

(2025) 07 BOM CK 0237

In the Bombay High Court, Aurangabad Bench

Case No : Second Appeal No.144 Of 1999

Town Planning Officer A'nagar And Others

APPELLANT

Vs

Abdul Razak Abdul Karim And Others

RESPONDENT

Date of Decision : 18-07-2025

Acts Referred:

Constitution of India, 1950 — Article 300A

Code of Civil Procedure, 1908 — Section 80

Maharashtra Regional Town Planning Act, 1915 — Section 9(6), 29, 30(10), 40, 40(1), 40(1)(2), 40(3), 41, 41(a), 51, 67, 86, 83, 88, 88(a), 126, 126(2), 127

Land Acquisition Act, 1894 — Section 6

Citation : (2025) 07 BOM CK 0237

Hon'ble Judges : Shailesh P. Brahme, J

Bench : Single Bench

Advocate : Subodh P. Shah, Ajeet B. Kale, Sandip R. Andhale

Final Decision : Allowed

Judgement

Shailesh P. Brahme, J.

1. Heard both sides finally.

2. This appeal was admitted on 26.02.2001 and ground Nos.I, II, III, V, VI, VII and VIII were recorded to be substantial questions of law involved in the appeal. Both sides mainly addressed substantial questions of law mentioned in ground Nos.I, II, III, V, VI. No any other substantial question of law is pressed into service by the parties.

3. Appellants are original defendant Nos.3 and 4 who are challenging judgment and decree in Regular Civil Suit No.913 of 1989 passed by Joint Civil Judge Senior Division, Ahmednagar on 17.01.1995 which is confirmed by judgment and decree dated 09.12.1998 by Additional District Judge, Ahmednagar in Regular Civil Appeal No.80 of 1995. Parties are referred to by their original status.

4. Plaintiffs are granted relief of declaration that they are owners of the suit

property. The defendants are directed to remove encroachment on the suit property and to deliver vacant possession thereof to the plaintiffs. Appellant No.1 is directed to furnish account of income fetched from the suit property.

5. The plaintiffs claim to be owner of City Survey No.1269, 1270, 1271 and 1282 which are converted into plot Nos.76, 136, 135, 134 respectively, situated within Municipal limits of Ahmednagar city, Dane Dabara. The suit plots were purchased by Fakir Mohamed Hafiz on 04.07.1899 and the plaintiffs inherited them. They found that suit plots were encroached by third persons by erecting temporary stalls. On making inquiry, it revealed that the suit plots were reserved for parking of bullock carts (Gadi Tal) in town planning scheme of 1928. It further revealed that without resorting to due procedure of law of either acquisition or payment of compensation, defendant No.2/the then Municipal Council grabbed possession. It inducted third persons by executing lease deeds in their favour and was deriving profits unauthorisedly. The plaintiffs issued notices to the appellants and others on 18.12.1987 for releasing the suit plots which was not replied. The reservation was claimed to have been lapsed.

6. The suit was contested by defendants by filing written statement. It is contended to be barred by time. Ownership of respondent Nos.1 to 5 was disputed. It is contended that Civil Court had no jurisdiction. No notice was issued under Section 80 of the Civil Procedure Code. It is further contended that suit plots were included in the town planning scheme under the Bombay Town Planning Act of 1915 (hereinafter referred to as "Act" for sake of brevity and convenience) and reserved for cart parking. Arbitrator was appointed and compensation of Rs.3,001/- was determined.

7. Predominant plea of the defendants was that suit plots vested in the local authority due to finalization of town planning scheme vide resolution dated 07.05.1928. A notification to that effect was published in the gazette. It is contended that nobody from the plaintiffs approached the defendants for receiving compensation of 3,001/-. It is further contended that the reservation could not lapse under Section 127 of Maharashtra Regional Town Planning Act.

8. Plaintiffs adduced oral evidence of three witnesses. The defendants did not adduce any oral evidence. The correspondence between City Survey Office and the Local Authority are placed on record. Notification dated 07.05.1928 under Section 40 of Act Exh.60 and final scheme Exh.72 are the vital documents around which entire matter revolves.

