

(2002) 02 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 725 of 2002

Ramshankar Manmohanlal Pande

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 22-02-2002

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 31, 4
Nagpur Improvement Trust Act, 1936 — Section 39, 45

Citation : (2002) 4 BomCR 645

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : M.G. Bhangde, for the Appellant; A.G.P. for Respondent No. 1, S.K. Mishra, for Respondent Nos. 2 and 3 and Anand Parchure, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—By this petition, the petitioners have challenged certain actions, including the action of acquisition of land by the Nagpur Improvement Trust on the ground mentioned in the petition. Identical petitions are filed by 14 more persons by nine more writ petitions. All of them complain of the same set of circumstances and raise identical questions of fact and law. In fact, all these petitions arise from out of one improvement scheme framed by the N.I.T., execution and implementation of which is assailed in all these petitions. The details of other petitions are mentioned in the schedule attached to this judgment, which will form part and parcel of this judgment. Since all these petitions raised identical questions of fact and law, all concerned parties agreed that all these petitions can be disposed of conveniently by a common argument and judgment. We, accordingly, have heard the learned Counsel for the petitioners; learned Counsel for the N.I.T. and learned Counsel for the original owners of the entire land involved in the development scheme, as envisaged by the N.I.T.

2. It will be better to consider, in extenso the prayers that have been made in

this petition :-

"i) Declared that---

(a) the respondents cannot deprive the petitioner of his constitutional right to property viz. leasehold rights in the premises described in paragraph No. 2 of the petition except by authority of law;

(b) land acquisition proceedings in respect of Khasra No. 320, various survey numbers admeasuring 8.70 Acres, Mauza Sitabuldi, Nagpur, belonging to the Buty family, Award/s passed therein and order dated 7-10-1997 (Annexure No. 6) passed by the State Government are void and not binding upon the petitioner and consequently pursuant thereto the respondents can neither demolish the premises occupied by the petitioner nor evict/dispossess the petitioner therefrom.

ii. Restrain the respondent No. 2--

(a) from taking any action of increasing the radius, area of Variety Square, Sitabuldi, Nagpur and widening the Abhyankar Road, Sitabuldi, Nagpur, except in accordance with the sanctioned Development Plan;

(b) from demolishing the premises occupied by the petitioner or evicting/dispossessing the petitioner therefrom.

iii. Direct the respondents to resettle the petitioner by providing alternative accommodation before demolishing the premises occupied by the petitioner and evicting the petitioner therefrom.

iv. Pending the disposal of this petition by an appropriate interim order, restrain the respondents from demolishing the premises occupied by petitioner or evicting/dispossessing the petitioner therefrom;

v. The petition be kindly allowed with costs and any other relief as may be deemed fit and proper in the facts and circumstances of the case may kindly be granted."

3. It will be, therefore, seen that the petitioners are assailing the land acquisition proceedings in respect of Survey No. 320 and other lands, admeasuring 8.70 acres of village Sitabuldi in Nagpur. They claim that their possession over the leasehold property cannot be taken away except by process of law. They also challenge the action of the N.I.T. in increasing the radius of the area and by prayer 3 they seek their resettlement or rehabilitation by providing alternative accommodation before demolishing the premises in question.

4. The learned Counsel Shri Bhangde, praying for grant of the above prayers, submitted three contentions, which may be enumerated, in brief, as follows :-

1. The land acquisition proceedings commenced by the N.I.T. suffer from vice of violation of principles of natural justice, as these proceedings were pending quite some time and ultimately, were resumed in 1996 or 1997, from which stage onwards, no notices of any kind, were issued to the tenants. With the result, that

passing of the final Award was in violation of the principles of natural justice. On this ground alone, the proceedings according to the learned Counsel are liable to be quashed.

2. Relying on the provisions of section 31 and other provisions of Maharashtra Regional and Town Planning Act, 1966 (for short, M.R.T.P. Act), it was contended by the learned Counsel that by reason of the provisions of section 31(6) of the M.R.T.P. Act, development plan becomes final and binding. It is not consequently open for the N.I.T. to change this development plan without recourse to the provisions for that purpose as mentioned in M.R.T.P. Act. For this reason, according to the learned Counsel, the change in the development plan, extending 40 ft. road to 80 ft. is unsustainable in law and is liable to be quashed;

3. Without prejudice to the contentions raised hereinabove, it was submitted by the learned Counsel that even under the agreement executed intra parties and the sanction granted by the Government, which also is assailed in these petitions, the right of the tenants to resettlement is undisputable and is liable to be granted or executed before they are unsettled by dispossession.

