

(2022) 11 BOM CK 0082
In the Bombay High Court
Case No : Writ Petition No.2912 Of 2021

Municipal Council Bhusawal	Vs	APPELLANT
Devesh Ramchandra Yawalkar And Others		RESPONDENT

Date of Decision : 22-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965
— Section 330(3)

Citation : (2022) 11 BOM CK 0082

Hon'ble Judges : Nitin B. Suryawanshi, J

Bench : Single Bench

Advocate : N.B.Khandare, B.S.Deshmukh, S. N. Kendre, A. B. Kale

Final Decision : Dismissed

Judgement

Nitin B. Suryawanshi, J

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

2. This petition, filed under Article 226 and 227 of the Constitution of India, takes exception to the judgment and order dated 23rd October, 2019 passed by the learned District Judge-1, Bhusawal in Miscellaneous Civil Application No. 35 of 2017.

3. Facts in brief are as follows:

The respondents filed Miscellaneous Civil Applications No. 65 of 2004, 66 of 2004, 67 of 2004 and 68 of 2004 under section 330 (3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter for short "the said Act") seeking compensation for their lands, acquired by the petitioner from survey Nos.194/1 and 196 (part) of village Kandari, Taluka – Bhusawal, District – Jalgaon. The respondents claimed that the said lands were acquired for the purpose of Development Plan Roads as well as

open spaces and though promised, the petitioner failed to pass Award and pay compensation to the respondents. The respondents issued notice under section 330 (3) of the said Act on 31st December, 2002, which was served on the petitioner and respondent No.8 Collector and respondent No.9 Director of Town Planning. However, no compensation was paid and while acquiring the lands of the respondents, the provisions of the said Act were not followed. Hence, the applications were filed seeking compensation, rent, solatium etc.

4. The petitioner opposed the applications, denying the claim of the respondents and stating that layout of survey Nos. 194/1 and 196 (part) is sanctioned by the Collector in which 3183.90 square meter area is kept under roads and 1270.90 square meter area is kept as open space. The open space area is handed over by the respondents, to the petitioner. The respondents have also taken advantage of the roads in the sanctioned layout, as approach roads to their sanctioned layout and, therefore, there is no question of paying compensation to the respondents.

5. The District Court allowed the Miscellaneous Civil Applications and awarded nominal compensation @ Rs.10 per square foot, for the area acquired for 24 meter wide DP road and @ Rs.300/- per square foot for the area acquired for open spaces.

The decision of the District Court was challenged by the petitioner, by filing writ petitions No. 4460 of 2015, 4734 of 2015, 4771 of 2015 and 4779 of 2015. The respondents also challenged the decision of the District Court awarding nominal compensation @ Rs.10/- per square foot for the area acquired for 24 meter wide DP road, by filing writ petitions No. 2554 of 2016 and 2560 of 2016.

6. This Court, by common order dated 25th July, 2017, allowed Writ Petitions No. 4771 of 2015 and 4779 of 2015, to the extent of compensation awarded for open spaces and set aside the orders impugned therein.

7. By allowing Writ Petitions No. 2554 of 2016 and 2560 of 2016 with Writ Petitions No. 4660 of 2015 and 4734 of 2015, this Court set aside the judgment of the District Court, by which compensation @ Rs.10/- per square foot was awarded with regard to 24 meter wide road as per the DP plan and remanded Miscellaneous Civil Applications No. 65 of 2004 and 67 of 2004 to the District Court for hearing afresh, to the extent of quantifying the compensation for the lands acquired for laying 24 meter wide road under DP plan, in accordance with law.

8. After the remand, Miscellaneous Civil Application No. 65 of 2004 was re-numbered as application No. 35 of 2017. By the judgment and order dated 23rd October, 2019, the District Court allowed the application 35 of 2017 and awarded compensation for 4217.55 square meter area used for roads under the DP plan @ Rs.2500/- per square meter, 30% solatium and 12 % component. Further, interest @ 9% p.a. for the period from 1st November, 1999 and @ 15% p.a. from 1st November, 2000 till payment of compensation is awarded. This judgment is impugned in the present petition.

9. Heard learned advocate for the petitioner. Learned Assistant Government Pleader and learned advocate for respondents No.1, 2A to 2C, 3, 5 and 6, at length. Perused the grounds raised in the writ petition and the record and proceedings.

