiling Act. It is contended that both these exemption orders are neither challenged by the Petitioner-Society nor developer nor owner and as such they have attained finality. It is contended that the Petitioner has purposely not mentioned anything about these exemptions orders resulting in suppression of material facts.

13. It is further contended that during the time of development of subject matter land, the original owner and developer have taken full benefits under said exemption orders and developed the property in 4 phases and now after almost 31 years, the Petitioner-Society is trying to challenge the conditions put under exemption orders and therefore the present petition is merely a chance litigation.

14. It is contended that the original owner (Trust) held 27,703.74 sq. mtrs vacant land in excess of ceiling limits in the Pune Urban Agglomeration and out of such surplus land, under order dated 03/09/1988, land admeasuring 20592.62 sq. mtrs was

exempted on condition that 7711.12 sq. mtrs of land at 5, Koregaon Road was to be handed over free of cost. However, the Trust instead of surrendering said 7111.12 sq. mtrs land, offered alternative land at survey no. 228/5 at Lohegaon, Pune and said offer was accepted by the Government. It is contended that in exercise of powers under section 20(1)(a) of the Ceiling Act, Government exercised its powers and passed second exemption order dated 17/02/1990 exempting 7111.12 sq. mtrs vacant land from the provisions of Chapter III of Ceiling Act, subject to conditions and that is how the development has been permitted, on which Petitioner-Society is standing.

15. It is contended that under condition no. 5 of the exemption order dated 17/02/1990, it is provided that D.P roads or the reservations prescribed by the Planning Authority in the layout for internal roads shall be transferred by the owner to the State Government or Pune Municipal Corporation after being duly developed without charging any monetary consideration and Completion Certificate for last building in the project shall be obtained only after such handing over. It is further provided in the condition no. 5 that internal roads shall be brought upto the standards laid down by the Pune Municipal Corporation.

16. It is contended that on 13/12/1988, Pune Municipal Corporation issued Commencement Certificate and the conditions of exemption orders are integral part of the said Commencement Certificate. It is contended that by office circular dated 31/07/1989, Pune Municipal Corporation has permitted the Developer to utilise the FSI of the internal roads on payment of premium. It is further contended that on 29/09/2006, Pune Municipal Corporation has granted further Commencement Certificate and this also includes the conditions imposed earlier and the conditions imposed under exemption orders. It is further contended that the Developer had made an Application requesting Pune Municipal Corporation to grant permission for using FSI under the road and accordingly Pune Municipal Corporation has granted building permission for construction on additional building No. 18/ building J, under which construction, the Developer has consumed 1429 sq mtrs FSI.

17. It is contended that on or about 10/07/2014, Pune Municipal Corporation issued notice under Section 51(1) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act" for short) for revocation/ modification of the Commencement

Certificate because permissions were affected by publication of draft development plan and more particularly 12 meter D.P. road. It is contended that the developer submitted its say and assured Pune Municipal Corporation to hand over the area for road widening as and when demanded and after hearing the developer, an Order dated 30/07/2014 was passed by the Pune Municipal Corporation. It was directed that Developer to get plan revised by marking the area affected under the draft of development plan as 'deferred area' and the developer was further directed to hand over area of road to Pune Municipal Corporation free of cost. After necessary assurance from the Developer, the order was passed and thereafter the Pune Municipal Corporation has issued Occupation Certificate on 29/11/2016.

18. Lastly it is contended that the subject matter road, which according to the Petitioner-Society overlaps on the Society's internal road, is completely maintained and repaired by Pune Municipal Corporation including the street lights thereon along-with the electricity consumption charges being borne by Pune Municipal Corporation. Alongwith Affidavit-in-Reply, Pune Municipal Corporation has produced Commencement Certificate, Office

Circular, notice under Section 51(1) of the MRTP Act, assurance letter given by the developer and Order dated 30/07/2014 which are referred in the reply.

SUBMISSIONS :

19. Mr. Potnis, learned counsel for the petitioner has argued orally as well as filed written submissions. He submitted that the said strip of land was not reserved as DP Road in the year 1987 when the development started, but the same came to be reserved as DP Road subsequently in the year 2017. He further contended that the said strip of land was not part of the property till 20.02.2000 and ULC orders are dated 1988 and 1990 and the said strip of land was not part of the ULC orders.

