

Ashish

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

**WRIT PETITION NO.3100 OF 1999
WITH
REJECTED CASE NO.723 OF 2015
IN
WRIT PETITION NO.3100 OF 1999**

Phaltan Nagar Parishad Through Chief
Officer ... Petitioner

V/s.

Pratapsinh Malojirao Naik- Nimbalkar
And Ors. ... Respondents

Ms.Gunjan Shah i/b Mr. P.B. Shah, for Petitioner.

Mr.Milind Deshmukh, for respondent nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : MARCH 21, 2025

JUDGMENT.:

1. Challenge in the present writ petition is directed against the judgment and order dated 8th October 1998, passed by the learned Third Additional District Judge, Satara in Civil Miscellaneous Application No. 305 of 1992. By the said judgment and order, the learned Judge was pleased to allow the application filed by respondent nos.1 to 5, and directed the petitioner–Municipal Council to pay compensation to the said respondents at the rate of ₹350/- (Rupees Three Hundred and Fifty only) per square meter, for the area admeasuring 3717.5 square meters forming part of

City Survey No. 3320, situated at Phaltan. In addition to the compensation so determined, the learned Judge further directed the petitioner to pay solatium as contemplated under Section 23(2) of the Land Acquisition Act, 1894, along with interest at the rate of 12% per annum on the amount of compensation.

2. The foundational facts giving rise to the present petition, as pleaded by the petitioner, may be summarised as under:

3. It is the case of the petitioner that during the period between 1962 and 1970, the predecessor-in-title of respondent nos.1 to 5 had submitted a layout plan for development, which included within it an 80 ft. wide ring road. On 27th January 1970, the said layout plan, as submitted by the father of the present respondents, came to be duly sanctioned by the Town Planning Officer concerned. Subsequently, on 5th February 1975, the Development Plan of the Phaltan Nagar Parishad was finalised, which incorporated the 80 ft. ring road as proposed in the earlier sanctioned layout. It is not in dispute that the said ring road formed part of the layout sanctioned at the behest of the predecessor of respondent nos.1 to 5. Thereafter, on 14th May 1978, the original owner, i.e., the father of the respondents, passed away.

4. It is further the case of the petitioner that during the year 1983-84, the said road came to be constructed by the petitioner-Municipal Council, and for the said purpose, an expenditure of ₹56,998/- was incurred. Subsequently, on 20th June 1988, a notice came to be issued by the petitioner to respondent nos.1 to

5, calling upon them to execute and register the conveyance of the portion of land forming part of the ring road in favour of the petitioner–Municipal Council. The petitioner offered nominal compensation of ₹1/- (Rupee One only) for the said purpose and requested the respondents to execute the conveyance deed on requisite stamp paper. The said communication was replied to by respondent no.3.

5. Thereafter, on 10th December 1992, respondent nos.1 to 5 instituted Civil Miscellaneous Application No. 305 of 1992 before the learned District Judge, Satara, invoking the provisions of Section 330 of the Maharashtra Municipalities Act, 1965, seeking compensation in the sum of ₹7,500/- (Rupees Seven Thousand Five Hundred only) per square meter in respect of the land forming part of City Survey No.3320, which was allegedly utilized by the petitioner for the construction of the said 80 ft. ring road.

6. The petitioner appeared and contested the said application by filing a detailed reply, inter alia, contending that the entire area comprising City Survey No. 3320 was neither reserved nor notified for any public purpose, and that no part of the said land was ever shown as being under reservation in the sanctioned Development Plan. It was further contended that the predecessor-in-title of respondent nos.1 to 5 had voluntarily submitted a layout plan for development of the said property, and that the said plan, which included provision for an 80 ft. wide ring road, was duly sanctioned by the competent authority. The petitioner also relied upon the communication dated 20th June 1988, addressed to respondent no.3, wherein the petitioner had called upon the

respondents to execute and register the necessary document on stamp paper for formal transfer of the road area in favour of the petitioner–Municipal Council. However, it was submitted that despite the said request, the said transfer could not be effected. The petitioner has further pointed out that respondent no.3 had replied to the said communication in the year 1988 itself, but the execution of the conveyance deed was not undertaken.

