

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11486 OF 2025

Arshad Asif Kotkar & Ors.

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

Mr.Aharva Dandekar i/b. G. J. Jain for Petitioner.

Dr. Dhruti Kapadia, AGP for Respondent/State.

Mr. Swapnil Patil for Respondent Nos.2 & 3.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 7th OCTOBER 2025

P.C.

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This Petition filed under Article 226 of the Constitution of India prays for the following substantive reliefs:-

“a) Issue a Writ of Certiorari, or other appropriate Writ, Order or Direction calling for the records leading to the issuance of the Impugned Notice dated 31.07.2025 (Exhibit “N” to the Petition), and after going through the legality, validity and propriety of the same, be pleased to quash and set it aside.

b) In the alternate to prayer clause (a), Issue to Respondent Nos. 2 and 3 a Writ of Mandamus or other appropriate a writ, Order or Direction directing them to forthwith withdraw the Impugned Notice dated 31.07.2025.

(c) Issue to Respondent Nos. 2 and 3 a Writ of Mandamus or other appropriate Writ, Order or Direction, directing them to forthwith and in any event within a period of four weeks, pay to the Petitioners compensation for the subject premises and subject plot on the

principles enshrined in the Right to Fair Compensation Act, 2013 and other applicable statutes;

d) Pending the hearing and final disposal of the present Petition, restrain by appropriate orders and direction Respondent Nos. 2 and 3 from taking possession of any part of the subject plot (described at Para 1 of the Petition) or carrying out any road widening exercise thereupon;

e) Grant to the Petitioners ad-interim relief in terms of Prayer clause (d) above;

f) Grant to the Petitioner the costs of the present Petition;

g) Grant to the Petitioners such other and further relief/s as this Hon'ble Court may deem fit in the light of the facts and circumstances of the case.”

3. The facts are not in dispute that the land belonging to the Petitioner was under acquisition by Respondent No.2 Bhiwandi Nizampur City Municipal Corporation. The concerned officer of the said Municipal Corporation is Respondent No.3, namely, Assistant Municipal Commissioner, Ward No.5. There are prior proceeding which had reached this Court in regard to the measurement of the land subject matter of acquisition. Such proceedings came to be disposed of by an order dated 13th June 2024 passed by the co-ordinate Bench of this Court in Writ Petition No. 8308 of 2024 along with other writ petitions. After the joint survey was carried out, the Petitioners were issued notice dated 23th July 2025 calling upon the Petitioner to submit documents in respect of their premises/structures. Such notice was complied and although such documents were submitted, according to the Petitioner a high handed action was resorted by Respondent No. 2 on 31st July 2025 whereby Respondent No.2 Corporation came to the subject plot with bulldozer and other demolition equipments and demolition was undertaken on 31st July 2025 and accordingly the land below the Petitioner's structures was taken over for the purpose of road widening. In these circumstances the Petitioners demanded compensation to which a reply was received from the Municipal Corporation dated 7th August 2025, which is impugned in the present Petition, wherein the Municipal Corporation recorded

that the financial condition of the Corporation is not sound and therefore the Municipal Corporation would not pay monetary compensation but offer TDR. It is in these circumstances that the present Petition has been filed.

4. Mr. Dandekar, the learned Counsel for the Petitioner would submit that the impugned communication is untenable in law, in as much as offering TDR cannot be unilateral and in fact when such high handed action of the demolition of the Petitioners' structure was taken without the procedure in law being followed, the Petitioner would be entitled to not only for monetary compensation but also damages. It is further submitted that the grant of Transfer of Development Rights (TDR) can only be made with the consent of the Petitioners, as it may permissible under the provisions of Section 126 of the MRTP Act read together with Section 108 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and not otherwise.

5. In support of this submission, Mr. Dandekar has placed reliance on the decision of the Full Bench of this Court in the case of **Shree Vinayak Builders & Developers V. State of Maharashtra [2022 SCC OnLine Bom 1562]** as also followed by the Division Bench of this Court in the case of **Purnima Talkies Vs. Chief Officer, Dahanu Nagar Parishad and Others [(2025 SCC OnLine Bom 326)]** as also in the case of **Our Lady Immaculate Conception Church A Public charitable Trust V. Municipal Corporation, Grater Mumbai**. It is a well settled principle of law that there cannot be unilateral foisting of the TDR on the Petitioners and as sought to be done by the impugned order.

