

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

WRIT PETITION NO. 10899 OF 2022

1. Chandrakant Uttam Kolekar
Age: 56 years; Occu.: Agriculture,
R/o House No.172, Near Maruti
Temple, Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
2. Suryakant Uttam Kolekar
Age: 46 years; Occu.: Agriculture,
R/o House No.172, Near Maruti
Temple, Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
3. Uttam Narayan Kolekar
Age: 85 years; Occu.: Agriculture,
R/o House No.172, Near Maruti
Temple, Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
4. Shrikant Suresh Padale
Age: 32 years; Occu.: Agriculture,
R/o S/No. 10/B, Sunil Nagar,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
5. Shridhar Suresh Padale
Age: 30 years; Occu.: Agriculture,
R/o S/No. 18/B, Sunil Nagar,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

6. Suresh Chiman Padale
Age: 62 years; Occu.: Agriculture,
R/o S/No. 18/B, Sunil Nagar,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
7. Ramdas Chiman Padale
Age: 50 years; Occu.: Agriculture,
R/o S/No. 18/B, Sunil Nagar,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
8. Vinayak Ramdas Padale
Age: 25 years; Occu.: Agriculture,
R/o S/No. 18/B, Sunil Nagar,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.
9. Chagan Kundalik Gujar
Age: 85 years; Occu.: Agriculture,
R/o S/No. 50, Mahalunge-Nande
Road, Waghjai Nagar, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.
10. Sakharam Tukaram Pashankar
Age: 63 years; Occu.: Agriculture,
R/o S/No. 49/1, Nande-Mahalunge
Road, Waghjai Vasti, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.
11. Sahdev Tukaram Pashankar
Age: 56 years; Occu.: Agriculture,
R/o S/No. 49/1, Nande-Mahalunge

Road, Waghjai Vasti, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

12. Nirmala Balkrushna Pashankar

Age: 40 years; Occu.: Agriculture,
R/o S/No. 49/1, Nande-Mahalunge
Road, Waghjai Vasti, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

13. Anil Tukaram Pashankar

Age: 50 years; Occu.: Agriculture,
R/o S/No. 49/1, Nande-Mahalunge
Road, Waghjai Vasti, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

14. Suresh Maruti Padale

Age: 45 years; Occu.: Agriculture,
R/o Nande-Mahalunge Road,
Rasaynik Ayurved Company Javal,
S/No. 48/10, Mahalunge, Tal.- Mulshi,
Dist – Pune 411045.

15. Shankar Maruti Padale

Age: 38 years; Occu.: Agriculture,
R/o Nande-Mahalunge Road,
Rasaynik Ayurved Company Javal,
S/No. 48/10, Mahalunge, Tal.- Mulshi,
Dist – Pune 411045.

16. Shivaji Krushna Paygude

Age: 41 years; Occu.: Agriculture,
R/o S.N. 18/4, Paygude Vasti,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

17. Rohidas Narayan Golande
Age: 62 years; Occu.: Agriculture,
R/o Near Shiv Chatrapati Krida Sankul,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.
18. Laxman Vithoba Padale
Age: 60 years; Occu.: Agriculture,
R/o Vitai Niwas, S/No.-29/6/2,
Nande-Mahalunge Road, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.
19. Rahul Laxman Padale
Age: 37 years; Occu.: Agriculture,
R/o Vitai Niwas, S/No.-29/6/2,
Nande-Mahalunge Road, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.
20. Ravi Laxman Padale
Age: 34 years; Occu.: Agriculture,
R/o Vitai Niwas, S/No.-29/6/2,
Nande-Mahalunge Road, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.
21. Ramdas Vithoba Padale
Age: 60 years; Occu.: Agriculture,
R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.
22. Mahadev Vithoba Padale
Age: 80 years; Occu.: Agriculture,
R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

23.Sangita Maruti Shedge

Age: 46 years; Occu.: Agriculture,
R/o House No.12, Behind Math Talim,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

24.Raju Maruti Shedge

Age: 27 years; Occu.: Agriculture,
R/o House No.12, Behind Math Talim,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

25.Aniket Maruti Shedge

Age: 25 years; Occu.: Agriculture,
R/o House No.12, Behind Math Talim,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

26.Sujata Dattatray Shedge

Age: 36 years; Occu.: Agriculture,
R/o House No.12, Behind Math Talim,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