20. Learned Counsel contended that in the event, the Respondents want to apply the ULC conditions of the year 1988 and 1990 to the said strip of land, then separate orders to that effect must be passed, after the said strip of land became part of the layout. He contended that the ULC orders would apply to the reservation such as DP roads that were existing prior to the orders passed and

they cannot apply to subsequent reservations. He further submitted that assuming that the ULC orders would apply till the completion certificate which is of the year 2016, even in such scenario they would not apply to the present subject matter strip of land because the DP reservation is subsequent to the final sanction of layout and completion certificate. He invited our attention to the clause 17 of the commencement certificate dated 13.12.1988, and submitted that this clause deals with construction of DP Road and not with the compensation of the acquisition of land. He contended that the width of the DP Road does not fit in the chart mentioned and hence the chart cannot be said to be applicable to the Petitioner.

21. Learned Counsel contended that clause 17 has to be read in toto and it basically deals with cost of construction of DP Road and not with the compensation for its acquisition. He submitted that there is no provision in law by which any space can be transferred or vested in the Municipal Corporation free of cost without payment of compensation and sanctioning of layout does not provide for an entitlement to corporation to claim any land free of cost. He relied upon article 300A of the Constitution of India which provides for protection of citizens from the deprivation of

property save by authority of law. He submitted that there is no provision in law by which any land can be transferred to sanctioning authority without payment of compensation.

22. It is submitted that there is no provision under DCR by which, any property can be transferred free of cost to corporation and that in the event, such provision exists, it will be unconstitutional and violative of Article 300-A and MRTP act. He submitted that the DP Road is shown abutting the railway land but internal Road is currently touching the boundary of the society, and as a result, there needs to be demarcation of land. He further submitted that scheme of section 51 of MRTP Act deals with compensation payable for construction to be removed, as a result of change in the DP plan. It does not deal with compensation for acquisition which falls under section 126 and 127 of the MRTP Act. He submitted that the letter dated 10.07.2014 does not say that petitioner would give up the compensation but it only states that land would be handed over on demand.

23. It is submitted that even if the letter dated 10.07.2019 is

to be given an absurd interpretation of waving the compensation, it is only with reference to Section 51 which deals with compensation for removal of construction and cannot be construed to mean waiving compensation for acquisition of land which falls under Sections 126 and 127 of the MRTP Act. Lastly he submitted that the order issued under Section 51 of the MRTP Act dated 30.07.2014 is with respect to deferred area which is shown in the layout attached to the order. He submitted that deferred area of road does not fall on the side strip of land but it runs along the length of the area. According to him, the layout plan clearly demarcates the said strip of land as Road and there is no marking of deferred area shown.

24. Learned counsel appearing for petitioner relied upon following case law, in support of his case.

(i) Yogendra Pal and Ors. Vs. Municipality, Bhatinda and Ors (1994) 5 SCC 709

(ii) Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi (1995) 1 SCC 47.

(iii) Vrajlal Jinabhai Patel and Ors. Vs. State of Maharashtra and Ors. 2003(3) MhLJ 215.

(iv) The State of Maharashtra Vs. Bhimashankar Sidramappa

Chippa, Partner of Umashankar Industries 2009 (4) BomCR 1.

(v) Kishor Sharad Borakake and Ors. Vs. The state of Maharashtra and Ors. MANU/MH/1764/2019.

(vi) K.T. Plantation PVT. Ltd. And Ors. Vs. State of Karnataka AIR 2011 SC 3430.

25. *Per contra* Mr. Pethe learned Counsel appearing for Respondent/Pune Municipal Corporation opposed grant of any relief in favour of the Petitioner/Society. He submitted that the subject matter property was affected by draft DP published in 2013 and therefore specific notice under Section 51(1) of the Maharashtra Regional and Town Planning Act, 1966 (For Short “MRTP Act”) was issued to the developer which is produced on record. He submitted that the said notice dated 10.07.2013, amongst other things, clearly stated that existing permission under which is the property is being developed is in violation of published revised draft Development Plan dated 28th March, 2013 and it is specifically mentioned in clause 7(a) of the said notice that the permission granted is in not in conformity with provisions of the published revised DP since the said land is affected by road widening 42 Mtr. and 12 Mtr.

26. It is submitted that the developer has given its reply dated 10.07.2014, which is produced on record. Inviting our attention to said reply of the developer, he submitted that a specific request was made by the developer to permit continuation of construction for the super structure and a clear undertaking is given by the developer to hand over necessary area for road widening as and when demanded by him.

27. Learned Counsel pointed out that by a specific order dated 30.07.2014 passed in respect of the subject matter land, making clear reference to the subject matter 12 Mtr. DP road, it is ordered after hearing the developer, that development was permitted to be continued under Section 51 (1) (A) of the MRTP Act, however, the width of the road as per draft DP of 2013 to be shown as deferred area and lay out be modified suitably and the assurance/indemnity to be taken from the developer for handing over the road space without any consideration to Pune Municipal Corporation.