5. These three submissions countered by the learned Counsel for the N.I.T.-Shri S.K. Mishra and Shri Anand Parchure, learned Counsel appearing for the original owners of the lands in question and they elaborately pointed out that no grievance can subsist in relation to the petitioners as alternate accommodation to accommodate, all the 40 tenants have been already effected. They can have immediate possession and, therefore, there should be no impediment in implementation of the scheme. It has pointed out, in extenso before us as to how resettlement can be done; how accommodation is readily available for housing business of the petitioners and, therefore, it was claimed that the petition is liable to be dismissed. It was specifically averred before us by Shri Mishra that the N.I.T. shall co-operate to the best of its ability and within four corners of law in granting sanctions at the earliest to the further development propositions that may be put forward by the parties and the entire scheme can be dutifully executed resulting in growing of business of each of the petitioners. He was at pains to point out that the Court in this case should note where public interest lies. It is true, as stated by the learned Counsel, that this is not public interest litigation as is popularly known, but it is a litigation started by certain individuals for protection of their personal rights. In the process, public interest of a very large section of society of the city of Nagpur is involved. Public interest, convenience, betterment of lacs of people would be indefinitely postponed if the implementation of the scheme at present is stalled. He, therefore, prayed that in view of the alternative accommodation being readily available for housing the petitioners' business, there is no reason to interfere in the present case. He pointed out that there was no substance in the other two contentions also, as there was sufficient notice of the proceedings to the petitioners at all point of time and the development plan came into existence in 1966 after promulgation of the M.R.T.P. Act and the scheme challenged by the petitioner was also finalised

and sanctioned before that in the year 1964 only. Therefore, the development plan cannot override already sanctioned and approved scheme. He then pointed out certain Rules and Regulations called Development Control Regulations, 2000 for Nagpur City sanctioned by the Government on 9-4-2001, whereunder, power to alter the development plan, is given to the Trust. According to him, therefore, there is no need to interfere with the scheme and it should be finalised. These are the rival contentions, which we have to examine while adjudicating all these petitions. We will take each of the contentions separately.

6. The first submission made by Shri Bhangde, was that the proceedings of land acquisition are void as the same are taken in violation of the principles of natural justice. He submitted that till 1983, the petitioners were well aware about the proceedings for acquisition under the scheme, but no action was taken in relation to those acquisitions and the scheme for quite some time. In the result, a writ petition came to be filed in 1983, seeking quashing of the proceedings for inordinate delay in execution thereof. According to the learned Counsel, these matters were taken up for settlement between the landlord and the Government somewhere in 1996 and the settlement was arrived at, in pursuance of which, the proceedings for land acquisition were resumed and the Special Land Acquisition Officer was again nominated for that purpose. The proceedings for land acquisition commenced and formal Award in the light of the agreement between the State and the N.I.T. and the landlord, was made. It is this Award, according to the learned Counsel, which is unsustainable and in violation of the principles of natural justice, as according to him, during all this process right from 1996 onwards, there was no participation by the tenants, nor was there is any notice given to them to submit their claims and hence the principles of natural justice have been violated. We are unable to accept the arguments for several reasons. It will be seen that the N.I.T. was established under the provisions of Nagpur Improvement Trust Act, 1936 for the purposes of carrying out planned development of the city of Nagpur. Several powers, including powers to acquire the lands, were vested in the N.I.T. by the Act. It also empowers the N.I.T. to take up a scheme for the development of the city. The Act gave exclusive powers to the trust in relation to planned development of the city of Nagpur. It was, in exercise of these powers, that the trust notified a scheme called "Abhyankar Road Widening & Buty Mahal Street Scheme". Another scheme, called "Sitabuldi (West) Improvement Scheme" was also framed by the trust. These schemes were conceived to improve the traffic conditions and to decongest the entire Sitabuldi area by providing wide roads and adequate parking provision for that area. It was with a view to develop the said area in a planned manner that the trust has prepared these two schemes.