6. A Full Bench of this Court in the case of **Shree Vinayak Builders & Developers V. State of Maharashtra (supra)**, this Court in such context has made the following observations:-

17. While concurring with the above proposition, we would like to emphasise that the mode of acquisition of land under Sections 126 (1)(a) and (b) of the MRTP Act is by an 'agreement'. The word agreement connotes offer and acceptance and signifies that the agreement is not an unilateral act but a bilateral act which is concluded with communication of acceptance of the offer. Thus,

acquisition of land reserved for public purpose under Sections 126(1) (a) and (b) cannot be by any unilateral proposal of the acquiring authority to acquire the land with an offer of compensation or FSI/TDR. It is a mutual agreement between the acquiring authority and the landowner whereunder the land is acquired by the authority concerned by agreement either by paying an amount agreed to or by granting, in lieu of any agreed amount, FSI or TDR against the area of land surrendered free of cost and free of all encumbrances. That being so, the modes of acquisition of land under Sections 126(1)(a) and (b) of the MRTP Act, can be resorted to only when there is a consensus between the parties; when the parties are ad idem and not when there is dissension; not when they are at variance. That means these modes of acquisition are essentially at the choice of either of the parties and not just the acquiring authority and are taken to their logical end when the consensus is arrived at between these parties. In the absence of such concord, the only option available to the acquiring authority is to take recourse to Section 126 (1)(c) of the Act and make an application to the State Government under the provisions 2013 Act.

27. Thus the contract would be legal and binding only when the terms are settled and the contract is concluded. Of course, whether there is any concluded contract or not would be a question of fact to be determined in the facts and circumstances of each case. It then follows that any application made by a landowner or lessee for grant of FSI or TDR or any approval given by the acquiring authority to such an application would have to be examined and considered on the touchstone of these requirements of a contract. Upon such examination, if it is found that any of these requirements is missing, there would be no concluded contract between the parties and the landowner or lessee would be at liberty to withdraw his application for grant of FSI/TDR.

28. While finding out if there is a concluded contract between the parties or not, in case of an agreement under Section 126(1)(a), not much difficulty would be faced as the requirement thereunder is of plain and clear agreement whereby the land is acquired by paying an amount agreed to. But determination of question as regards agreement under Section 126(1)(b) requires examination of acts and conduct of parties and an assurance that they are in consonance with the requirements of Section 126(1)(b) of the MRTP Act.

34. We are, thus, of the view that once there is a concluded contract between the landowner or the lessee and the acquiring authority as regards grant of monetary compensation or grant of TDR/FSI in lieu of compensation, the landowner or the lessee cannot withdraw his request and thereby refuse to surrender the land. He can withdraw his such request only if there is no concluded contract between the parties. What would be considered to be a concluded contract

between the parties, would be a question of fact to be determined by considering all the relevant facts and circumstances of each case.

41. It thus well-settled that the step taken under the aforesaid section should be an irreversible step, which will culminate in acquisition of land. Hence, mere grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation cannot be treated as a step for acquisition of land, but it is the conclusion of a contract regarding acquisition of land by granting FSI/TDR which constitutes a step for acquisition of land. Surrender of land with a view to obtaining FSI/TDR can be a step to commence acquisition proceedings, if it is something by which conclusion of contract occurs. There may be, however, be cases in which by acts and conduct of parties contract in terms of Section 126(1)(b) of the MRTP Act is concluded even before surrender of land and the latter act is only consequential to contract between the parties. Ultimately, it all boils down to the stage when the contract between parties concludes."

7. Further, in the case of **Purnima Talkies Vs. Chief Officer, Dahanu Nagar Parishad and Others (supra)**, a Division Bench of this Court had made the following observations:-

"32. We would now gainfully advert to the judgment of a coordinate Bench of this Court in *Our Lady of Immaculate Conception Church A Public Charitable Trust case*, wherein the Court in similar circumstances made the following observations. (SCC OnLine Bom para 10)