28. It is submitted that in the teeth of such specific notice under Section 51 of the MRTP Act, reply and written assurance given

by developer thereon and specific order being passed for modification of development permission, the Petitioner/Society, who has now stepped into the shoes of developer/owner, cannot be permitted to back-track and seek compensation for the area of the said 12 Mtr. D.P. road which is affecting the subject matter land. He further argued that the said order dated 30.07.2014 is not at all challenged by the developer, not even in the present Petition. So also original commencement certificate (conditions therein) and ULC orders are also not challenged. He submitted that since all the said permissions/ orders including last order under Section 51 have attained finality, the Petitioner is estopped by conduct as well as under law from seeking compensation now.

29. Ld. AGP and Mr. Deshpande have submitted to the order of the Court.

REASONS AND CONCLUSION

30. The question that therefore falls for our consideration is whether in the peculiar facts and circumstances of this case, the Petitioner Society can be permitted to seek compensation and seek acquisition under Fair Compensation Act for the subject land affected

by 12 Mtr. D.P. road.

31. It is material to note that when the order under Section 51 of the MRTP Act was passed, the Petitioner's predecessor - developer has been duly heard. When the notice was issued and reply was filed by developer on 10.07.2014 as well as when the order was passed on 30.07.2014, Fair Compensation Act had already come into force. If the developer was not agreeable to hand over necessary area for road widening without compensation, he should have raised such grievance or at least should have challenged the order dated 30.07.2014, as provided under law. Having not done so, neither the developer nor the Petitioner/Society can be permitted to challenge the effect of the said order, after a period of five years by filing the petition in the year 2019.

32. Under clause 17 of the original Commencement Certificate dated 30th December, 1888 when the development first started on the subject matter land, it was stipulated that the Society/promoter will construct at its own cost D.P. road/s passing through or abutting the Society/land as per alignment given by the Pune Municipal Corporation and these DP roads should be treated as

colony roads and their widths should be as per standards mentioned therein.

33. It is further necessary to note that in condition No. 5 of the 2nd exemption order dated 17.02.1990, by which the excess land of 7111.12 Sq.Mtr was exempted from the application of the Ceiling Act and was permitted to be utilized for development, a specific condition has been imposed that the area falling under development plan reservation including D.P. road shall be transferred by the owner to Municipal Corporation after being duly developed without charging any monetary consideration either before the work or at a later date. It is further provided in the said condition that completion certificate for the last building in the project shall be obtained only after land under reservation including D.P. roads, if any, is actually handed over to Municipal Corporation.

34. It is not disputed that the Owner/Developer/Society has utilized the benefits under the exemption order dated 17th February, 1990 which is obvious from the fact that the earlier excess land of 7111.12 Sq.Mtr land is ultimately utilized for long phase-wise development and construction of society buildings since 1987 till

2016. It is also not disputed that Owner/Developer/Society has utilized the benefit of 1st commencement certificate dt. 13/12/1988 and other commencement certificates of the year 2006 for such development and construction.

35. It is also obvious that in the teeth of revised DP being published, affecting the subject matter land for 12 Mtr D.P. road, only after giving written assurance dated 10th July, 2014, an order is secured from the Municipal Authority for continuing with the construction with road width being permitted to be shown as deferred area and the Occupation Certificate has been obtained on 29th November, 2016. It is also obvious that had the Petitioner or developer raised any grievance about handing over of D.P. road to the Municipal Corporation as provided in the condition of the exemption order or in response to the notice under Section 51, the Occupation Certificate would not have been granted and the matter would have proceeded as provided section 51(2) or 51(3) of the MRTTP Act.

36. The developer has not opted for such recourse and has given written assurances and has utilized the benefits order under

Section 51 and has obtained Occupation Certificate for the society buildings. Having done so, in our considered view, the Petitioner/Society cannot be permitted to back-track now after 5 years from the date of Order u/s. 51 and after 3 years from the date of OC to seek compensation by fresh acquisition of the land for the purpose of 12 Mtr. D.P. road through subject matter of land under the Fair Compensation Act.

37. The argument of the Petitioner that the said strip of land was not reserved as D.P. road in the year 1987 when the development started but it is reserved only in the year 2017 or the argument that the said strip of land was not part of property till February, 2000 and the ULC orders passed of the 1988 and 1990 did not cover the same, is attractive at the first blush. However, on deeper consideration following material facts emerge :

(i) that by the ULC exemption orders, not only the original retention land but also the excess land was made available for the development.

(ii) The owner had offered alternative land so that the excess land can also be used with the retention land for development. That alternative land was accepted and the second exemption Order of

1990 was passed, as stated earlier.