10. Learned advocate for the petitioner assailed the impugned judgment on various grounds. He submits that since the DP road is already constructed on the acquired land, section 330 (3) of the said Act would not apply in the present case, therefore, the application filed by the respondents under section 330 (3) of the said Act, was not maintainable. He submits that the procedure in respect of the Development Plan is given under the Maharashtra Regional Town Planning Act and the respondents ought to have filed claim under that enactment. Since NA permission is obtained by the respondents and layout submitted by them is sanctioned and as the roads are shown in the said layout, the respondents are not entitled to compensation for the roads shown in the sanctioned layout.

He further submits that the District Court erred in granting relief beyond the claim, which is not permissible in law. According to him, the respondents claimed compensation of 1392 square meter area, whereas the District Court has awarded compensation for 4217.55 square meter area, which is beyond the claim. Hence, the District Court has exceeded its jurisdiction.

In support of this submission, he relied on "National Textile Corporation Limited V/s Nareshekumar Badrikumar Jagad and Others" (2011) 12 SCC 695 and "Bachhaj Nahar V/s Nilima Mandal and Another" (2008) 17 SCC 491.

Further submission is that excessive compensation is awarded. The District Court has erroneously appreciated the sale instances, which should not have been relied on while awarding the compensation to the respondents. According to him, the determination of compensation is contrary to the judgments of the Supreme Court and High Court. The agreements of sale relied on by the respondents are from Bhusawal city whereas the acquired land is from village Kandari, therefore, they were not of the comparable area and this aspect is ignored and these agreements are wrongly relied on by the District Court. He, therefore, submits that the impugned Award cannot be sustained and the same is liable to be quashed and set aside, by allowing the writ petition.

In support of his submissions, he relied on

1. "Syed And Company and Others V/s State of Jammu and Kashmir and Others" 1995 supp (4) SCC 422
2. "Digamber and Others V/s State of Maharashtra and Others" (2013) 14 SCC 406
3. "Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) By LRs and Others V/s Special Land Acquisition Officer and Others" (2012) 7 SCC 595

11. Per contra, learned advocate for the respondents, by placing reliance on the

decision of this Court in Writ Petition No. 2554 of 2016 (Devesh Ramchandra Yawalkar and Others V/s Municipal Council Bhusawal and Others) filed by the respondents in the earlier round of litigation, submits that it is held by this Court that compensation of DP road needs to be granted. This judgment is not challenged by the petitioner and, therefore, the petitioner cannot now claim that no compensation is payable for the area acquired for the DP road. He further submits that Maharashtra Regional and Town Planning Act is not applicable to the facts of the present case, it only lays down the procedure to be followed by the planning authority in the city and the MRTP Act has nothing do with the compensation. He submits that under section 330 (3) of the said Act, the District Court is competent to entertain application for compensation. He further submits that initially Miscellaneous Civil Application No. 65 of 2004 was filed, which is renumbered as Miscellaneous Civil Application No. 35 of 2017 after remand of the matter by this Court. He submits that there were total four Miscellaneous Civil Applications filed initially, bearing No.65 of 2004, 66 of 2004, 67 of 2004 and 68 of 2004. He further points out that the decision of this Court in the earlier round of litigation, passed in Writ Petition No. 2554 of 2016 and connected writ petitions, which were filed by the respondents challenging judgments in Civil Miscellaneous Applications, is not challenged by the petitioner.

12. He further submits that it is not contended by the petitioner that they have not acquired total area of 4217.55 square meter for construction of roads. He, therefore, submits that there is no substance in the contention of the petitioner that relief is granted to the respondents beyond their pleadings. He submits that there is no merit in the writ petition and the petition is liable to be dismissed. In support of his submissions, he relies on the decision in writ petition No.2554 of 2016 and connected matters, "Sadashiv Madhav Shelke V/s State of Maharashtra" 2019 (4) Mh.L.J. 643 and "K. V. Shiraz V/s Binni Emmatty" 2015 (12) SCC 39.