9. Learned counsel Mr. Subodh P. Shah submits that both the Courts below overlooked that suit plots were reserved in town planning scheme which was finalized on 07.05.1928. In a final town planning scheme, compensation of Rs.3,001/- was computed which was payable to the original owner. In view of Section 41 suit plots absolutely vested in the local body. He would submit that at the relevant time, Bombay Town Planning Act 1915 was in force which was superseded by Bombay Town Planning Act of 1954 and lastly by Maharashtra

Regional Town Planning Act 1966 (hereinafter referred to as "M.R.T.P Act" for sake of brevity and convenience). The provisions of Section 127 of M.R.T.P. Act are not attracted and the claim of the plaintiffs based on Section 127 is misconceived. It is contended that plaintiffs are approaching belatedly. It is vehemently contended that in view of vesting of the plots, no question of possession or compensation or acquisition would arise.

10. It is submitted that plaintiffs did not challenge award of the arbitrator or notification dated 07.05.1928, Exh.60 and final scheme Exh.72. It is submitted that final town planning scheme was revised in the year 1960 and there is no confusion for vesting of the plots in the defendants. Lastly, it is submitted that both the Courts below committed patent illegality in holding that without resorting to the provisions of Land Acquisition Act, the suit plots have been taken into possession and allotted to third person.

11. Per contra, Mr. Ajeet B. Kale for respondents/original plaintiffs would submit that it was not that on 07.05.1928, the scheme was sanctioned but it was in the year 1950 which is evident from letter dated 05.04.1983 at Exh.120. It is vehemently contended that there is absolutely no record to show that procedure of acquisition under Land Acquisition Act of 1894 was ever undertaken. No notification under Section 6 of Land Acquisition Act was ever issued. No compensation was paid because suit plots were in the heart of the city and could have fetched considerable compensation. It is contended that title of the plaintiffs is evident from city survey record and there is no challenge to their title. Though the suit plots were reserved it was incumbent upon the defendants to acquire them by following due procedure. Plaintiffs rightly issued notices at Exh.61 and 62 on 18.12.1987 under Section 127 of M.R.T.P. Act. For non-compliance of the same, plaintiffs are entitled to get back suit plots and those stand de-reserved.

12. Learned counsel Mr. Kale further submits that arbitrator's role is very limited to the extent of determination of compensation and contributions. The determination of Rs.3,001/- would not validate vesting of the title with the local body. He would further submit that there is a difference between scheme and development plan. The provisions of Section 126 and 127 are applicable for the town planning schemes also. It is submitted that Exh.60 pertains to scheme for Dane Dabara and Exh.72 is the resolution which would not make out case of the defendants. It is submitted that Section 51 of the Act also contemplates acquisition of the property reserved for the public purpose under town planning scheme, which is not complied with. Lastly, it is submitted that there are concurrent findings of facts and no interference is called for.

13. Learned counsel Mr. Sandip Andhale appearing for respondent No.2 adopts the submissions of respondent No.1. Additionally, he would submit that the defendants did not lead any evidence and therefore, they are bound to fail in appeal. No material is placed on record by them to show that possession was actually handed over by the plaintiffs to the defendants.

14. I have considered rival submissions of the parties. Both the Courts below concurrently held that plaintiffs are the owners of the suit plots. Those were purchased by their predecessor Fakir Mohamed Hafiz on 04.07.1899. They have placed sufficient material in the form of Exh.82 to 85 to support their title. Even final scheme at Exh.72 upon which great reliance is placed by the defendants discloses name of the owner in its redistribution and valuation statement which corroborates claim of title. I find no merit in the submission of learned counsel for the appellant that plaintiffs are not the owners.

15. The core question which goes to the root of the matter is as to whether due to sanction of final town planning scheme suit plots vested with the local authority or as to whether the suit plots need to be acquired by the local authority after following due procedure of law.

