

(2015) 07 BOM CK 0362

In the Bombay High Court

Case No : Writ Petition No. 2208 of 2014

Prem Daulatram Ahuja and Others

APPELLANT

Vs

Deputy Commissioner, Land Acquisition and Administration
Office, Pune Municipal Corporation and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 23, 4(1), 52
Maharashtra Regional and Town Planning Act, 1966 — Section 126
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 28, 29, 30

Citation : (2015) 07 BOM CK 0362

Hon'ble Judges : Abhay Shreeniwas Oka and Revati Mohite Dere, JJ.

Bench : Division Bench

Advocate : Prafulla B. Shah i/b Kayval P. Shah, for the Appellant; Rajdeep Suresh Khadapkar, for the Respondent

Judgement

Abhay Shreeniwas Oka, J.—On 13th April, 2015 an order was passed by this Court directing that the petition shall be disposed of finally at the stage of admission.

2. The petitioners claim to be the owner of the land, more particularly described in paragraph 2.1 of the petition. On 2nd April, 2004, a Resolution was passed by the General Body of the Pune Municipal Corporation. The said Resolution was as regards applying Section 205 of the Maharashtra Municipal Corporation Act, 1949 (for short "the MMC Act") to the road passing through the land of the petitioners set out in paragraph 2.1 of the petition. It is pointed out in the petition that an order was passed by the Commissioner of the said Corporation under Section 205 of the MMC Act prescribing regular line of road having a width of 9.14 mtrs running through the said land of the petitioners

3. The petitioners filed Writ Petition No. 5027 of 2011 in this Court. There were two substantive prayers made in the said petition. The prayer clauses (a) and (b)

of the said petition reads thus:--

"a) By a suitable writ, order or direction this Hon"ble Court be pleased to quash and set aside the letter/order/decision of the respondent No. 1 dated 2/6/2011 and thereafter be pleased to direct the respondents to grant TDR to the petitioners as per the provisions of DC Rules, if the respondents want to acquire 30 ft. internal private road admeasuring 4214 Sq.Mtrs passing through Survey No. 206/3, Lohgaon, from Nico Garden to Viman Nagar Road, Pune Taluka Haveli, District Pune; or

b) By a suitable writ, order or direction this Hon"ble Court be pleased to direct the respondents to pay compensation to the petitioners against the acquisition of 30 ft. internal private road admeasuring 4214 Sq.Mtrs, passing through Survey No. 206/3, Lohgaon, from Nico Garden to Viman Nagar Road, Pune Taluka Haveli, Dist. Pune as per market rate with all benefits under the Land Acquisition Act."

4. The said petition was contested by the Pune Municipal Corporation by filing an affidavit-in-reply of Shri Prashant Madhukar Wagmare, its City Engineer. It was contended in the said reply that Transferable Development Rights (TDR) in respect of the road cannot be granted. In paragraph 6 of the said reply, it was stated that the compensation will be duly paid to the petitioners after following the procedure under Sections 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). It will be necessary to make a reference to the Agreement dated 20th April, 2007 which is relied upon by the petitioners executed by and between the Pune Municipal Corporation and one Prakash K. Lodha and Another. The said agreement shows that the market value of the land acquired by the Pune Municipal Corporation was agreed to be paid.

5. Writ Petition No. 5027 of 2011 was disposed of by this Court by order dated 13th August, 2012. The order passed in the said Writ Petition reads thus:--

"Heard.

Rule. Rule made returnable forthwith and heard finally with the consent of the parties. Respondents waive service.

Learned Counsel for the Corporation states that the Corporation will send the proposal to the Government for acquisition of the subject land within a period of three months from today.

Statement is accepted.

The Government shall taken decision thereon within a period of four months from the receipt.

In the circumstances, rule is disposed of as above."

6. It appears that on the basis of the said order, a proposal was submitted by the Pune Municipal Corporation to the State Government for acquiring the land covering road having a width of 9.14 mtrs. On 7th February, 2013, the District

Collector passed an order appointing Special Land Acquisition Officer No. 16, Pune to commence the acquisition proceedings. The said order records that before issuing a notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the said Act of 1894"), the 50% of the estimated compensation amount will have to be deposited by the acquiring body. By letter dated 12th February, 2013 the Special Land Acquisition Officer No. 16, Pune informed the Pune Municipal Corporation that the acquisition proposal was not in respect of the land reserved in the Development Plan and therefore, 25% of the estimated compensation of Rs. 7,13,70,000/- will have to be deposited by the Pune Municipal Corporation as a condition for initiating acquisition proceedings. Thereafter, there was a correspondence exchanged between the Pune Municipal Corporation and the Officers of the State Government. On 22nd October, 2013, an officer of the Pune Municipal Corporation addressed a letter to the Additional Municipal Commissioner expressing an opinion that the land covered by the road can be taken over for nominal consideration.