13. Learned Assistant Government Pleader submits that appropriate orders may be passed.

14. The challenge of the petitioner that the proceedings filed by the respondents under section 330 (3) of the said Act are not tenable, is liable to be rejected at the threshold. Admittedly, the petitioner, in earlier round of litigation, had challenged the orders passed by the District Court in favour of the respondents, thereby awarding compensation to the respondents in Miscellaneous Civil Applications No. 65 of 2004, 66 of 2004, 67 of 2004 and 68 of 2004 filed under section 330 (3) of the said Act, for open space as well as for the roads. This Court set aside the order of awarding of nominal compensation @ Rs.10/- per square foot for the land acquired for DP roads and remanded the matter back to the District Court with following observations :

"7. The claimants are claiming compensation as a matter of right and it is not that the council would oblige them by making payment of compensation. If a specific right is asserted, the Court is expected to apply the law and arrive at a

proper conclusion, so as to ensure that the claimant who has lost his land, is suitably compensated, keeping in view the price/value of the land at issue.”

“8. The proceedings in these petitions being Miscellaneous Civil Applications No. 65 and 67 are remanded back to the Court of the learned District Judge – IV at Jalgaon for a hearing afresh to the extent of quantifying the compensation in accordance with law for the land acquired for laying the 24 M wide road under DP plan.”

15. Admittedly, this decision is not challenged by the petitioner and hence it has attained finality.

16. In unreported decision of Division Bench of this Court in Writ Petition No. 481 of 2006 (Coram : Smt. Nishita Mhatre and M. T. Joshi, JJ), and in the decision of the Single Bench of this Court in Sadashiv Madhav Shelke” (supra), it is held that for the land acquired by the Municipal Corporation for the purpose of development plan road, compensation has to be paid. These decisions support the case of the respondents.

17. In view of the aforesaid, the argument of the petitioner that no compensation is payable for the portion of land acquired for development plan road and since the roads are shown in the Development Plan, the respondents are not entitled for compensation, is unacceptable.

18. Section 330 (3) of the said Act provides remedy of approaching District Court for determination of the amount of compensation or damages to the aggrieved person, whose land is acquired. Admittedly, the respondents issued notice under section 330 (3) of the said Act to the petitioner, seeking compensation for the acquired land, but no compensation is paid to the respondents. In this view of the matter, there is no substance in the contention of the petitioner that proceedings filed by the respondents under section 330 (3) of the said Act, were not tenable.

19. The next ground of challenge of the petitioner that the District Court has granted relief beyond the pleadings, as in Miscellaneous Civil Application No. 35 of 2017, compensation for 1392 square meter area was sought, however, the District Court has granted compensation for 4217.55 square meter area, is also unacceptable in the peculiar facts of the present case.

20. On the basis of record and evidence led before it, the District Court has held that total area of 4217.55 square meter out of survey No. 194/1 and 196 (part) has been acquired for the purpose of Development Plan Road. It is held that the area of 1034 and 3183.55 square meter has been acquired for the said Development Project roads and since 1st November, 1999, those lands have been acquired for the public purpose and road prepared thereon is a public road.

21. In the memo of the writ petition, the petitioner has made following averments.

"That a miscellaneous application under section 330 (3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial

Townships Act, 1965 was filed by the present respondents no.1 to 6 claiming determination of amount of compensation solatium and other benefits and or damages towards land admeasuring 4217.55 Sq. Mtr. For purpose of development plan road from survey no. 194/1 and 196 of Kandari falling within the local limits of Municipal Council Bhusawal".

..... The respondents have filed three Misc. Civil Application for getting compensation for 24 meter road, 12 meter road and open space respectively and the compensation claim regarding open space was withdrawn before this Hon'ble Court."

22. From the above pleadings and from the grounds raised in the petition, it is clear that the petitioner has nowhere pleaded and / or claimed that, it has not acquired 4217.55 square meter area of the respondents for construction of road. If the petitioner has acquired the said area for construction of road, the respondents cannot be deprived of compensation of the said area and in my opinion, the District Court has rightly granted compensation for the said area.

23. Strong reliance is placed by the petitioner on "National Textile Corporation Limited", "Syed And Company and Others" and "Bachhaj Nahar" (supra), in support of the argument that the District Court has granted claim of the respondents beyond pleadings. These rulings are in respect of civil suit. It is held by the Hon'ble Apex Court that without pleadings and an opportunity of hearing to the defendant, no amount of evidence can be looked into to grant any relief. It is observed:

"When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief it will lead to miscarriage of justice.

"It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings."

24. In the present case, the respondents claimed compensation by filing proceedings under section 330 (3) of the said Act and it was not a civil suit filed under the Code of Civil Procedure. As noted supra, the petitioner has neither pleaded nor raised any ground that it has not acquired 4217.55 square meter area belonging to the respondents, for constructions of roads. In this view of the matter, the ratio in these citations cannot be made applicable to the present case.