27.Siddhika Dattatray Shedge

Age: 19 years; Occu.: Agriculture,
R/o House No.12, Behind Math Talim,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

28.Kaushik Balasaheb Sutar

Age: 28 years; Occu.: Agriculture,
R/o Sutarwadi, Mahalunge-Nande Road,

Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

29.Dyaneshwar Krushnaji Shedge

Age: 34 years; Occu.: Agriculture,
R/o Shedge Niwas, Front of Z.P. School,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

30.Janta Krushnaji Shedge

Age: 54 years; Occu.: Agriculture,
R/o Shedge Niwas, Front of Z.P. School,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

31.Rasika Santosh Bhondave

Age: 35 years; Occu.: Agriculture,
R/o Shedge Niwas, Front of Z.P. School,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

32.Kamlesh Krushnaji Shedge

Age: 37 years; Occu.: Agriculture,
R/o Shedge Niwas, Front of Z.P. School,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

33.Vishwanath Damodar Paygude

Age: 76 years; Occu.: Agriculture,
R/o Paygude Vasti, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

34.Gulab Kisan Padale

Age: 76 years; Occu.: Agriculture,

R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

35.Dharmraj Somaji Padale

Age: 68 years; Occu.: Agriculture,
R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

36.Kanta Bajirao Padale

Age: 48 years; Occu.: Agriculture,
R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

37.Prashant Bajirao Padale

Age: 32 years; Occu.: Agriculture,
R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

38.Jalinder Nathu Padale

Age: 72 years; Occu.: Agriculture,
R/o Behind Z.P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

39.Rajaram Shankar Padale

Age: 76 years; Occu.: Agriculture,
R/o Swastik Heights, Near Datta Mandir,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

40.Shailendra Prakash Padale

Age: 33 years; Occu.: Agriculture,
R/o Swastik Heights, Near Datta Mandir,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

41. Kalpana Prakash Padale

Age: 52 years; Occu.: Agriculture,
R/o Swastik Heights, Near Datta Mandir,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

42. Ankush Baban Padale

Age: 40 years; Occu.: Agriculture,
R/o Sambhaji Nagar, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

43. Ramesh Maruti Rajguru

Age: 67 years; Occu.: Agriculture,
R/o Vitai Niwas, Near Vitai Hotel,
S/no.-53/6, Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

44. Ashok Aabu Kolekar

Age: 73 years; Occu.: Agriculture,
R/o Kolekar Niwas, Kolekar Vasti,
Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

45. Murlidhar Shankar Padale

Age: 71 years; Occu.: Agriculture,
R/o S/no. 48, Rasaynik Ayurved
Company, Mahalunge, Taluka-Mulshi,
Dist – Pune 411045.

46. Sudam Namdev Khaire

Age: 68 years; Occu.: Agriculture,
R/o House no. 162, Near Datta Mandir,
Mahalunge, Taluka-Mulshi,

Dist – Pune 411045.

47. Shantaram Dattatray Padale

Age: 66 years; Occu.: Agriculture,
R/o Behind Ram Temple, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

48. Rakhamji Vamanrao Padale

Age: 58 years; Occu.: Agriculture,
R/o Near Z. P. School, Mahalunge,
Taluka-Mulshi, Dist – Pune 411045.

49. Kaluram Nathu Sutar

Age: 62 years; Occu.: Agriculture,
R/o Near Shiv Chatrapati Krida Sankul,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

50. Vasudev Ramdas Kolekar

Age: 36 years; Occu.: Agriculture,
R/o House no.-231, Kolekar Wasti,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

51. Sukhdev Ramdas Kolekar

Age: 40 years; Occu.: Agriculture,
R/o House no.-231, Kolekar Wasti,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

52. Hirabai Ramdas Kolekar

Age: 58 years; Occu.: Agriculture,
R/o House no.-231, Kolekar Wasti,
Mahalunge, Taluka - Mulshi,

Dist – Pune 411045.

53. Deepmala Santosh Barne

Age: 38 years; Occu.: Agriculture,
R/o House no.-231, Kolekar Wasti,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

54. Vithal Shankar Kolekar

Age: 52 years; Occu.: Agriculture,
R/o House no.-231, Kolekar Wasti,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

55. Eknath Annasaheb Paygude

Age: 67 years; Occu.: Agriculture,
R/o S.N. 18/4, Paygude Vasti,
Mahalunge, Taluka - Mulshi,
Dist – Pune 411045.