16. Trial Court recorded following findings :

- (i) Ownership of the plaintiffs is proved.
- (ii) Municipality did not produce any record to show payment of compensation.
- (iii) There was no demarcation of the plots.
- (iv) City survey record did not show implementation of town planning scheme.
- (v) Letter dated 05.04.1983 at Exh.120 shows sanctioning of the scheme in the year 1950 but there is no demarcation and handing over possession as per scheme.
- (vi) Suit plots were not acquired as per procedure under Land Acquisition Act.
- (vii) No finalization of town planning scheme in 1928 by taking recourse to Land Acquisition Act.
- (viii) Suit was within limitation.
- (ix) Reservation on the suit plots lapsed and those are to be restored to the plaintiffs.

17. Lower Appellate Court confirmed the findings of the Trial Court and reiterated that Municipal council did not take any step to acquire suit plots and the reservation lapsed in view of notice dated 18.12.1987.

18. The judgment passed by both the Courts below do not show any discussion on Section 40 and 41 of the Act and their repercussions. It cannot be lost sight of that suit plots were reserved for some public purpose during the British Government. Present Regular Civil Suit No.913 of 1989 is filed on 19.12.1989. M.R.T.P. Act came into force on 11.01.1967. Before that, there was Bombay Planning Act 1951 which was repelled by Bombay Town Planning Act 1954. For the purpose of reservation of the land, its acquisition and its vesting in local body Bombay Town Planning Act of 1915 was applicable. Both the Courts below overlooked this aspect of the matter and proceeded to examine the facts in view

of provisions of M.R.T.P. Act.

19. If the defendants succeed in proving that the vesting of the suit plots are in accordance with Act, then submissions referring to Section 126 or 127 of M.R.T.P. Act are redundant. If their plea of vesting fails then only the purchase notice dated 18.12.1987 issued under Section 127 of M.R.T.P. Act would come into effect. Both the Courts below negative plea of the defendants that there was lawful vesting of the suit plots in the local body and proceeded to examine whether the reservation lapsed or not. This is grave error of jurisdiction committed by both the Courts below. Without conducting foremost inquiry of vesting of the suit plots under the Act, it was held that reservation lapsed by implication of Section 127 of the M.R.T.P. Act. The substantial questions of law pressed into service specifically pertain to vesting of the suit land under Section 41 of the Act.

20. The defendants have not led any oral evidence on record. The correspondence between Local Authority and City Survey Office Exh.60, Exh.72, letter dated 05.04.1983 Exh.120 are the public documents. I have gone through the documents Exh.72 and Exh.60 notification dated 07.05.1928, and town planning scheme of Dane Dabara (final) at Exh.72. A document at Exh.72 is comprising of covering letter dated 31.01.1926 issued by Arbitrator and town planning scheme Dane Dabara containing re-distribution and valuation statement. Covering letter dated 31.01.1926 is issued by Arbitrator forwarding a final scheme under Section 30 (10) of the Act. The relevant provisions is as follows :

"30. In accordance with the prescribed procedure the arbitrator shall –

- (1)
- (2)
- (3)
- (3A)
- (3B)
- (3C)
- (3D)
- (4)
- (5)
- (6)
- (7)
- (8)

(9)

(10) draw up in the proscribed form the final scheme in accordance with the draft scheme :

provided that –

(i) he may make variations from the draft scheme ;

(ii) any variation estimated by him to involve an increase of ten per centum in the costs of the scheme as described in Section 16 shall require the sanction of the [Provincial Government]:

Provided further that he shall make no substantial variation without the consent of the local authority and without hearing any objections that may be raised by the owners concerned ; and that in the case of any substantial variation made by him the owners concerned shall have the right of appeal to the [Provincial Government].

21. Re-distribution and valuation statement shows name of the plaintiffs at serial No.56, suit plots, their area and value determined to the tune of Rs.3,001/-. There is no material on record to show that this amount was ever received by the plaintiffs. Equally it is true that no such a claim was ever made by them, muchless in the present proceedings.

22. In pursuance of the correspondence of the Arbitrator, a resolution was passed by Government of Bombay on 07.05.1928 under Section 40(1) sanctioning the town planning scheme final. Following are the relevant extract of resolution :

“Resolution – The requisite notification sanctioning the Town Planning Schemes, Ahmednagar Nos. I and II-Final, under Section 40(1) of the Bombay Town Planning Act, 1915 should be published in the Bombay Government Gazette.