25. In "Narendra and Others V/s State of U.P." (2017) 9 SCC 426 the Hon'ble Apex Court has held that, strict rules of pleadings are not applicable to the proceedings filed seeking compensation for land acquisition and rendering substantial justice to the parties has to be the paramount consideration. In this view of the matter, the argument of the petitioner that the District Court granted

relief beyond pleadings, is liable to be rejected.

26. Another ground of challenge of the petitioner is that the District Court has wrongly determined the compensation and has awarded excessive compensation. It is submitted that the determination of compensation by the District Court is contrary to the decisions of the Supreme Court and this Court and the sale instances relied upon by the respondents, in support of their claim, are not of the comparable area and they ought not to have been relied upon by the District Court.

27. It is a matter of record that the layout of the respondents was sanctioned on 13th May, 1991 and NA permission was granted to them on 3rd September, 1991. The District Court has observed that the acquired property has great NA potential. It is further held that the acquired land is nearer to National Highway No.6 and Central Railway, Bhusawal Junction. Now a days village Kandari is totally adjacent to Bhusawal city and, therefore, highest valuation of acquired area is required to be calculated.

28. In support of their claim, the respondents have brought on record two agreements i.e. Exhibit-15 and Exhibit-16. One is in respect of plot No.6 out of land survey No. 130/1/2 of Bhusawal city, in which 150 square meter plot is sold for Rs.3,60,000/- on 18 th July, 2000. Second agreement is in respect of plot No.4 out of land survey No. 130/1/3, admeasuring 138.42 square meter for Rs.3,50,000/- on 21st June, 2000. Both these agreements are of the plots, which are less than 150 square meter and both the plots are situated in Bhusawal city.

29. The petitioner has also brought on record copies of two sale deeds i.e. Exhibits-38 and 39, wherein the rate of plots is Rs.240/- per square meter and Rs.205/- per square meter respectively, wherein market value of the plots is Rs.2529/- per square meter and Rs.2400/- per square meter. The District Court, therefore, awarded compensation @ Rs.2500/- per square meter. The District Court, by relying on the ratio in "Mehrawal Khewaji Trust (Regd) V/s State of Punjab" (2002 AIR SCW 2822) and applying the principle that when different sale instances showing different market rates are placed before the Court, then higher sale instance is required to be taken into account for determination of market rate of the landed property, has accepted the higher sale instance.

30. While determining the compensation @ Rs.2500/- per square meter, the District Court has also taken into consideration the fact that in Miscellaneous Civil Application No.66 of 2004, in respect of the acquired land out of land survey No. 194/1 and 196 (part) of village Kandari, Taluka – Bhusawal, District – Jalgaon, rate of Rs.300/- per square foot for 1271 square meter land is granted on 4th October, 2013. Per square meter rate of 2171 square meter area @ Rs.300/- per square foot, comes to Rs.3228/- Therefore, the District Court has granted compensation @ Rs.2500/- per square meter to the respondents, which in the facts of the present case appears to be reasonable, just and proper.

31. The decisions in "Digamber and Others" and "Sabhia Mohammed Yusuf Abdul

Hamid Mulla (Dead) by LRs and Others” (supra) are on the point of determination of market value. It is held that -

“It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

- (i) Existing geographical situation of the land.
- (ii) Existing use of the land
- (iii) Already available advantages, like proximity to National or State Highway or road and/or developed area.
- (iv) Market value of other land situated in the same locality/ village/area or adjacent or very near the acquired land.”

These are the settled principles which are required to be taken into consideration while determining the market value. In the case in hand, I am of the opinion that the District Court has rightly considered these principles and has awarded appropriate compensation.

32. It is settled legal position that the jurisdiction of the High Court to issue writ of certiorari is a supervisory jurisdiction. In “K. V. Shiraz” (supra) the Apex Court has held that - “in exercise of power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the court or tribunal only when there has been a patent perversity in the orders of the tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted.”

None of the grounds mentioned in the aforesaid ratio, is made out by the petitioner in the present case.

33. The District Court has passed a well reasoned order, on the basis of record, which is not liable to be interfered with in the extraordinary writ jurisdiction. The writ petition being devoid of any substance, is dismissed. Rule discharged. No costs.