7. The trust followed the provisions of the N.I.T. Act and proceeded to execute the scheme. The necessary requirement for execution of that scheme was requisition of land. Accordingly, notices of acquisition of land, under the provisions of the N.I.T. Act, were issued to all the persons concerned. Simultaneously, the scheme was notified on 5-10-1961, as required by section

39 of the N.I.T. Act. The notices were duly published, as required by the Act. After considering the objections, the Government of Maharashtra duly approved and sanctioned the scheme, as contemplated by section 45 of the N.I.T. Act. It cannot, therefore, be said that the petitioners were not aware of the implementation of that scheme. They have factually and actively participated in the acquisition proceedings. When the proceedings for acquisition of land were started for implementation of the scheme, all the land owners of pieces of land, measuring 2, 13, 173 sq. ft. of Khasra No. 320 of Mauza Sitabuldi and other members challenged the proceedings for acquisition by filing a writ petition in this Court. The basic challenge was that though the scheme was framed in 1964 and acquisitions were started immediately thereafter, proceedings are yet no finalized ;period of 20 years lapsed, and consequently, the acquisition has become stale. Its purpose is defeated and, therefore, the proceedings are liable to be stopped. The petition was admitted and stay of implementation of the scheme was granted. That petition was pending till 1996 with the interim order operating in favour of the petitioner. Somewhere in 1996, the owners of the lands started negotiating with the trust for settlement of the entire dispute by making certain proposals, which proposals came to be accepted by the trust on 11-3-1996 and ultimately, the writ petition came to be withdrawn on 25-3-1996. While permitting to withdrawal of the petition, as aforesaid, this Court directed the State Government to take a decision in this regard within six months from the date of the order and accordingly, on 7-10-1997, the Government granted approval to the Board Resolution by which the entire dispute was compromised between the trust and the owners. This permission for approval granted to the trust to real lot the lands to the owners contains certain specific stipulations, one of which was that the land owner will accept the compensation as will be determined by the Special Land Acquisition Officer and the landlord will accommodate their tenants and make available the land for widening of the roads as per the scheme. We will advert to the details of this sanction for different purpose, at a later stage. Suffice it to say that after this order was made by the State, the proceedings for acquisition of lands, were commenced again and an Award was passed. The submission of the learned Counsel is that at this point of time and thereafter till the Award was made, they were not heard and hence there is violation of principles of natural justice. From the narration above, it will be clear that the petitioners were having knowledge of the entire litigation right from the time the revenue cases for acquisition of lands were started and they were noticed till 1983 and thereafter when the writ petition, challenging the acquisition proceedings were pending, each and every one of the petitioners had a full knowledge of the pendency of that writ petition in the High Court. They had, therefore, knowledge that their valuable rights regarding continuance of the leasehold right and possession, are at stake. They were put to notice to all the acquisition proceedings and they had actively opposed the acquisition for quite some time. It was, therefore, their duty to be diligent in relation to the result of the writ petition pending in this Court. It is, in the circumstances, not possible for us to accept that the petitioners had no notice of

the entire proceedings. The first contention, on this ground, therefore, must fail and is rejected.

8. That takes us to the second contention viz., lack of power in the trust to change the development plan or to change dimensions of the road in the scheme. It was contended on behalf of the petitioners that the dimensions of the road in development plan was shown to be 40 ft. The development plan has acquired the finality and binding force by reason of provisions of section 31(6) of the M.R.T.P. Act and consequently, the scheme cannot change the dimensions of the road. We are unable to accept this argument as it is fallacious. The Maharashtra Regional and Town Planning Act, 1966 came into force in the year 1966. The N.I.T. Act came into force in 1936. It empowers the trust to do several things including acquisition of land for the purpose of making planned development of the city. It was in exercise of the power conferred on the trust that the notification u/s 39 of the N.I.T. Act was promulgated and the scheme floated after objections to the same were considered. The State granted its approval and sanction to the scheme in 1964 as per the provisions of section 45 of the N.I.T. Act. The scheme, therefore, in 1964 was duly approved and sanctioned scheme as per provisions of N.I.T. Act. The scheme provides for "Abhyankar Road Widening and Buty Mahal Street Scheme". In this scheme, Abhyankar Road was to be 34 metres wide, which would be 80 ft. approximately. So the width of the road was already 80 ft. under the scheme of "Abhyankar Road Widening and Buty Mahal Street Scheme". This scheme was approved in 1964. The M.R.T.P. Act came into existence in 1966 and thereafter the development plan was prepared. The development plan, as submitted by the petitioners, showed the width of Abhyankar Street to be 12 metres, i.e. 40 ft. approximately. This development plan came into existence, admittedly, after 1966 and it shows the general development to be taken in the city of Nagpur, after the scheme was finalised and the map shows the existing dimensions of Abhyankar Road. The development plan nowhere stipulates that Abhyankar Road shall be widened to 40 ft. It stipulates that it was 40 ft. The development plan is made by the planning authority, nominated in the M.R.T.P. Act. Regional Planning Board to be constituted u/s 4 of that Act, is, therefore, a separate board, as stipulated by section 4 thereof. The N.I.T. is established under an independent statute, constitution of which is defined in the N.I.T. Act. Factual and legal position is that for the purposes of regional development of Vidarbha region of State of Maharashtra, there is a Regional Board, established u/s 4 of the M.R.T.P. Act. But, there is a special statute called N.I.T. Act, 1936, which was already prevalent when M.R.T.P. Act was introduced in 1966. It is a special statute, created for the purposes of planning, development of the city of Nagpur alone, and consequently, that special statute shall prevail over the general statute, viz. M.R.T.P. Act, which came into existence in 1966.

