



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

WRIT PETITION NO. 3357 OF 2024

Kishor Kaluram Agrawal And Others
VERSUS

The State Of Maharashtra Through The Secretary And Another

...

Advocate for the Petitioners : Mr. P. R. Katneshwarkar
AGP for Respondents : Mr. A M Phule

...

**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Dated : April 01, 2024

...

FINAL ORDER :- (Per S.G. Chapalgaonkar. J.)

1. The petitioners approached this Court under Article 226 of the Constitution of India seeking declaration that Resolution No.112 dated 12.11.2020 passed by the General Body and Resolution No.183 dated 20.12.2021 passed by the Standing Committee of Dhule Municipal Corporation is illegal, The petitioners further seeks to quash and set aside the Tender Notice No.182 of 2023-2024 published by the Commissioner/Administrator of Municipal Corporation, Dhule. The petitioners further seeks to grant injunction against Municipal Corporation, Dhule from handing over plot No.153 to developer/builder for construction of commercial complex on BOT/BOLT basis. The petitioners have further prayed that the respondents be directed to release land in his favour since the same is not put to the public use.

2. The petitioners contend that they were the owner of land comprising plot nos.3,4, 6 and 7 out of final plot no.153 admeasuring 1H 63R situated at Taluka and District Dhule. Under development plan, sanctioned under the Maharashtra Regional and Town Planning Act, 1966, it was reserved for the garden. The Municipal Corporation acquired the land and took physical possession on 24.9.1986 in terms of the Land Acquisition Award dated 19.9.1986. The petitioners had received meager compensation of Rs.3,15,492/-, which was enhanced to Rs.6,07,060/- under the Award of the Reference Court passed under Section 18 of the Land Acquisition Act. However, the enhanced compensation is not released to petitioners till this date.

3. According to the petitioners, after acquisition of the land, the land which was reserved for the garden has been converted to residential zone as per revised (modified) development plan. Therefore, the petitioners had served notice on Municipal Corporation on 26.3.2018 seeking restoration of the land to them and also the cheque of Rs.3,15,492/- towards refund of compensation amount was offered. Since the Corporation denied petitioners claim, they had approached this Court in Writ Petition No.417 of 2021 praying for restoration of land. However, writ petition was dismissed. The said order attained finality on dismissal of Civil Appeal No.7634 of 2023 by the Supreme Court of India. However, the Supreme Court directed the Respondent Municipal Corporation/State Government to deposit the enhanced compensation amount alongwith interest within the period of two months. Till this date there is no compliance of such directions.

4. The Petitioners contend that now the Respondent Corporation issued E-Tender notice No.182/2023-2024 dated 11.1.2024, inviting tenders from Developers for construction of shopping complex on subject land on BOT/BOLT basis. The E-Tender notice is preceded by impugned resolution of the Corporation and Standing Committee.

5. Mr. P.R.Katneshwarkar, learned advocate appearing for the petitioners would submit that for last 37 years the petitioners land is not put to the use for public purpose and as per impugned resolutions followed by E-Tender notice, Municipal Corporation proposed it to be used for profiteering. The petitioners, who are the original owners of the land are still waiting for release of compensation as determined by Reference Court. Without releasing enhanced compensation, the Corporation has put the land for construction of the Shopping Complex and profiteering. Mr. Katneshwarkar would submit that the land was reserved for garden i.e. public amenity and acquired for that purpose, handing over the same to the developer or builder for shopping complex would amount to fraud towards the petitioners. He would point out that the Resolution No.183 passed by the standing committee of the Corporation reveals that Corporation is expecting 110 Crores out of the transaction by converting premises to commercial use, instead using it for public purpose. To buttress his submission, he would rely on the observations of the Supreme Court in following cases :-

1. *Bangalore Medical Trust Vs. B.S.Muddappa and others reported in (1991) 4 Supreme Court Cases 54.*
2. *Royal Orchid Hotels Limited and another Vs. G.Jayarama Reddy and others reported in (2011) 10 Supreme Court Cases 608.*

3. *Uddar Gagan Properties Limited Vs. Sant Singh and others reported in (2016) 11 Supreme Court Cases 378 and*
4. *Shah Hyder Beig and others Vs. State of Maharashtra and others reported in 1999 (2) Mh.L.J. 799.*

6. Per contra, Mr. A.M Phule, learned AGP would point out that the petitioners have no locus standi to challenge the resolution of the Municipal Corporation and consequential E-Tender notice. He would submit that the land in question is acquired long back under the award passed in the year 1986. The petitioners have received the compensation in terms of the award and possession has been handed over to the Corporation. He would further submit that in view of the aforesaid acquisition, the land has been completely vested with the Municipal Corporation free of encumbrances. The proposed construction of shopping complex is for public purpose. Change of user itself would not germane the cause of action in favour of the petitioners to seek the reliefs as prayed. He would therefore urge that petition sans merit and deserves to be dismissed.