... Petitioners

Versus

1. The State of Maharashtra
Through its Principal Secretary,
The Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Pune Metropolitan Region
Development Authority,
Through its Chief Executive Officer
and Metropolitan Commissioner,
Pune.
3. The Arbitrator,
Mahalunge-Maan Town Planning

Scheme No.-1,
Pune Metropolitan Region
Development Authority,
Survey No. 152-153, Maharaja
Sayajirao Gaikwad Udyog Bhavan,
Aundh, Pune – 411067.

... Respondents

Ms Madhavi Ayyappan i/by Talekar & Associates for the Petitioner.

Mr B. V. Samant, AGP a/w Ms Rupali M. Shinde, AGP for the
State-Respondent No.1.

Mr Rajiv Chavan, Senior Advocate a/w Mr Vijaykumar Dhakane
a/w Mr Dinesh Adsule for the Respondent Nos. 2 and 3.

***CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.***

***RESERVED ON : 25 April 2023
PRONOUNCED ON: 2 August 2023***

Judgment (Per R. N. Laddha, J.) :

By this petition under Article 226 of the Constitution of India, the petitioners seek to challenge the Mahalunge-Maan Preliminary Town Planning Scheme No.1 sanctioned under Section 86(1)(a) of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the Act'). The petitioners further seek to challenge the Mahalunge-Maan final town planning scheme, prepared by an Arbitrator under Section 72(6) of the Act. The petitioners claim they were denied compensation for their lands acquired for public purposes under the Scheme. It is the contention of the petitioners that the acquisition should have followed the procedure outlined in

either the Act or the Right to Fair Compensation, Rehabilitation and Resettlement in Land Acquisition Act, 2013 and that compensation should have been paid to the land owners.

2. It is the case of the petitioners that the Pune Metropolitan Region consists of the important cities of Pune and Pimpri Chinchwad, as well as seven Municipal Councils, including Lonavala Hill Station, Nagar Panchayat of Vadgaon Maval and three Cantonment Boards; Khadki, Dehu and Pune. Additionally, it covers 842 villages and has a population of 7.5 million, according to the 2011 census.

3. Mahalunge and Maan villages are located within the Pune Metropolitan Region near the rapidly growing IT park at Hinjewadi. They are also adjacent to the Pune Municipal Corporation boundary and the Mumbai Bangalore Highway. Despite their high potential, they have remained underdeveloped due to their classification as agricultural or no development zones in the existing regional development plan.

4. On 11 July 2016, the Government of Maharashtra established the Pune Municipal Region Development Authority (for short 'the PMRDA') to plan the development of Pune City,

Pimpri Chinchwad Industrial City, and the surrounding area of about 7357 sq. km. In 2018, PMRDA was declared as the Special Planning Authority for Pune Metropolitan Region under Section 40(1) of the MRTP Act. In 2017, due to the growth of the IT park at Hinjewadi and the potential for development of the nearby villages, the PMRDA announced its intention to prepare Mahalunge-Maan Town Planning Scheme No.1, which was published in the Maharashtra Government Gazette. Later that year, the Government of Maharashtra delegated its powers under Section 68(2) of the Act to the Metropolitan Commissioners of the concerned Metropolitan Region Development Authorities. However, according to the petitioners, this delegation of power was inappropriate as sanctioning a draft Scheme prepared by a planning authority was essentially a function of the State Government.

5. The petitioners claim that the Metropolitan Commissioner and Chief Executive Officer of PMRDA met the villagers whose land was included in the draft scheme under Rule 4 of the Maharashtra Town Planning Schemes Rules, 1974. The authorities told the villagers that they would acquire half of their lands for the project and offer them either FSI or monetary compensation. The villagers were also told that they would be given developed plots for the 50% of their land. However, the petitioners claim that no

further details were provided in regard to the project and on its development or in regard to its completion time. The petitioners reportedly expressed their objections to the draft Scheme and its implementation and refused to accept FSI as compensation. They demanded compensation under new acquisition laws and pointed out that the proposed 36-meter DP road would affect many villagers' residential and commercial properties, which they believed warranted compensation.

6. The villagers objected to the merger and division of their lands, stating that it would create disputes and jeopardize their livelihoods. They also informed the authorities that MIDC had proposed compensation under new land acquisition laws for building a 36-meter-wide road and asked that the PMRDA take this into account when finalising the Scheme. The villagers requested a hearing by sending notices on 6 December 2017, 8 December 2017 and 3 January 2018. Meanwhile, the authority decided to change the boundary of the TP Scheme under Section 62 of the MRTP Act and published it in the Gazette on 15-21.02.2018.