7. The learned Third Additional District Judge, Satara, by the impugned judgment and order dated 8th October 1988, was pleased to allow the application filed by the respondents and directed the petitioner to pay compensation at the rate of ₹350/- (Rupees Three Hundred Fifty only) per square meter for the land admeasuring 3717.5 sq. meters. In addition to the compensation amount, the learned Judge also awarded solatium at the rate of 30% in terms of Section 23(2) of the Land Acquisition Act, and interest at the rate of 12% per annum on both the compensation and solatium amounts, to be calculated from the date of filing of the application till actual realisation. It is this judgment and order which is impugned in the present writ petition filed under Article 227 of the Constitution of India.

8. Learned Advocate appearing for the petitioner has placed reliance upon the provisions of Section 330 of the Maharashtra Municipalities Act, 1965, and has specifically invited the attention of this Court to sub-section (1) thereof. It was submitted that the amount offered by the petitioner to respondent nos.1 to 5 in the communication dated 20th June 1988 did not amount to a determination of compensation under the said provision, and in

any case, no compensation was legally payable under the Act, particularly in the facts and circumstances of the present case where the layout plan had been sanctioned at the instance of the respondents' predecessor. The learned Advocate further submitted that even assuming, without admitting, that the said letter dated 20th June 1988 amounted to an intimation under sub-section (1) of Section 330, sub-section (2) thereof mandates that a person aggrieved by the amount so offered is required to approach the District Court within a period of one month from the date of receipt of such communication. It was, therefore, submitted that the application filed by the respondents on 10th December 1992 was clearly barred by limitation, and consequently, not maintainable in law.

9. Per contra, learned Advocate appearing on behalf of respondent nos.1 to 5 has supported the impugned judgment and order and submitted that the land in question has admittedly been utilized for the construction of a public road by the petitioner-Municipal Council, which is a public body, and hence, it cannot retain or use the said land without payment of just compensation to the rightful owners. It was submitted that the petitioner has derived benefit from the land belonging to the respondents and, therefore, is under a legal and moral obligation to compensate them. It was further argued that the learned District Judge, after taking into consideration comparable instances of sale of neighbouring plots, has rightly determined the market value of the land at ₹350/- per square meter, which according to the respondents, is reasonable and just. In the circumstances, it was

contended that the impugned order does not suffer from any illegality or perversity warranting interference in exercise of writ jurisdiction.

10. The rival submissions advanced by the learned counsel appearing for the respective parties now fall for consideration of this Court. I have heard the learned counsel for the petitioner and the learned counsel for respondent nos.1 to 5 at length. With their able assistance, I have perused the pleadings placed on record, the documents annexed thereto, and the impugned judgment and order passed by the learned Third Additional District Judge, Satara. In order to properly appreciate the legal contentions raised by both sides and to examine the sustainability of the impugned order, it becomes necessary to refer to the statutory scheme governing the field.

11. For the purpose of effective adjudication of the controversy involved in the present petition, and to ascertain the true import and scope of the powers conferred upon the District Court in such matters, it would be apposite to reproduce hereunder Section 330 of the Maharashtra Municipalities Act, 1965, which reads thus:

“330. Determination of damages, compensation, etc.

(1) Save as otherwise expressly provided in this Act, if an agreement is not arrived at with respect to any compensation or damages which are by this Act directed to be paid, the amount and if necessary the apportionment of the same, shall be ascertained and determined by the Council.

(2) Any person who is aggrieved by the amount

of compensation or damages, determined by the Council or the apportionment of such compensation or damages, may, within, one month from the date of receipt by him of an intimation about the compensation or damages or the apportionment thereof determined by the Council, appeal to the District Court against the determination made by the Council.

(3) Any person who is aggrieved by the failure of the Council to determine the amount of compensation or damages or the apportionment thereof, may, give to the Council a notice stating the circumstances of the case and requesting the Council to determine the amount of compensation or damages or the apportionment thereof. If the Council fails so to determine the amount of compensation or damages or the apportionment thereof within a period of one month from the receipt by it of the notice aforesaid, such person may apply to the District Court to determine the amount of compensation or damages or the apportionment thereof.

(4) In cases in which the compensation is claimed in respect of land, the District Court in deciding any appeal or application under subsection (2) or (3) shall follow, as far as may be, the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court;

Provided that-

(a) no application to the Collector for a reference shall be necessary ; and

(b) the Court shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit.