7. In this petition under Article 226 of the Constitution of India, the first prayer is for directing the Pune Municipal Corporation to deposit 50% of the estimated compensation with the Collector. The second prayer is for quashing and setting aside the said letter dated 22nd October, 2013 addressed by the Special Executive Officer of the Pune Municipal Corporation to the Additional Commissioner of the Pune Municipal Corporation. Another prayer which is added by way of amendment is for setting aside the letter dated 24th December, 2013, addressed by the Special Land Acquisition Officer No. 16, Pune to the Deputy Engineer of Pune Municipal Corporation by which the Pune Municipal Corporation was informed to take over the land covered by the road at its own level as the same was forming part of a layout. The Land Acquisition Officer directed the Pune Municipal Corporation to take over the land by taking action at its own level. Further prayer in this petition is for direction to acquire the said land or to grant TDR in lieu of the said land in accordance with law. The learned counsel appearing for the petitioners on instructions stated that the petitioners are pressing the prayer for initiating proceedings for the acquisition of the land and for the payment of the compensation in respect of the land.

8. There is a reply filed by Pune Municipal Corporation of its City Engineer. In the said reply, it is contended that the Pune Municipal Corporation has accepted the suggestion made by the Special Land Acquisition Officer No. 16, Pune to take over the land at a nominal consideration. However, he has further stated that the Pune Municipal Corporation will pay the compensation as may be fixed by the respondent No. 5.

9. We have heard the learned counsel appearing for the petitioners. He has relied upon the order passed by this Court in the earlier Writ Petition filed by the petitioners. He urged that though a proposal has been submitted by the Pune Municipal Corporation for acquisition, as the Pune Municipal Corporation did not deposit the requisite amount, the acquisition proceeding has not been initiated.

He, therefore, urged that within a time bound programme fixed by this Court, the Pune Municipal Corporation be directed to initiate acquisition proceedings and to complete the same.

10. The learned counsel appearing for the Pune Municipal Corporation pointed out that as per the Resolution passed by the Standing committee on 12th November, 2012, a proposal for acquisition was submitted to the Collector. He pointed out that it was decided by the Pune Municipal Corporation to proceed with the acquisition at a nominal compensation. He urged that the petitioners will not be entitled to the TDR.

11. We have carefully considered the submissions. We have already quoted prayer clauses (a) and (b). In the earlier writ petition filed by the petitioners being Writ Petition No. 5027 of 2011, the prayer was for grant of TDR or for payment of compensation against the acquisition of 30 ft. wide internal private road admeasuring 4214 sq.mtrs passing through Survey No. 206/3, Lohgaon, from Nico Garden to Viman Nagar Road, Pune in Taluka Haveli, District Pune. The petition was disposed of by order dated 13th August, 2012, by directing the Municipal Corporation to submit a proposal to the State Government for acquisition of the subject land. As stated in the affidavit filed by Shri Prashant Madhukar Wagmare, on the basis of the Resolution dated 12th November, 2012 passed by the Standing Committee of the Municipal Corporation, a proposal for acquisition was submitted to the Collector, Pune. It is not in dispute that the said proposal was accepted by the Collector, Pune and in fact he passed an order dated 7th February, 2013 under Section 52 of the said Act of 1894 directing commencement of the acquisition and appointing the respondent No. 5 - Special Land Acquisition Officer No. 16, Pune to exercise his powers of acquiring the said land. Though by a letter dated 12th February, 2013 the respondent No. 5 called upon the Pune Municipal Corporation to deposit a sum of Rs. 2,96,18,550/- being 25% of the estimated compensation, the said amount was admittedly not deposited by the Pune Municipal Corporation. Thereafter, there was correspondence between the Special Executive Officer appointed by the Pune Municipal Corporation and the Additional Municipal Commissioner of the said Corporation. The Additional Commissioner of the Pune Municipal Corporation took a decision on 25th October, 2013 to take over the said land at a nominal price. Accordingly, a letter dated 12th November, 2013 was addressed by the Special Executive Officer of the Pune Municipal Corporation to the fifth respondent requesting him to take action to possess the land covered by the road at a nominal price.