7. It is the grievance of the petitioners that the authority prepared a draft scheme for the purposes of Section 61 of the Act vide Resolution No.2 dated 24 March 2018, without considering

the objections and suggestions made by the villagers.

8. The petitioners have expressed concerns that the draft Scheme does not include provisions for the acquisition of final plots designated for local society amenities development, as required by Section 64(a) of the Act. The draft Scheme includes a map with final plot numbers, but it does not specify plot allotment. Additionally, the draft scheme does not propose the formation, merging, or alteration of a final plot to a dispossessed owner or the transfer of ownership of an original plot, as required by Section 65 of the Act.

9. Further, it is the case of the petitioners that they, along with other villagers, filed complaints about the unfair division, reservation, and allotment of plots, as well as the non-payment of compensation. The Special Executive Officer and Deputy Collector of the PMRDA invited the petitioners to discuss their objections on 4 June 2018. Meanwhile, the respondent authorities conducted a joint measurement of the lands owned by the petitioners and other villagers and created an inventory of fruit-bearing trees and buildings for valuation purposes. The petitioners were informed that their compensation claim was being considered based on the property valuation determined by the joint measurement.

10. It is the grievance of the petitioners that the Metropolitan Commissioner and the CEO of the PMRDA approved the draft town planning Scheme without considering their objections or those of other villagers. This was done under Section 68(2) of the Act, as stated in the Notification dated 22 June 2018. The Metropolitan Commissioner and CEO of the PMRDA did not consult the Director of Town Planning or conduct any enquiry before approving the Scheme. They justified this by stating that consultation with the Director of Town Planning, MS, Pune, had already taken place before the draft Scheme was published under Section 61(1) of the Act, so further consultation was not necessary before approving the Scheme under Section 68(2) of the Act.

11. According to the petitioners, Sections 61 and 68 of the Act operate at different stages. The language in Section 68 concerning consultation with the Director of Town Planning is mandatory and cannot be ignored simply because the Director of Town Planning approved it under Section 61 of the Act. The respondent authority neglected to consult the Director of Town Planning, resulting in the revocation of the Notification dated 22 June 2018 by the Government of Maharashtra. On 9 August 2018, the PMRDA prescribed the Scheme to the Director of Town Planning. The

Director instructed the authority to make necessary modifications and take appropriate legal measures vide letter dated 18 September 2018. On 19 September 2018, the PMRDA's Metropolitan Commissioner and CEO approved the draft town planning Scheme. On 16 October 2018, Mr D.S. Khot, an Assistant Director of Town Planning, was appointed as the Arbitrator for approving the draft Scheme by the Maharashtra Government's Urban Development Department under Section 72(1) of the Act.

12. The petitioners claim that the Arbitration is required by Section 72(3) of the Act to divide the town planning Scheme into a preliminary and final Scheme, following due procedure. The preliminary Scheme must be prepared within nine months, and the final Scheme within eighteen months of the Arbitrator's appointment. The Arbitrator then asked the villagers to submit objections to the final plot allotment in the draft town planning Scheme and file compensation claims under Section 102 within sixty days of receiving the notices. The villagers were called for hearings on different dates. Some petitioners attended the hearings and raised objections to the final plot allotments, while others requested alternative dates due to personal difficulties.

13. The petitioners raised objections to the division of their land

into smaller units and the reshuffling of their plots, stating that it would cause them undue hardship. They requested that their original survey numbers be retained to allow them to continue farming. They also objected to the allotment of non-contiguous plots and requested for allotment of a consolidated plot. The petitioners brought to the Arbitrator's attention that some of the allotted plots were not developable or non-buildable. They also raised a claim for compensation, which the Arbitrator assured would be considered before taking possession of their lands.

14. The petitioners have raised concerns that their objections were ignored by the Arbitrator. They contend that in a surprising move, the respondent authority issued notices on 17 May 2019, asking the villagers to hand over possession even before finalising the preliminary compensation Scheme. The petitioners objected, stating that their claims should be settled and compensation paid before taking possession.