2. The notification should also be forwarded to the Editor of the “Diu Mitra”, Ahmednagar, for publication and he should be asked to send the bill of costs to Government in duplicate for payment.

3. The Collector of Ahmednagar should be asked to make arrangements for posting copies of the notification in or near the area included in the schemes and at the office of the local authority.

By order of the Government of Bombay

(Transferred Departments)”

23. Simultaneously, notification was also published in the gazette declaring the date of commencement of the final scheme as 01.07.1928. Its relevant portion is as under :

“It is hereby notified that the Government of Bombay (Transferred Departments)

have been pleased to sanction the final schemes. The said schemes will be open to the inspection of the public at the office of the said Municipality at Ahmednagar and copies will be obtainable at Rs.4-2-0 and Rs.2-5-0 respectively, per copy. The date on which the liabilities created by the schemes shall take effect and the final schemes shall come into force shall be the first day of July 1928."

24. It is evident from Exh.60 notification dated 07.05.1928 that final town planning scheme for area Dane Dabara was sanctioned on 07.05.1928 and it was given effect to from 01.07.1928. The minute reading of the notification shows following relevant facts :

(a) Making of town planning scheme vide notification dated 20.08.1999 was sanctioned under Section 9(6) of the Act.

(b) Draft town planning scheme was sanctioned under Section 14 Sub Section (2) by the Government notification dated 22.11.2023 and Arbitrator was appointed for the said scheme under Section 29 of the Act.

(c) Final scheme for approval was submitted by the Arbitrator vide letter dated 24.08.1927 under Section 40(1)(2) for the approval of the Government.

(d) Final town planning scheme was sanctioned under Section 40 vide Government Resolution dated 07.05.1928.

(e) Final scheme was given effect from 01.07.1928.

25. The final town planning scheme has been sanctioned as per the provisions of the Act. There was no challenge to various stages, notifications and the correspondence by plaintiffs. The final scheme has also not been challenged by the plaintiffs in the present suit. I have no iota of doubt that due procedure of law was followed to sanction final town planning scheme. The non disbursement of the compensation of Rs.3,001/- to the plaintiffs or their predecessor in title does not affect the final sanction and its consequences.

26. Both the Courts below did not look into vital aspect of the matter. It is relevant to note following provisions :

"40. (1) After the Tribunal of Arbitration has decided all matters arising out of clauses [(3A), (3B), (3C),] (4), (5), (6) and (9) of section 30, the arbitrator shall forward the final scheme through the local authority to the [Provincial Government]. [On receipt of the final scheme, the Provincial Government may, by notification in the Official Gazette, sanction the scheme or refuse to give such sanction, provided that in sanctioning the scheme the Provincial Government may make such modifications as may in its opinion be necessary for the purposes of correcting an error, irregularity or informality.]"

(2)

"(3) On and after the date fixed in such notification a town planning scheme shall

have effect as if it were enacted in this Act.”

“41. On the day on which the final scheme comes into force –

(a) all lands required by the local authority' shall, unless it is otherwise determined in such scheme, vest absolutely in the local authority free from all encumbrances;

(b) all rights in original plots which have been reconstituted shall determine and the reconstituted plots shall become subject to the rights settled by the arbitrator.”

27. An inevitable conclusion by implication of Section 40 Sub Section (3) quoted above is that from 01.07.1928 finalized town planning scheme has partaken the Act. Due to the statutory force, the consequences of Section 41 follows. By way of Section 41(a), the suit plots acquired by Ahmednagar Municipal Council, the then Local Authority stood vested absolutely free from all encumbrances in it with effect from 01.07.1928. Learned counsel Mr. Subodh Shah is right in contending that the plaintiffs have lost all right, interest in the suit plot due to Section 41(a) of the Act.