7. We have considered the submissions advanced on behalf of the respective parties. We have perused the record. Apparently, the land in question was owned by the petitioners and in pursuance of the reservation for garden under the development plan, it has been acquired by the Municipal Corporation, Dhule under the Award dated 19.9.1986 passed by the Special Land Acquisition Officer. The Corporation took over the physical possession on 24.9.1986. The petitioners and co-owners received the compensation as determined by the Land Acquisition Officer and also secured award of enhanced

compensation under section 18 of the Land Acquisition Act. Previously, the petitioners had approached this Court in Writ Petition no.417 of 2021 seeking declaration that the acquisition is deemed to have been lapsed, in alternative seeking compensation in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. One of contention raised in said writ petition was that the reservation of the garden on acquired land has been released as per modified development plan and reservation for residential zone is replaced. This Court rejected the prayer of the petitioners observing that in view of the concluded Award under Land Acquisition Act, the land has been vested with the Corporation and right of the petitioners is restricted to receive the compensation. Said order is confirmed by Supreme Court in Civil Appeal No.7634 of 2023.

8. It is not disputed before us that the acquisition of land was completed in the year 1986 and possession has been handed over to the Municipal Corporation, Dhule on 24.9.1986 and petitioners persuaded their claim for grant of compensation under section 18 of the Land Acquisition Act. In this background, petitioner contends that land was reserved for the amenity i.e. garden in terms of section 2(2) of MRTP Act, 1966 and subsequent change of user would amount fraud to the land owner. The petitioners have relied upon the observations of the Supreme Court in case of Bangalore Medical Trust Vs. B.S. Muddappa (supra) which states thus :-

“It was improper to confer a largesse on a private party at the expense of the general public and when the land in question was reserved for parking or garden in terms of the approved and published development plan, the same could not

have been allotted for construction of the shopping complex.”

9. We are of the considered view that the Judgment in case of Bangalore Medical Trust (supra) would not assist the petitioners to advance his contentions. In that case, the reservation site was reserved for public park, however, under the Government order and Resolution of Bangalore Development Authority, it was allotted to Medical Trust for constructing the hospital. Said allotment was subject matter of writ petition at the instance of residents of locality, who were intending to protect and preserve the environment by reserving open space for 'ventilation', recreation and play grounds and parks for the general public. The writ petitioners, being aggrieved as members of the general public and residents of the locality, have challenged diversion of the user and allotment of the site to private persons for construction of a hospital was subject matter of challenge.

10. In the present case, petitioners are advancing their individual right only because they are erstwhile owner of the land. Secondly, it is apparent that in 2015, reservation of the land in question has been changed to residential zone. The said change of reservation was not challenged by the Petitioners within reasonable period nor in their earlier Writ Petition No.417 of 2021. Said Writ Petition was decided by this Court and the said decision is maintained by the Hon'ble Apex Court in Civil Appeal No.7634 of 2023 (arising out of SLP (C) No.25507 of 2023 @ D.No.40013 of 2023) decided on 10th November, 2023. When opportunity was available to the petitioners to challenge the change of reservation, it has not

been so challenged; therefore, petitioners are now estopped from challenging the further action by the Municipal Corporation.

11. Now, the Corporation has passed the Resolution for construction of the shopping complex on BOT basis. That will generate funds for the Corporation. It is trite that once land vests in the State or its authorities, public purpose of its acquisition can be changed at later stage. Only limitation would be to use the land for public purpose. Construction of the shopping complex by the Municipal Corporation with a view to generate funds will also serve the public purpose.

12. Second contention raised on behalf of the petitioners is that, the land is scarce natural resource. Rights of the owner of the land cannot be deprived except under the compelling needs of the society. The State can be allowed to exercise its domain only with public purpose and if the land is not used for public purpose, it shall revert back to the owner. However, we do not find substance in this contention. As indicated above, in the present case, acquisition proceeding is completed long back. Municipal Corporation has acquired absolute title and under the impugned Resolution and tender notice, the use of the land is proposed for public purpose i.e. construction of the shopping complex and generation of the funds. Therefore, petitioners cannot seek advantage relying upon the observations of the Supreme Court in case of *Uddar Gagan properties Ltd. Vs. Sant Singh (supra)*.

13. In that view of the matter, we do not find substance in the writ petition. Writ Petition stands **dismissed**.
No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

...

aaa (f).