15. On 24 July 2019, the Arbitrator announced that he had drawn up the preliminary town planning Scheme, Mahalunge-Maan No.1, in accordance with the provisions of the Act. This was confirmed through a public notice published in the Government Gazette on 26 July 2019. The State Government approved the Scheme with some modifications as described in Schedule I

(pertaining to final plots) and Schedule II (pertaining to special development control and promotion regulations of town planning Scheme No.1) vide Notification issued on 2 December 2019. The sanctioned preliminary town planning Scheme No.1 came into effect on 10 February 2020.

16. The petitioners claim that the Arbitrator made changes to the allotment of plots as outlined in Schedule-I of the Notification dated 2 December 2019. It is their grievance that the Arbitrator altered the draft town planning Scheme to accommodate the preferences of some landowners by giving them their desired plots. The shape and size of these plots were changed according to their demands, and different plots were merged by altering their boundaries.

17. According to the petitioners, the Government of Maharashtra has approved special development control regulations for the Maan-Mahalunge town planning Scheme, as detailed in Schedule II of the Notification. The maximum allowed FSI for final plots without monetary compensation, amenity plots, and EWS/LIG plots will vary from 2.5 to 3.3 depending on the width of the road. These Special Development Control Regulations will only apply if villagers decide to build on their plots. Section 65 of the Act states

that an owner's property cannot be taken by the planning authority or any other authority without their consent. Any changes to the property's boundaries, including merging or separating, must also be done with the owner's consent and for consideration. However, the planning authority and the Arbitrator proceeded to make changes to the original plot without the consent of the petitioners and land owners, which is in violation of Section 65 of the Act.

18. Miss Madhavi Ayyappan, learned counsel appearing on behalf of the petitioners, submitted that the State is obligated to provide compensation when acquiring private property for public use. She submitted that seizing the petitioners' land without determining and providing compensation is a violation of not only Article 300-A but also Articles 14 and 21 of the Constitution of India. It is submitted that additional FSI cannot be considered as a substitute for monetary compensation and that providing 50% developed plots in exchange for their entire land is not a valid justification for withholding monetary compensation. It is submitted that the respondent authorities should have included the compensation amount in the project cost estimate as mandated by Section 97 of the Act, and the Arbitrator was required to determine the compensation for land owners whose land was being acquired for the Scheme. It is submitted that dividing the petitioners'

contiguous land into smaller plots and allocating them to other villagers without their consent is a violation of Section 65 of the Act.

19. Relying on the Judgment of the Hon'ble Supreme Court in *Hari Krishna Mandir Trust v/s. State of Maharashtra*, reported in *(2020) 9 SCC 356*, the learned counsel for the petitioners, submitted that any transfer, division or amalgamation of existing plots without the parties' consent is unlawful and invalid. Despite a public notice on 14 February 2020 stating that individual awards were communicated, the petitioners claim they never received any communication.

20. It is submitted that the Arbitrator did not address the petitioners' objections regarding plot allotment or compensation payment when finalising the Scheme. It is submitted that the final draft town planning Scheme fails to meet the legal requirements specified in Section 72(6) of the Act. The final draft does not include an estimated amount of compensation payable u/s 66 or an estimate of compensation for loss of original plot area as per Clause (f) of sub-section (1) of Section 97. It also fails to estimate compensation for property or rights affected by the town planning Scheme as per Section 102 or determine if the area reserved for

public purposes is beneficial to owners or residents within the Scheme area.

21. It is submitted that the town planning Scheme, both in its draft and final form, did not comply with the statutory requirements. It is also submitted that the petitioners were not given written reasons for the denial of compensation by either the Arbitrator or the authority. Instead, they were orally informed that they would receive developed plots and an FSI of 2.5 instead of compensation. However, it is submitted that these alternatives are not equivalent to monetary compensation and that the additional FSI would only be useful if they planned to use their land for construction. Since their lands are agricultural, the FSI would be of no use to them.

22. It is submitted that despite being asked the petitioners to submit their claims against the Arbitrators' decision, they have not received any personal communication to date and are unaware of why their requests for compensation were denied. It is submitted that the State of Maharashtra has not established an Appellate Tribunal to review the claims of the petitioners against the Arbitrator's decision. Furthermore, it is alleged that respondent authorities/officers, accompanied by police, have visited land

owners and pressured them to surrender their lands.

23. On the other hand, Mr B. V. Samant learned Additional Government Pleader appearing for respondent no.1, inviting our attention to the affidavit filed on behalf of respondent no.1 submitted that the State Government did not set up an Appeal Tribunal as per the PMRDA's suggestion because the PMRDA has proposed changes to the preliminary draft town planning Scheme (Mahalunge-Maan) and they wanted to avoid doing the same work twice.