(iii) Both the retention as well as excess land has been utilized for development.

(iv) It is not in dispute that D.P. road of 2017 was already notified as part of draft Development Plan which affected the subject matter land in the year 2013 itself.

(v) It is also not disputed that therefore before issuance of occupation certificate, specific notice under Section 51 of MRTP Act was given, which was responded by the developer with written assurance and an Order was secured for continuing with the development.

38. These facts are sufficient reason to reject the argument of the Petitioner that the said strip of land was not reserved from beginning and was not part of the orders under The Urban Land (Ceiling and Regulation) Act. For the same reasons the argument of the Petitioner that the orders under the Ceiling Act would apply to D.P. roads existing prior to the orders, needs to be rejected.

39. The argument that ULC orders will not apply to present subject matter strip of land because D.P. reservation is subsequent to

final sanction of lay out and occupation certificate, also needs to be rejected for the same reason that the D.P. road of 2017 was duly notified prior to grant of occupation certificate and the procedure under Section 51 has been already followed.

40. The argument about width of the D.P. road not fitting the details mentioned in the clause 17 of the commencement certificate dated 13.12.1988 is only stated to be rejected because such roving inquiry including factual aspects cannot be done under writ jurisdiction under Article 226 of the Constitution of India. Similarly the argument of the Petitioner that the order under Section 51 of the MRTP Act is only with respect of deferred area and the subject matter road does not fall within the deferred area and it runs along the length of the plot, is also an argument requesting this Court to go in inquiry of facts including reading of maps for lengths and breadths, which cannot be done under writ jurisdiction under Article 226 of the Constitution of India. Learned Counsel for the Petitioner has raised certain arguments as if a suit is being argued in a trial, which we are afraid, cannot be permitted.

41. The next argument of the learned Counsel for the

Petitioner that clause 17 of the commencement certificate dated 13.12.1988 and application of Section 51 only deals with waiving of construction costs and therefore it does not affect the right of the Petitioner/Society to seek compensation for deprivation of its property rights under Article 300-A of the Constitution of India r/w Section 126 and 127 of the MRTP Act, cannot be gone into at today's belated stage when the Petitioner has accepted and not challenged the order under Section 51 of the MRTP Act dated 30.07.2014, as also occupation certificate dated 29.11.2016. If the Petitioner had agitated this issue of compensation prior to getting O.C. or at the time of answering notice under Section 51, this contention could have been gone into. Afterall it is matter of public utility of road under applicable Development Plan.

42. Now let us consider various judgments relied upon by the Petitioner in support of its case. In the case of ***Yogendra Pal and Ors. Vs. Municipality, Bhatinda and Ors. (supra)*** the question of law before the Apex Court was whether the provisions of Section 192 (1) (c) of the Punjab Municipal Act, 1911 and the corresponding provisions of Section 203(1)(c) of the Haryana Municipal Act, 1973 for compulsory transfer of the land to the Municipal Committees

without payment of compensation, were valid. Careful reading of the said judgment, specially para 8 relied upon by the Petitioner, shows that the Apex Court has considered the purport of word 'transferred' against the word 'acquired'. The Apex Court has held in the context of Section 192(1)(c) of the Punjab Municipal Act, 1911 that the transfer is nothing short of acquisition divesting the land owner of all his rights as owner of the land. The question of back-tracking from written assurance given by the developer so far as the D.P. road is concerned, was not under consideration in the said judgment and therefore, in our considered view, the said judgment will not advance the case of the Petitioner.

43. In the case of *Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi (supra)* the question under Consideration before the Apex Court was whether the Municipal Corporation of Delhi, in absence of any provision in the Delhi Municipal Corporation Act, 1957, was entitled to sanction the plan for building activities with condition that the open spaces for parks and schools be transferred to the Corporation free of cost. Careful reading of the facts of this judgment shows that what was under consideration was 'transfer of open spaces' and not DP roads.

44. It will not be out of place to mentioned here that in D.C. rules applicable to matter in hand (at Pune), streets/roads, open spaces & amenities spaces are differently provided and they are distinct in the nature so far as their utility for public or plot/flat owners/purchasers in the lay-out is concerned. In the facts where the corporation was insisting on transfer of open space for parks and schools free of costs, the order of the High Court was modified by the Apex Court and it was left open to the Corporation to get the said open spaces transferred after paying the market price as prevailing on the date of sanction of lay out.

45. In the present case, the question of transfer of open space for park and school is not at all involved. So also in the present case, there has been specific hearing after notice of modification was issued by Respondent/Corporation under Section 51 of the MRTP Act. The Petitioner's predecessor (Owner/Developer) having developed the entire project by drawing benefits under not only Commencement Certificate but also under exemption-orders passed under Ceiling Act and Section 51 of the MRTP Act. In that view of the matter, the said judgment is clearly distinguishable and does not

advance the case of the Petitioner.

