

Mr. Vivek M. Salunkhe a/w. Mr. Akshay Petkar, Mr. Vivek Punjabi and
Mr. Priyansh R. Jain for petitioner.

Smt. M. S. Bane, AGP for respondent Nos.1 to 3-State.

Mr. Subhash V. Gutte for respondent Nos.4 to 6.

P.C. :

• Heard learned counsel for the parties.

2. By this petition, the petitioner is seeking a writ, order or direction, directing the respondents to complete the acquisition proceedings in respect of 9700 sq. mtrs land bearing Survey No.179/3, Nashik, District Nashik (hereinafter referred to as the subject land), belonging to the petitioner and to declare the final award. A direction is also sought against respondent No.4-Nashik Municipal Corporation (hereinafter referred to as the Corporation), to deposit the amount towards compensation with the concerned land acquisition officer, so that the acquisition proceedings can be taken up and brought to a logical conclusion.

3. The learned counsel for the petitioner submitted that in the present case, the subject land was affected by 30 meter Development

Plan Road (hereinafter referred to as the DP road), since the year 1993. By referring to the contents of the petition and documents filed therewith, it was submitted that the necessary acquisition proceedings for the purpose of construction of the said road, were undertaken and appropriate proposals were moved in that regard. By referring to the contents of the reply affidavit filed on behalf of respondent No.2-District Collector, Nashik and respondent No.3-Deputy Collector, Nashik, it was submitted that admittedly, not only were such proposals moved, but further concrete steps were taken in that regard. Joint measurement was conducted and in the year 2010 itself, request was made to respondent No.4-Corporation to deposit an amount, pursuant to which the said respondent had deposited the amount of ₹ 2,65,20,000/-. It was submitted that appropriate notifications under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the Land Acquisition Act) and Section 126(4) of the Maharashtra Regional and Town Planning Act, were issued in the year 2011 and it was expected that further steps would be taken expeditiously to complete the acquisition process and to pay appropriate compensation to the petitioner.

4. However, it is submitted that appropriate steps were not taken and in the interregnum, the Land Acquisition Act was repealed and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013), was enacted and brought into force with effect from 01.01.2014. Even thereafter, a number of communications were addressed, indicating that the acquisition proceeding was to be undertaken in right earnest, but for the failure on the part of respondent No.4-Corporation to deposit the amount. It was submitted that the tenor of the reply affidavit filed on behalf of

respondent Nos.2 and 3, clearly indicates that upon 30% of the demanded amount being deposited, appropriate notification under Section 19 of the Act of 2013, can be issued and acquisition process can be completed. It is submitted that in the face of the contents of the aforesaid reply affidavit itself, the petition deserves to be allowed without further arguments.

5. But, it is submitted that respondent No.4-Corporation has, for the first time in all these years, taken a novel stand by referring to proceedings under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the ULC Act), to claim that certain proceedings were undertaken and that unless respondent-State authorities provide further detailed information with regard to the same, the instant petition cannot be considered. In that regard, reference is made to the an order dated 28.01.1998 passed by the competent authority under Section 8(4) of the ULC Act. It is submitted that even if the said order is to be taken into account, the contents thereof support the petitioner, inasmuch as the subject land would be covered under the retainable portion of land, thereby indicating that respondent No.4-Corporation is simply trying to postpone the inevitable, by referring to the provisions under the ULC Act. On this basis, it was submitted that this Court may consider allowing the petition.

6. The learned AGP appearing on behalf of respondent Nos.1 to 3 relied upon the contents of the aforesaid reply affidavit filed on behalf of respondent Nos.2 and 3 and submitted that appropriate orders may be passed in the present case.

7. The learned counsel appearing on behalf of respondent No.4-Corporation also relied upon the reply affidavit filed on behalf of the said respondents, particularly paragraph Nos.6 to 10 thereof, to contend that unless there was clarity with regard to the proceedings under the ULC Act, relief cannot be granted in the present petition.

8. We have considered the rival submissions in the light of the documents placed on record. We have also perused the aforementioned reply affidavit filed on behalf of respondent Nos.2 and 3. It would be appropriate to refer to its contents. The relevant paragraphs of the same read as follows:

- “6. I say that, the Deputy Superintendent Land Records, Nashik has submitted Joint Measurement report to this office on 07/09/2010. Thereafter, through the letter of this office dated 03/03/2010, Nashik Municipal Corporation has informed about submitting the revised proposal as per joint Measurement report to this office. Revised order 52-A was issued on 02/08/2011 as per joint Measurement report. Hereto annexed and marked as Exhibit R-3 is a copy of letter's dated 07/09/2010, 03/03/2010 & 02/08/2011.
7. I say that, As per the letter of this office dated 07/01/2010 Nashik Municipal Corporation was requested to deposit 1/2 amount, and as per letter dated 03/06/2011. Nashik Municipal Corporation deposited amount of Rs.2,65,20,000/- to this office. Hereto annexed and marked as Exhibit R-4 is a copy of letter's dated 07/01/2010 & 03/06/2011.
8. I say that, Accordingly, in the said proposal, under the old Land Acquisition Act 1894 and Section 126(4) of the MRTP Act, a notification under Section 6 was published on 27/09/2011 under the signature of Hon'ble District Magistrate, Nashik. Published in Maharashtra Government Gazette dated 20/10/2011. The said notification was also

published in two local newspapers. Hereto annexed and marked as Exhibit R-5 is copy of notification dated 27/09/2011 & Gazette dated 20/10/2011. I crave leave to refer to and rely upon newspaper publication as & when produced.