12. Under order dated 13th August, 2012 this Court recorded the statement of the Pune Municipal Corporation that a regular proposal for acquisition will be submitted within a period of three months. Accordingly, on the basis of the resolution of the Standing Committee, a regular proposal was submitted. The Collector accepted the said proposal and by order dated 7th February, 2013 exercised powers under Section 52 of the said Act of 1894 and appointed

respondent No. 5 to take further proceedings for acquisition. Only in view of the stand taken by the Pune Municipal Corporation that the acquisition can be made at a nominal price that further steps could not be taken by the Special Land Acquisition Officer (Respondent No. 5.)

13. In view of the order dated 13th August, 2012 in the earlier writ petition, there was no option for the Pune Municipal Corporation but to acquire the said land as per the law governing compulsory acquisition. Recourse could not be taken to the provisions of Section 126 of the MRTTP Act inasmuch as, in view of the sub-section 1 of Section 126 of the MRTTP Act, a recourse can be taken to the three modes of acquisition provided in sub-section 1 thereof, only if the land is reserved in a Draft Regional Plan, a Development Plan or any other plan or Town Planning Scheme under the MRTTP Act. The subject Land is not covered by any such reservations. Therefore, on the date on which this Court passed the order in earlier Petition, there was no option but to initiate proceedings under the said Act of 1894. As a result of the delay on the part of the Municipal Corporation and its suggestion to acquire the said land at a nominal price, the acquisition proceedings under the said Act of 1894 made no progress and even a Notification under Section 4(1) of the said Act of 1894 thereof has not been issued.

14. Even under the provisions of the said Act of 1894, the concept of acquiring a land for public purpose at nominal price is completely foreign to the scheme thereof. Under the said Act of 1894, compensation was required to be determined as per Section 23 thereof. Therefore, the proposal submitted by the Pune Municipal Corporation to the fifth respondent to acquire the land at a nominal price is completely contrary to law.

15. The delay in acquisition is only on account of the failure of the Municipal Corporation to deposit the requisite amount towards compensation as required by the various Government Resolutions. There was no reason for the Municipal Corporation to act on such a strange suggestion to acquire the land at a nominal price. The proposal dated 12th November, 2012 submitted by the Pune Municipal Corporation to the fifth respondent to acquire the land at a nominal price was completely illegal.

16. In view of the repeal of the said Act of 1894, with effect from 1st January, 2014, the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the said Act of 2013") came into force. Now the Municipal Corporation will have to proceed with the acquisition under the said Act of 2013. It must be stated here that now the compensation payable by the Municipal Corporation will be under the provisions of the said Act of 2013 which may be much more than the compensation under the Repealed Act of 1894.

17. The petitioners have been deprived of the compensation of land covered by road in question which is taken over long back. Now the acquisition proceedings cannot be delayed any further. We, therefore, propose to direct the respondent

No. 1 to complete acquisition proceedings in a time bound schedule. If the acquisition is not completed within the stipulated period, we propose to grant liberty to the petitioners to file a fresh petition in this Court for claiming appropriate relief including the relief of restoration of the possession of the land covered by the road. Accordingly, we pass the following order:--

"i) We direct the Pune Municipal Corporation to submit a fresh proposal to the appropriate officer of the appropriate Government for initiating acquisition proceedings under the said Act of 2013. Such proposal shall be submitted within a period of two months" from today;

ii) We direct the Pune Municipal Corporation to make all procedural compliances in terms of the Relevant Government Resolution to enable the State Government to initiate acquisition proceedings including the requirement of deposit of the requisite compensation amount;

iii) We make it clear that the compensation payable to the petitioners will be determined in accordance with provisions of the said Act of 2013 and in particular Sections 28 to 30 of the said Act of 2013. As held earlier, the attempt of acquiring the land for public purpose at a nominal price is completely illegal;

iv) The acquisition proceedings shall be completed by declaration of an Award and by offering of the payment of compensation in terms of the Award to the petitioners, as expeditiously as possible and in any event on or before 30th September, 2016;

v) On the failure of the Pune Municipal Corporation and the State Government to complete the acquisition proceedings as aforesaid, it will be open for the petitioners to file a fresh petition in this Court for seeking appropriate relief including the relief for restoration of the possession of the land subject matter of the acquisition;

vi) Rule is partly made absolute on above terms with no order as to costs."