9. Apart from this, enough powers have been conferred on the Trust by the Development Control Regulations 2000 for Nagpur City, which came into force w.e.f. 9-4-2001 in relation to access roads. With reference to power mentioned in

para 12, it is obvious that change of width of road is permissible. The development plan under the M.R.T.P. Act, does not say that the width of Abhyankar road shall be only 40 ft. The plan only depicts the factual position then existing, viz. 40 ft. width of that road. The scheme to widen of that road for facility what people using it, it not adverse to and cannot be a change in the development. The development plan contemplates, development of the locality/ area, for which it is made. The scheme for development, framed under the N.I.T. Act is also made for the purposes of development of that particular scheme in a particular locality. Consequently, the submissions that the scheme implementation into changed development plan, which has acquired finality, is, fallacious and cannot be accepted. That takes us to the last and third submission made on behalf of the petitioners. That, the petitioners, being leaseholders of the original landlords and their lease being continued and in existence and, therefore, they have a right of resettlement. Their possession cannot be taken away without there being resettlement. The contention is also based on the sanction granted by the Government in October 1997 to the proposals of the landlord and the N.I.T. and the sanction itself incorporates the condition that the tenants will be resettled by the landlord. Relying on this position, it was contended by the learned Counsel for the petitioners, Shri Bhangde, that unless resettlement is complete, eviction cannot take place and on this ground at least, the petitions are liable to be allowed. Prayer 3, quoted above, is the prayer which covers this contention of the petitioners. However, from the submissions made by the N.I.T. and the former land owners, it is abundantly clear for us that this prayer does not and cannot survive, as the contention raised and the prayer made stand virtually granted by the concerned respondents and for that reason, no interference with the process of acquisition and implementation of the scheme is necessary. In the circumstances, it would be pertinent to note the submissions made by the owners in this behalf.

"12. It is however, clear that since the original land owners have agreed to safeguard the interest of the original tenants, the owners are duty bound to do the same. In fact, the respondents have acted in conformity with the conditions as has been contemplated in the scheme. The bona fides of the respondents can be seen from the fact that the petitioners shall be provided alternate accommodation at an alternate site for the time being so that it would facilitate them to vacate the premises and shift to the temporary accommodation which is also of a good condition and would not adversely affect their business since it is adjacent to the existing premises occupied by the petitioners. The land owners shall develop the vacant plots as early as possible and shall accommodate these tenants as per their requirement on such conditions as may be mutually agreed to. As such, within a short span, the tenants would be able to start their business in the premises owned by them at a very concessional rate and would thus not be affected in any manner whatsoever. The aforesaid scheme sanctioned by the State Government and approved by the improvement trust is in no way prejudicial to the interest of the petitioners. At the same time, the purpose of

development of town would also not suffer and it is in the larger interest that such scheme be permitted to be implemented. It will not be out of place to mention here that some of the shopkeepers have already accepted the offer and have vacated their respective shops and many more are willing to follow the same.

It is further pertinent to mention here that the petitioners are aware of this situation and have, therefore, made specific prayer for grant of alternate accommodation, particularly prayer (3) in the Writ Petition No. 726/2000. It is further submitted that the petitioners cannot question the policy decision taken by the State and the improvement trust about the actual structure of the scheme, particularly when the improvement trust is the planning authority. The petitioners have nowhere demonstrated that there are any mala fides involved or there is any arbitrariness in the action on the part of the improvement trust and as such the petitioners cannot question the said decision or challenge its legality in any manner whatsoever.

It is pertinent to mention here that as per the scheme, alternate accommodation sites are already ready and the petitioners can immediately shift to the said premises and depending on the availability of the area, the interest of the petitioners is bound to be protected. The petitioners cannot adopt a dictatorial attitude and will have to act only within their legal rights. The scheme, as evolved, is in the larger interest and at the same time, protects the interest of the petitioners and cannot be termed, in any manner, as prejudicial to their interest.

It is worthwhile mentioning here that one of the tenants petitioner No. 4 in Writ Petition No. 770/2002 had performed the Bhoomi-Poojan in presence of several other petitioners for constructing 60 to 70 shops to accommodate these petitioners at the alternate site. It is, therefore, submitted that the petitioners are estopped from questioning the validity of the action and it does not lie in their mouth in any manner to agitate about the validity of the scheme.