"10. A bare reading of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 would indicate that a land reserved for public purpose can either be acquired by an agreement by paying an amount or in lieu of such amount, the TDR or FSI can be granted to the claimant. However, the TDR or FSI can only be granted in lieu of the amount agreed. As such, it is necessary that for TDR or FSI to be granted to the claimant, there has to be basic agreement between the parties. The TDR/FSI can only be granted in lieu of the amount agreed. In the absence of agreement between the parties, the reserved land cannot be acquired under clause (a) or clause (b) of Section 126(1). If there is no agreement, the logical corollary to it is that, the land reserved for public purpose has to be subjected to acquisition as per the applicable law, namely, to be acquired under Section 126(1) (c). As such, we have no hesitation to hold that the land of the petitioner, in absence of any agreement between the petitioner and the planning authority/development authority, can be acquired only under the 2013 Act for the purposes of implementation of the regional plan for constructing public garden/park on the land of the petitioner."

The above judgment has duly considered and applied the decision of the Full Bench supra, reiterating that if there is no agreement between the owner of the land and the planning authority, the logical corollary would be that the land acquisition ought to be undertaken in accordance with Section 126(1)(c) of the MRTTP Act. Resultantly, in absence of an agreement between the petitioner and the planning/development authority, the subject land could have been acquired only under the 2013 Act. Juxtaposing the said decision to the given facts, in our view, the above judgment would squarely apply to the present case.

33. While considering the submissions of the petitioner to the effect that the entire process relating to acquisition of the subject land was arbitrary, mechanical and high handed we would refer to the seven guiding principles laid down by the Supreme Court in *Kolkata Municipal Corpn. v. Bimal Kumar Shah*, which ought to be followed by the authorities, prior to land acquisition, for public purpose. These are summarised as under:

- A. the right to notice,
- B. the right to be heard,
- C. the right to a reasoned decision,
- D. the duty to acquire only for public purpose,
- E. the right of restitution or fair compensation,
- F. the right to an efficient and expeditious process, and
- G. the right of conclusion.

34. It is pertinent to note that such edict of law more particularly the right of restitution or grant of fair compensation to the petitioner is *ex facie* breached and or infringed, violated by the respondents. In this context, the Supreme Court has duly recognised that right to hold and enjoy property is an Integral part of the constitutional right under Article 300-A. Any deprivation or extinguishment of such right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or such other measures. Compensation has always been considered to be an integral part of the acquisition process. In the present case, the only mode and manner of restitution of the petitioner's position, whose compound wall was demolished, in the absence of the respondents following due process of law as prescribed under Section 126 of the MRTTP Act, would be by payment of compensation, to be determined and paid under the provisions of the 2013 Act. Infact, courts have taken a consistent view that such compensation is not merely necessary but also that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

35. At this juncture, we consider it appropriate to also refer to the settled legal proposition as enunciated by the court of Chancery in *Taylor v. Taylor* that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act. The respondents clearly overlooked said settled legal principles in the case.

36. Thus, in the given facts and circumstances, we are constrained to observe that instead of taking recourse to lawful acquisition of land, the respondents in the present case have gone ahead to demolish the compound wall on the subject land of the petitioner that too without payment of any compensation to the petitioner. Thus, the respondents have acted contrary to and in the teeth of the provisions of law as discussed above, which has also infringed the constitutional right of the petitioner guaranteed under Article 300-A.”

8. We have perused the reply affidavit. On such backdrop, we have considered the reply affidavit filed by one Mr. Anmol Sagar, Administrator and Commissioner of Bhiwandi Nizampur City Municipal Corporation of Respondent No.2, in which payment of compensation to the Petitioner is not disputed when in paragraph No. 22, the following statement is made:

“At the same time, the Respondent No. 2 recognises that mere reliance on financial incapacity cannot justify non-compliance with constitutional and statutory obligations. The Respondent No. 2 is therefore not pressing any such defence and leaves it to the wisdom of this Hon'ble Court to mould appropriate relief.”

9. In this view of the matter and considering the settled principle of law as laid down by the decisions as discussed hereinabove, we are of the opinion that the impugned communication dated 31st July 2025 cannot be sustained and the same is required to be quashed and set aside as also the Petitioner would be entitled to the payment of compensation. We accordingly allow this Petition in terms of prayer clauses (a) and (c).

10. The amount of compensation be disbursed in favour of the Petitioner within a period of ten weeks from the date a copy of this order is made available. All rights and contentions in regard to the computation of the compensation are expressly kept open.

11. The Petition is disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)