24. Mr Rajiv Chavan, learned senior counsel appearing on behalf of respondents no. 2 and 3, submitted on 14 February 2020, the Arbitrator split the Scheme into a preliminary and final Scheme under Section 72(3) of the Act. The Government has approved the preliminary Scheme, which had details of land owners' area, share, and ownership as per Section 72(4). However, the Arbitrator still has to prepare the final Scheme after the Tribunal of Appeal's decision as per Section 72(6) of the Act. The final Scheme would determine and give compensation to the concerned landowners after getting Government approval.

25. The learned senior counsel submitted that the PMRDA suggested setting up the Tribunal of Appeal on 20 May 2022, but

the Director of Town Planning, MS, thought that it would be better to set up the Tribunal of Appeal after sanctioning preliminary Mahalunge-Maan TPS-1 (first variation) and completing arbitration procedures. So the Government decided to set up the Tribunal of Appeal after finalising these procedures.

26. The learned senior counsel submitted that the PMRDA finalised plots as per Government approval and marked their boundaries with pillars showing plot details. They paid a fee to the Deputy Superintendent of Land Records for demarcation. On 15 March 2022, the Collector Pune published a Notification that included lands in TPS-1 in the Gaothan area under Section 122 of the Maharashtra Land Revenue Code, 1966. The Government's Revenue and Forest Department passed a Resolution on 23 June 2022 to measure and prepare records for the TPS-1 area under Section 126 of the Maharashtra Land Revenue Code, 1966. The PMRDA prepared a draft property card for the final plot and submitted it to the Land Record Department for further action on 27 May 2022. It is submitted that as per Section 106 of the said Act and Rule 24 of the said Rules of 1974, the PMRDA would pay the amount due to concerned parties after the Government sanctions the final Scheme.

27. According to the learned senior counsel, the PMRDA followed the procedure outlined in the Act while preparing the draft Scheme. The Arbitrator heard all land owners and submitted a report to the Government, which sanctioned the preliminary TPS under Section 86(1) of the Act vide a Notification dated 9-15 January 2020. It is submitted that the PMRDA decided to change the preliminary TPS-1 under Section 92 of the said Act vide Resolution No.3 dated 14 October 2021, following the procedure laid down in the Act. It is submitted that after sanctioning the draft Scheme (first variation), the petitioners would get an opportunity to be heard by the Arbitrator. Therefore, it is submitted that the petition is premature and deserves to be dismissed.

28. The rival contentions now fall for our determination.

29. Considering the contentions of the petitioners, it would be appropriate to have a survey of the relevant provision of the MRTTP Act. According to Section 60, a Scheme must be prepared for any area within the jurisdiction of the planning authority and published in the official gazette along with a copy of the plan. Section 61 mandates the publication of a draft Scheme for the declared area within a specified time frame and if not published within the specified time, it will lapse. Section 62 allows for the inclusion for additional areas in the draft Scheme, subject to procedural

formalities. Section 63 empowers the State Government to direct Planning Authority to make such a Scheme, and if it fails to comply, the State Government can appoint an officer to make and submit the Scheme. Section 64 outlines the contents of the draft Scheme, which may include provisions for land reservation, acquisition, or allotment, plot reconstitution by altering boundaries, laying out or relaying out land for comprehensive development, and an estimate of the total cost of the Scheme with the net costs to be borne by the planning authority. Section 65 specifies that in the draft Scheme, the size and shape of reconstituted plots will be determined to make them suitable for building purposes. If already build upon, it must be ensured that structures do not violate open space stipulations in the draft Scheme as far as possible. Section 66 of the Act outline the process for compensating a land owner when their land used is discontinued after a final Scheme is implemented. Section 67 allows for objections to be raised by affected persons and for modifications to be made to the draft Scheme, if necessary. Section 68 deals with power of State Government to sanction draft Scheme. Section 68A deals with effect of sanction on draft Scheme. Section 69 prohibits any changes or development on the land once the intention to create Scheme has been published, unless the necessary permission has been obtained. Section 71 provides for a summary