9. I say and submit that, After that, on 23/12/2011, a notice was issued to the concerned landowners under Section 9, (1) and (2) of the Land Acquisition Act 1894 and Section 9 (3) and (4) of Land Acquisition Act 1894. Pursuant to the said notice, objection applications received from 1) Mr. Narayansa Vishwanathsa Kshatriya 2) Mr. Chandrakant Madhavrao Vidhate and others were sent to Nashik Municipal Corporation for there opinion on the draft proposal. Hereto annexed and marked as Exhibit R-6 is copy of notice dated 23/12/2011 & letter dated 29/07/2015.
10. I say that, thereafter, as the Land Acquisition Act 1894 was abolished, Nashik Municipal Corporation was informed regarding the submission of a revised proposal as per the Land Acquisition Act 2013 vide letters dated 18/12/2018, 16/01/2020, 19/10/2020. Out of the 2,65,20,000/- deposited land acquisition amount Rs. 1,92,41,986/- transferred in urgent Land Acquisition proposal no. 4/09. And remaining amount of Rs.72,78,014/- has been transferred in urgent Land Acquisition proposal no.46/09 so there is no balance amount in the said proposal. The said transfer was made as the written request by any office to Nashik Municipal Corporation. I crave leave to refer to and rely upon letter of BMC as & when produced. Therefore, no award was declared in proposal no. 14/08. Hereto annexed and marked as Exhibit R-7 is a copy of letter's dated 18/12/2018, 16/01/2020 & 19/10/2020.
11. I say that, The Deputy Collector, Land Acquisition No.2, demanded the 30% amount to commissioner nashik municipal corporation letter's dated 17/05/2022, 07/07/2022, 05/01/2023, 10/05/2023, 29/12/2023 & 29/05/2024 Accordingly. Hereto annexed and marked as Exhibit

R-8 (Colly) copies of letter's dated 17/05/2022, 07/07/2022, 05/01/2023, 10/05/2023, 29/12/2023 & 29/05/2024.

12. I say that, after receiving 30% amount of award, then according to the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, I will go for notification under section 19 and after receiving total amount will complete the land acquisition procedure of the said land, expeditiously.

In view of the above facts & circumstances of the case, stated herein above an appropriate order maybe passed in the interest of justice.”

9. A perusal of the above-quoted portion of the reply affidavit of the said respondents makes it abundantly clear that this Court need not consider the assertions made in the petition, to examine as to whether the contents are correct or not. Virtually, all the assertions made in the petition are admitted by the said respondents in the above-quoted portion of their reply affidavit.

10. Therefore, it is clear that the petitioner is justified in contending that the land acquisition proceedings were indeed triggered and there was no reason why they remained in abeyance for all these years. The reservation since the year 1993 for the DP road is undisputed and despite proposals being moved from time to time and respondent No.4-Corporation being asked to deposit the necessary amounts, appropriate steps have not been taken, as a result of which the petitioner is continually being deprived of enjoying the subject property in accordance with law. It is also not adequately compensated for such deprivation of enjoyment of the subject land, *inter alia*, due to reservation for DP road.

11. The only reason pressed before this Court on behalf of respondent No.4-Corporation while disputing the claims made in the petition, pertains to the proceedings under the ULC Act. The said respondent, in its reply affidavit, claimed that there was lack of clarity with regard to the proceedings under the ULC Act, particularly as to what final action was taken in pursuance of the order dated 28.01.1998, placed on record as Annexure P1 to the reply affidavit. It was also sought to be indicated that the petitioner could avail Transferable Development Rights (TDR) in terms of Government Resolution dated 01.12.2015, applicable in cases concerning lands covered under the ULC Act.

12. We find substance in the contention raised on behalf of the petitioner that even if the contents of the order dated 28.01.1998 are to be taken into consideration, the subject land would be covered under the retainable component and therefore, there is no question of the said order or any alleged 'final act' pursuant to the said order, coming in the way of the petitioner in seeking relief, as per the prayers made in the present petition.

13. It appears that respondent No.4-Corporation has been recalcitrant in depositing the amount inspite of repeated requests by respondent No.3-Deputy Collector, Nashik, due to which the proceedings pertaining to acquisition of land have remained in limbo, while in the interregnum, continually depriving the petitioner of enjoyment of subject land, due to reservation of DP road, operating since the year 1993. It is also clear that the small amount deposited by the Corporation was utilized in other land acquisition cases.

14. The petitioner has made out a case in its favour for a specific direction to the respondents to take appropriate steps expeditiously for undertaking land acquisition proceedings, now in accordance with the Act of 2013, so that the petitioner is adequately compensated in respect of the subject land. Even if we go by the contents of paragraph No.12 of the above-quoted portion of the reply affidavit filed on behalf of respondent Nos.2 and 3, at the outset, respondent No.4-Corporation will have to deposit 30% of the amount, so that appropriate steps can be taken under Section 19 of the Act of 2013, eventually leading to completion of acquisition proceedings.

15. In view of the above, the writ petition is allowed in terms of prayer clause (a). As regards prayer clause (b), respondent No.4-Corporation is directed to deposit at the earliest the amount as demanded by respondent No.3-Deputy Collector, Nashik, from time to time, including communication dated 25.06.2021. Accordingly, respondent No.3 shall proceed to take necessary steps under Section 19 of the Act of 2013, and complete the process of acquisition and render the award within a period of 9 months from today.

16. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.)

(MANISH PITALE, J.)