



(This Judgment is corrected as per speaking to the minutes order dated 20.03.2025)

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

WRIT PETITION NO.10445 OF 2018

Bharati Pushpendra Raghuwanshi,
Age : Adult, Occu. Business,
R/o Anand Bhuvan, Pardeshi Pura,
Nandurbar, District Nandurbar.

... Petitioner.

VERSUS

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The District Collector,
Nandurbar, District Nandurbar.
3. The Special Land Acquisition Officer,
Nandurbar District Collector Office
Compound, Nandurbar.
4. The Chief Executive Officer,
Municipal Council,
Nandurbar.
5. The Director of Town Planning,
Maharashtra State, Pune,
District Pune.
6. Town Planning Officer,
Nandurbar,
District Nandurbar.

... Respondents.

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Advocate for Petitioner : Mr. Amit S. Savale.
AGP for Respondents/State : Mr. A. S. Shinde.
Advocate for Respondent No.4 : Mr. D. S. Bagul.

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**CORAM : S. G. MEHARE, AND
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 14.02.2025
PRONOUNCED ON : 17.03.2025**

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner is seeking direction against the contesting respondent to pay the compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("Act 2013" for short) for the land affected reserved for 24 meter wide road in the development plan.

3. In brief, the petitioner has a case that he is the owner of the lands Survey Nos.241/A/B, 242/1, 2, 3 and 4 situated within the municipal limits of Nandurbar. The development plan for Nandurbar city was sanctioned on 14.03.2007 which was brought into force from 30.04.2007. A 24 meter wide road was proposal, passing through the fields of the petitioner. He had made the application to respondent No.4 to reconsider the width of the sanctioned road and reduce it to 18 meters. Respondent No.4 had passed the resolution accordingly and

send the modified proposal to the Government. On 17.03.2012, the proposed modification under Section 37 of MRTTP Act came to be published in the Government notification. On 13.07.2012, the petitioner communicated respondent No.4 to de-mark the boundaries of the said layout as the possession of the roads and open spaces in the layout has already taken by respondent No.4 while considering his layout. However, contrary to the proposed modification published in Government Notifications dated 03.09.2009 and 17.03.2012 and contrary to the resolutions of respondent No.4, respondent No.3 proposed to acquire the subject lands beyond 18 meter wide road and proposed to construct the road of 24 meter wide. Respondent No.4 granted him the temporary commencement certificate for constructing the road. He was time and again requested respondent Nos.2, 3 and 4 for the proposed acquisition and initiation of acquisition proceeding. On 06.12.2016, he was constrained to issue a notice to the respondents. Surprisingly, on **31.12.2016**, respondent No.4 responded that it was rightly acquired the subject lands for construction of 24 meter wide road and the affected land is handed be over to Municipal Council for Rs.1/-. In the nutshell, the petitioner's contention is that the proposed road in the development plan from his land cannot be taken for

Rs.1/- against the sanction of layout for the remaining land. He is entitled to receive the compensation.

4. The contesting respondent No.4 filed affidavit-in-reply opposing the statements made in the petition being incorrect. In a development plan dated 14.03.2007, 24 meter wide DP road was sanctioned. However, the Municipal Council has proposed to reduce it to 18 meters. They admitted that the application for laying out the plots in the lands of the petitioner was moved to respondent No.4 and tentative layout proposal was sent to the Assistant Director of the Town Planning on 17.08.2010. The Assistant Director of Town Planning, Nandurbar recommended the said layout for sanction by letter dated 20.11.2010. Accordingly, the Municipal Council sanctioned demarcated layout on 21.02.2012. Again, the Municipal Council submitted the tentative layout proposal to the Assistant Director of Town Planning by letter dated 08.02.2013. It was recommended by the said Authority by letter dated 12.08.2013. Again, for those survey numbers Municipal Council communicated the petitioner about final demarcated layout. The Assistant Director of Town Planning while recommending for sanction of proposed layout by its letter dated 12.08.2013, imposed the condition that **24** meter

wide DP road in the layout should be transferred to the Municipal Council, Nandurbar for a nominal cost of Rs.1/-. The petitioner executed the agreement of transferred of the said land for nominal compensation of Rs.1/-. Therefore, there is no question to acquire the said land for DP road and pay the compensation.

5. Respondent Nos.1, 5 and 6 have also filed their affidavit-in-reply. In the measurement plan No.382 of 2010, dated 05.07.2010 of the suit land 18 meter wide existing road was shown. The Office of Assistant Director of Town Planning, Nandurbar after considering the proposal of 24 meter wide development plan road has proposed the road widening of six meter to the said existing 18 meter wide road passing through the suit lands and recommended for approval vide letter dated 12.08.2013. Besides, the condition that the land owner has to transfer 24 meter wide development plan road to the Municipal Council at nominal cost of Rs.1/-, the petitioner has already availed benefit of 10% open space required to be kept in the layout considering the area running after excluding the area under 24 meter wide development plan. The petitioner also availed the benefit of using 24 meter wide development road as access road to their plots. Thus, the petitioner has

taken due benefit for 24 meter wide development plan road. In such circumstances, the petitioner does not deserve compensation as claimed. They have prayed to dismiss the writ petition.

6. Both sides have relied on the case laws those would be discussed in the later part of the judgment.

7. Question is “Is petitioner entitled to the compensation for land acquired for laying 24 meter road and should not surrender land for 9 meter road and waive his right over the compensation land required for 9 meter road because he has utilized the open space, when his land was layout”?

8. The petitioner has placed on record the layout map. This layout map does not indicate that 9 meter road was merged in 24 meter and against it he got the benefits. The layout map even does not show that the 9 meter wide road was to be used only for the layout. On the contrary, the layout shows that the internal width of roads are 12 meter and 9 meter and those are the roads opening to the 24 meter wide road. Had it been the case that the petitioner applied for the layout after the compensation is paid, “can the Corporation

asked him to return the money used for 9 meter wide road”?