inquiry to resolve issues regarding disputed ownership. Section 72 provides for the appointment of an Arbitrator. Section 73 makes certain decisions of the Arbitrator final. Section 74 deals with appeal. Section 75 outlines the formation of an Appellate Tribunal, while Sections 76-82 provide procedural detail for the tribunal. Section 80 clarifies that the Appellate Tribunal is not a Court. Section 83 allows a planning authority to take possession of land for development by applying to the State Government through an Arbitrator. If approved, the State Government will authorise the Arbitrator to take possession vide an official notification. Section 84 requires the Commissioner of Police or District Magistrate to secure delivery of possession. Section 85 grants the right to receive 4% interest from the date of loss of possession until compensation is paid. Section 86 requires the State Government to approve the final Scheme with a specified period after receiving it from the Arbitration, while Section 87 outlines circumstances in which the Scheme can be withdrawn. Section 88 mandates that all lands required for the Scheme vest in and be handedover to the planning authority upon its finalization. Sections 89 and 90 address enforcement of Scheme while Sections 91-93 deal with variations in the Scheme. Section 94-95 outline procedure before the Arbitrator.

30. It is, therefore, quite clear from the statutory provisions that there is complete mechanism provided in the Act. In this background, to ascertain whether the petitioners' grievance at this stage needs to be gone into by this Court in the present proceeding or otherwise. It is not in dispute that the State has to award compensation when acquiring private property for public use or that taking away someone's land in exercising its power of eminent domain in expropriating private property for public use as without determining and providing compensation is against Article 300A of the Constitution of India. Also it is not in dispute that the State Government has the power to set up an Appeal Tribunal for Town Planning Schemes under Section 75 of the Act, which reads thus:-

Section 75 – Construction of Tribunal of Appeal

(1) The Tribunal of Appeal shall consist of a President and two Assessors.

(2) The President shall -

(a) in Greater Bombay, be the Principal Judge of the Bombay City Civil Court or such other Judge of the said Court as may be appointed by the State Government on the recommendation of the Principal Judge; and

(b) elsewhere, be the District Judge or the Civil Judge of the Senior Division as may be appointed by the State Government on the recommendation of the District Judge:

Provided that, the State Government may, if it thinks fit appoint as President any person who has held the post (i) in Greater Bombay of a Judge of the High Court or of the Bombay City Civil Court, and (ii) elsewhere of a Judge of the District Court.

(3) The President shall appoint fit and proper persons as Assessors, who shall as far as possible have knowledge, or experience of town planning, valuation of land or civil engineering.

(4) The President and the Assessors shall be appointed members of

the Tribunal of Appeal for such period as may be required by such Tribunal to decide an appeal made against the decision under clauses (iv) to (xi) (both inclusive), and clauses (xiv), (xv) and (xvi) of the sub-section (3) of Section 72.

(5) The State Government may, if it thinks fit, remove for incompetence or misconduct or any goods and sufficient reason any Assessor appointed under sub-section (3).

(6) If any Assessor is removed or dies or refuses or neglects to act or becomes incapable of acting, the President shall appoint forthwith a fit and proper person to take the place of such Assessor.

31. There is no disagreement that the PMRDA suggested changes/modifications to the draft town planning Scheme No.1 (Mahalunge-Maan) vide Resolution No.3. There is also no disagreement that these changes/modifications will substantially change/alter the final plots and assessment details of the Scheme, requiring a new start of arbitration proceedings. It is not in dispute that the PMRDA recommended the creation of the Tribunal of Appeal on 20 May 2022. On 26 July 2022, the Director of Town Planning, MS, issued a communication stating that it would be appropriate to establish the Tribunal of Appeal after the draft Mahalunge-Maan TPS-1 was approved and published. It was also brought on record that the PMRDA started a variation to TPS-1 under Section 92 and to that effect has provided a draft under Section 61(1) to the Director of Town Planning for consultation. There is also no disagreement that after the approval of the draft Scheme (first variation), the petitioners will have an opportunity to be heard by the Arbitrator.

32. In the light of the above discussion, it is quite clear that the petitioners would have an opportunity to echo all their grievances, if any, in a manner known to law at the appropriate time, including before the Arbitrator, after the final Scheme is notified. Thus we refrain from expressing our opinion on the merits of any of their contentions as being canvassed in the present proceedings, or in respect of any grievances/issues the petitioners may have in future. In such circumstances, in our view, the present petition is premature and deserves to be disposed of accordingly.

33. It is accordingly disposed of. There shall be no order as to cost.

R. N. LADDHA, J.

G. S. KULKARNI, J.

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