(5) In any case where the compensation is claimed in respect of any land or building, the

Council may after the award has been made by the Council or the District Court, as the case may be, take possession of the land or building, after paying the amount of compensation determined by the Council or the District Court to the party to whom such compensation may be payable. If such party refuses to accept such compensation, or if there is no person competent to alienate the land or building, or if there is any dispute as to the title to the compensation or as to the apportionment of it, the Council shall deposit the amount of the compensation in the District Court.”

12. Upon careful and conjoint reading of sub-sections (1) and (2) of Section 330 of the Maharashtra Municipalities Act, 1965, it becomes evident that the legislative intent underlying the provision is to empower the Municipal Council to determine the amount of compensation payable, where such compensation is required to be paid under the provisions of the Act. Sub-section (1) of Section 330 contemplates a situation where the Council, in the course of its statutory functions, either causes damage to any property or takes possession thereof in accordance with the provisions of the Act, and consequently, quantifies compensation or damages payable in that behalf. Sub-section (2), in turn, provides a remedial mechanism for a person aggrieved by such determination, by conferring upon such person a right to approach the District Court within one month from the date of receipt of intimation of such compensation, damages, or apportionment, as determined by the Council.

13. Adverting to the facts of the present case, it is pertinent to

note that no material has been placed on record by respondent nos.1 to 5 to demonstrate that the compensation claimed by them was one which the Municipal Council was obliged to pay under any express or implied provision of the Maharashtra Municipalities Act, 1965. It is not the case of the respondents that the land in question was acquired by the petitioner in accordance with law, nor has any notification under the Land Acquisition Act, 1894, or any corresponding statutory provision been brought to the notice of this Court. The records indicate that the layout plan submitted by the predecessor-in-title of respondent nos.1 to 5 was duly sanctioned, and the same contained a stipulation that the 80 ft. wide road shall remain as an open road. The said road subsequently came to be incorporated in the Development Plan of the Phaltan Municipal Council. However, in the absence of acquisition proceedings or a statutory mandate for payment of compensation, no obligation can be fastened upon the petitioner-Municipal Council to pay compensation merely because the land has been utilised as a road. The concept of compensating landowners for roads shown in sanctioned layouts must be understood in the light of settled legal principles that such earmarking, if voluntarily done, does not confer an automatic right to compensation unless acquisition or statutory vesting is established.

14. That being said, it is not in dispute that the petitioner, by communication dated 20th June 1988, addressed to respondent no.3, had offered to compensate the owners of the land in question by payment of a nominal sum of ₹1/-. Assuming *arguendo*, and

without concluding that such an offer amounted to a determination under Section 330(1), it still attracts the procedural safeguard under sub-section (2), which mandates that any aggrieved person, if dissatisfied with the amount so offered, must approach the District Court within one month from the date of receipt of such intimation. In the present case, it is evident from the record that respondent no.3 had replied to the said notice in the year 1988 itself. Therefore, the cause of action, if any, for seeking redressal against the compensation offered, arose in the year 1988 itself.

15. Despite such cause of action having arisen in 1988, respondent nos.1 to 5 filed Civil Miscellaneous Application No. 305 of 1992 only on 10th December 1992, i.e., more than four years after the receipt of the communication dated 20th June 1988. There is nothing on record to indicate that any application for condonation of delay was filed, nor does the impugned judgment reflect any consideration of the limitation aspect. In view of the mandatory requirement of filing such an application within one month under Section 330(2), and in absence of any valid explanation for the inordinate delay, I am constrained to hold that the said application was clearly barred by limitation. The learned District Judge, in my respectful view, erred in entertaining the said application on merits and granting relief to the respondents despite the statutory bar.

16. In the light of the foregoing discussion, and considering the factual and legal position as emerging from the record, this Court is of the considered opinion that the impugned judgment and

order dated 8th October 1988 passed by the learned Third Additional District Judge, Satara in Civil Miscellaneous Application No. 305 of 1992, is unsustainable in law and deserves to be quashed and set aside.

17. Accordingly, Rule is made absolute in terms of prayer clause (b) of the petition.

18. It is further directed that the amount of ₹3,75,000/- (Rupees Three Lakhs Seventy-Five Thousand only), deposited by the petitioner pursuant to the interim order dated 17th September 1999 in this court, shall be refunded to the petitioner along with accrued interest, if any.

(AMIT BORKAR, J.)