46. In the case of ***Vrajlal Jinabai Patel and Ors Vs. State of Maharashtra and Ors. (supra)*** once again the issue of acquisition of open space was involved and in that context, the coordinate bench of this Court had held that the title in the open space is not transferred to the Municipal Council merely on the passing of lay-out and acquisition of open spaces is not contemplated under Section 183 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. In the present case, there is no acquisition of open space involved in the matter and therefore the said judgment also does not advanced the case of the Petitioner.

47. In the case of ***The State of Maharashtra Vs. Bhimashankar Sidramappa Chippa (supra)*** once again coordinate Bench of this Court was considering the acquisition of land reserved for playground and there were actual proceedings of acquisition undertaken in which defence of conditions imposed at the time of sanction of lay-out was raised by municipal authority. In a challenge arising out of such facts, this Court had held that there is no provisions of law which authorizes transfer of open space ownership

in favour of the Municipality. In the case there are no acquisition proceedings before us. Present case is also not about open space but the question involved is of making available D.P. road as per order under Section 51 as also the condition imposed at the time of commencement of the Development. For that reason, this judgment also, being distinguishable, would not advance the case of the Petitioner.

48. In the case of *Kishor Sharad Borawake and Ors. Vs. The State of Maharashtra and Ors (supra)* the maintainability of the orders passed by Municipal Councils to transfer open space and space for amenity free of cost and consequential taking of possession free of cost as condition for sanctioning the layout, was under consideration. This alone distinguishes the present case from the said judgment relied upon by the Petitioner. Admittedly, in the present case the order granting permission, both, commencement order dated 13.12.88 and 30th July, 2014 u/s. 51 of MRTP Act are not challenged in this Writ Petition and the prayer of direction to acquire the land and pay compensation as per the Fair Compensation Act is also made belatedly. Once again, in the said judgment relied upon by the Petitioner, this Court was considering the transfer of open space

and amenity spaces and not a D.P. road.

49. In that view of the matter, the said judgment relied upon by the Petitioner is clearly distinguishable and does not advance the case of the Petitioner. It is not out of place to mention here that this judgment is relied upon by the Petitioner primarily for the delay caused, because in para 45 of the said judgment, a coordinate bench of this Court had exercised its jurisdiction despite long delay. It is obvious that the said exercise was made in the facts and circumstances of that case. When the order of the Municipal Corporation u/s. 51 dated 30th July, 2014, and the original condition of the Commencement Certificate dt. 13.12.88, are admittedly not challenged in the present Petition till 2019 when this petition is filed on 21.06.2019, we are not inclined to exercise our extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

50. So far as the last judgment relied upon by the Petitioner in the matter of *K.T. Plantation Pvt. Ltd and Ors. Vs. State of Karnataka (supra)* is concerned, the reliance placed by the Petitioner on the said judgment is totally misplaced, in as much as the ratio of that judgment of the Apex Court is related to ‘invalidation of the

legislation on the ground of delegation of essential legislative functions or on the ground of conferring un-guided, un-controlled and vague powers upon the delegate without taking into account preamble of act as also other provisions of the statute'. In that case the constitutional validity of Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996 and legal validity of Section 110 of the Karnataka Land Reforms Act, 1961 were under consideration. The facts of this case are not even remotely close to the facts of that judgment, and therefore this judgment also does not help the Petition.

51. Before parting, it is necessary to note that in none of the judgments relied upon by the Petitioner, there was specific order for modification of the development permission as in the present case viz. order under Section 51 of the MRTP Act.

52. Having fully utilized and derived benefits from all the commencement certificates, ULC exemption Orders, section 51 (MRTP Act) Order of modification to continue construction and having given written assurances, all this for a long phase-wise development and construction of society buildings since 1987 till

2016 and having acquired Occupation Certificate in 2016 itself, now cannot be allowed to raise a spacious argument that Respondents be directed to acquire said strip of land under Fair Compensation Act and pay or let the Society keep the road to itself. This is being asked when 3 years have passed from the grant of O.C., 5 years have passed from the modification order under Section 51 of the MRTD Act and about 29 years have passed after the exemption orders under Ceiling Act. No explanation is given whatsoever for delay and laches.

53. Thus in the background of aforesaid peculiar facts and circumstances, we decline to exercise our extra ordinary writ jurisdiction under Article 226 of Constitution of India. The Petition is therefore dismissed. Rule is discharged. No order as to costs.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]