The obvious answer is “no”.

9. The standard and development control and permission regulations for Municipal Council and Nagar Panchayat Maharashtra has been placed on record in which Rule 13.2.3.3 provides that whenever called upon by planning Authority to do so, areas under roads shall be handed over to the Planning Authority by way of deed after development of the same for which nominal amount of Rs.1/- shall be paid by the planning Authority. This is included in the Chapter having title “Regulations for the land Sub Division and layout”. The layout map placed on record already indicates 9 meter and 12 meter wide road. Those are to be handed over to the planning authority. Such roads are open for public access. In view of that matter, handing over such road to the planning authority is a different issue. Handing over such land as well as the open place to the local body is not a transfer. It is just vesting a right with authority to maintain it for the public use. The 24 meter road proposed to be led in development plan is not the high way. Therefore, it does not require service road. On the contrary, in such a situation, the layout road should be joined to the main road for access.

10. Learned counsel for Municipal Corporation Mr. Bagul placed reliance on the case of ***Pandit Chet Ram Vashist (dead) by legal heirs Vs. Municipal Corporation of Delhi, (1995) 1 Supreme Court Cases 47.*** In this case, the Hon'ble Supreme Court has observed that the resolution passed by the Corporation directing the appellant to transfer the space reserved for tube wells, school and park in its favour free of cost was depriving the owner of his property and vesting it in the Corporation against law. Such condition amounts to transfer of ownership and not merely transfer of right of Management. The Corporation by virtue of the lands specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. However, in the case at hand, is not pertains to the open space. Here is the question of acquiring the land for laying 24 meter wide road is under consideration. The attempt to reduce it by 9 meters at the behest of the Municipal corporation was unsuccessful. Therefore, this case would not support him. The law has been crystallized in the above case that no such property would be transferred to the Corporation free of cost.

11. He also relied on the case of ***Omprakash Gopalkrishna Khandelwal and others Vs. The State of Maharashtra and***

others, Writ Petition No.7496 of 2018 decided 11.10.2019 and Sanjay Vishnu Shende and another Vs. The State of Maharashtra and others. In the case of Omprakash, the petitioner were required to leave the land for 24 meter wide development road in the layout plan. The petitioner was asking for the compensation for the area under 24 meter development plan road (peripheral road). In that case also, the 24 meter wide D.P. road was shown passing through the land of the petitioner. The petitioner had submitted layout. It was observed that in the layout, the petitioner was required to provide for 9 meters internal road, but the petitioner was required to provide 24 meters D.P. road. As per the development plan, it was incumbent upon the petitioner to provide 24 meter wide road instead of 9 meter. In normal case, the petitioner is required to provide only 9 meter wide road as the layout road. Only because 24 meter wide road proposed peripheral plan, road was shown to pass through land of the petitioner, the petitioner was required to provide for 24 meter wide road, at the time the layout was sanctioned. The property of the petitioner was situated in village and not within the limits of Municipal Corporation. Subsequently, it was included in the jurisdiction in the Municipal limits. In that case, based upon the facts the learned counsel for the

petitioner had admitted that the petitioner would have to keep 9 meter wide internal layout. In view of that matter, it was held that the petitioner would be entitled to compensation for area affected in 24 meter wide D.P. road by deducting area of 9 meter road. It has also been observed that the respondent local Government cannot deprive the petitioner of their property without due process of law. The private land cannot be taken away by statutory body or State without paying any compensation. More particularly, when such land is required to be used by public at large. The area was left in the development plan road in 2007-2008 and that to when the area was under Gram Panchayat. In this case, the regulations of development control and promotion regulation for D class were made not applicable. In that set of facts, the Court decline to pay compensation to the petitioner as claimed. Delay and laches was another aspect before that Court. Identical facts were of the case of Sanjay Vishnu Shende.

12. Mr. Bagul also relied on the case of ***Shirdi Nagar Panchayat Vs. Kishor Sharad Borawake and others***. It was altogether on different facts and issues. Therefore, it does not require to discuss.

13. Examining the facts of the matter and the layout, we are of the opinion that the layout has been sanctioned to the petitioner considering the width of the road led in the development plan. The width of the road is one of the criteria to determine and sanction the layout. Length of the road also affects the area to be used for non-agricultural purpose. The copy of layout placed on record as discussed above does not indicate that any specific benefit has been granted to the petitioner merging 9 meter road in 24 meter road required to be left while granting the approval to the layout of the petitioner. In the absence of any such cogent evidence and material, it would be unjustifiable to refuse the compensation to the petitioner on the bare words that for this 9 meter road which is to be left and merged into 24 meters road, the petitioner is dis-entitled to the compensation. The law as discussed above, no matter of doubt is clear that property of the private person must be taken only after the compensation is paid. In view of the issue involved in the matter and the material placed before the Court, we are of the opinion that the petition deserves to be allowed. Hence, the following order:

ORDER

- (i) Writ petition is allowed.
- (ii) It is declared that the petitioner is entitled to the compensation for the land earmarked for 24 meter wide road passing through the field survey of the petitioner.
- (iii) We also declared that the affidavit waiving the land at Rs.1/- is contrary to the law and facts. Only on the basis of such undertaking which was executed in peculiar circumstances would not deprive the petitioner from the compensation to which he is legally entitled to.
- (iv) The respondent is directed to proceed for the acquisition for the land in dispute at the earliest and the compensation be paid to the petitioner accordingly.
- (v) Rule made absolute.
- (vi) No order as to costs.

(SHAILESH P. BRAHME, J.)**(S. G. MEHARE, J.)**

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vmk/-