It is further worthwhile mentioning here that 90% of the tenants occupying the premises on the Abhyankar Road have vacated the premises and shifted their belongings. The said fact itself would go to demonstrate that there is no legal right in favour of the petitioners and the said fact is within their knowledge and the petition being devoid of any substance is liable to be dismissed with costs."

10. The statement of the N.I.T. is also noteworthy in this regard. The N.I.T. has filed, as Annexure R- 1-4, a copy of the order dated 7-10-1997. In this sanction, it is specifically mentioned that the landowners shall, accommodate all residents and commercial leaseholders by giving them an alternative accommodation and keeping in tact their rights thereto. The N.I.T. has also stated and annexed to their reply, various plans submitted by the landowners, showing the proposed shopping complex that the owners would accommodate the tenants and part of

which, will be occupied by the petitioners. During the course of hearing, photographs of the premises in question were also shown to us. We would like to quote, from the reply, para No. 7, which reads as under:-

"7. it is submitted that as per the conditions put by the State Government, the landowners agreed to rehabilitate all their tenants in their new complex, which will be developed on the same site. Till the new complex is constructed, all the tenants who are affected by the road widening scheme, are being accommodated by the landowners in the temporary structures, which have been constructed by the landowners on the same site. The layout showing the temporary rehabilitation scheme and the photographs of the newly constructed shops for accommodating the tenants are filed herewith as Annexures R- 1 VII and VIII, respectively for the perusal of this Hon''ble Court. Hence, the tenant/petitioner has been taken care of by the landowners and the petitioner should not have any kind of grievance against execution of the said scheme."

11. Reading of the above, therefore, demonstrates that every effort at the best possible ability is undertaken by the respondent for rehabilitation of the petitioners and, therefore, this grievance also should not remain.

12. Reliance was placed on several decisions of the Supreme Court by Shri Bhangde, learned Counsel for the petitioner to spell out the rights of the petitioners to file the present writ petition and agitate the correctness of the acquisition proceedings. We need not refer to those cases, as nobody has questioned the right to do so as we have also entertained the petitions on merits. We have considered and rejected the submissions regarding validity of the acquisition and scheme, by our reasonings mentioned hereinabove. Hence, there is no need to refer the case law for this purpose, as is relied by the learned Counsel for the petitioner. Here we would like to point out that, as very rightly argued by Shri Mishra, learned Counsel for the N.I.T., that, these petitions involve a case of larger public interest. It is undisputed that the scheme, when complete will immensely benefit the citizens of Nagpur City, which includes the petitioners. A bare look at the map filed in the petition by the N.I.T., shows the nature of complex to be created by the landlord and it is evident from all this that the entire scheme when complete, shall be of immense value and benefit to the citizens of Nagpur. Thousand and thousand of people of Nagpur city will be permanently benefited by proper implementation and execution of the said Scheme. Obviously, therefore, larger public interest is involved in speed execution of the Scheme. If fifty and odd families are required to sacrifice temporarily, their luxurious surrounding and belongings for a permanent and larger benefits of thousands of families in and around Sitabuldi area, the suffering of such small inconvenience for small period, cannot be called, either unjust or unnecessary. Conversely, stalling of public interest scheme for months together, so that the petitioners get their pound of flesh, i.e. equivalent accommodation to what they are occupying, they cannot be allowed to indefinitely postpone development scheme, which is going to benefit thousands

of people of Sitabuldi locality.

13. The rights of the petitioners, have not in any manner, tampered. Most certainly they are not violated. Accommodation, though of lesser dimensions, is immediately available for their occupation, as will be seen from the reply of the landlord. 90% of the tenants have accepted the scheme and have voluntarily left the premises. In such circumstances, to accept technical submissions made on behalf of the petitioners, regarding notice of hearing; power of N.I.T. to enlarge the scheme or the streets, cannot be permitted to stall the progress for the betterment of a very large section of society. In fact, on this ground alone, the petitions are liable to be dismissed. However, we have taken into consideration the merits of the petitions, in extenso, for the reason that a careful consideration, for protection of the fundamental rights of the petitioner, has been vested right of the citizens, therefore, after having been satisfied that there is no breach of their fundamental rights that we have considered this aspect of public interest. Considered for any view, therefore, we find that there is no breach of any fundamental right belonging to the petitioners and better and larger public interest requires that improvement scheme goes on immediately. For all these reasons, we see no merits in the petition and the same are, therefore, dismissed.