28. I have not been pointed any provisions by the learned counsels for the respondents that after 01.07.1928 suit plots are liable to be restored or divested from the Local Authority. Once the title of the property is transferred to the Local Authority, the exercise of issuing purchase notice on 18.12.1987 at Exh.61 and 62 under Section 127 of M.R.T.P. Act is futile. The claim of the plaintiffs that no procedure was followed for taking over possession, payment of compensation or the acquisition of the suit plots under Land Acquisition Act become redundant. Both the Courts below only focused on the provisions of Section 126 and 127 of the M.R.T.P. Act. However, it should have demonstrated that title remained with the plaintiffs so as to enable them to take recourse to Section 127.

29. It is contended that no material is placed on record to show payment of compensation to the plaintiffs. I cannot be oblivious of the fact that suit plots stood vested way back in 1928 and the suit is filed in 1989 after about 61 years. In all probabilities it would not have been possible to preserve the record and produce it before the Courts below. The plaintiffs or their predecessor in title did not challenge vesting of the properties in time. Hence, absence of any material would not change the scenario or legal position.

30. The statutory effect of Section 40(3) and Section 41(a) are very drastic and conclusive. Therefore, even in the absence of any record showing handing over any possession, payment of compensation and recourse to Land Acquisition Act would not enure to the benefits of the plaintiffs. It has to be held that the acquisition of the suit plots are as per Section 51 of the Act.

“51. Land needed for the purpose of a town planning scheme shall be deemed to be land needed for a public purpose, within the meaning of the Land Acquisition Act, 1894.”

31. Similarly, as per Section 126 and 127 of M.R.T.P. Act, the procedure is laid down for acquisition of the properties required for public purpose and the consequences of not taking steps for the acquisition. However, it is conclusively proved by the defendants that vesting of the suit plots occurred on 01.07.1928 and therefore Section 126 and 127 can have no application which came into force with effect from 11.01.1967. By that time, vesting had already taken place.

32. Learned counsel Mr. Subodh Shah sought reliance on the judgment of Dinkar Ramchandra Honale and others Vs. the Municipal Corporation of Greater Bombay and another ; 1982 SCC OnLine Bom 67. He adverted my attention to paragraph Nos.7 and 9 of the judgment. He is right in contending that once the scheme is finalized rights of the original owner are determined. Following is the relevant paragraph :

"9. Once it is held that on coming into force of the final scheme and title or interest in the land stood extinguished and the reconstituted plots became subject to the rights settled by the Arbitrator along in view of the provisions of the Section 83 of the Act, then the plaintiffs cannot be heard that they had any subsisting right in the plots."

33. Appellants further relied on judgment of Jayesh Dhanesh Goragandhi Vs. Municipal Corporation of Greater Mumbai and others ; (2012) 13 Supreme Court Cases 305. In that case appellant was owner of the plot which was within Borivali Municipal Council. It was reserved for public purpose under draft scheme sanctioned in the 1962. The Arbitrator appointed under the Act determined the compensation. A notice issued by respondent/Corporation under Section 89 of the M.R.T.P. Act was challenged by filing suit by the owners. Although initially the plaint was rejected, later on, due to the intervention of High Court, City Civil Court decreed the suit directing Corporation to take recourse to provisions of Section 126 of M.R.T.P. Act for the purpose of acquisition of the land. Being aggrieved, Corporation preferred first appeal. It was dismissed. Then, latter patent appeal was filed and it was allowed by the Division Bench. Thereafter, matter reached Supreme Court. The point for determination is quoted in following paragraph :

"17. We have already stated that the only question that arises for consideration is whether the landowners can take recourse to Section 126 of the MRTP Act, once the town planning scheme is framed and the final scheme has been brought into force, vesting the land in the Corporation and providing compensation as provided in the Town Planning Scheme."

34. Entire scheme of M.R.T.P. Act for land reserved for public purpose and purport of sanction is dealt with in following paragraphs :

"35. The Town Planning Scheme envisaged under the MRTP Act is, therefore, a code by itself and the provisions relating to compensation are inbuilt in the scheme itself. The provisions of Town Planning scheme provide for computation of compensation by the Arbitrator and if a party is aggrieved by the

determination of compensation by the arbitrator, a party has a right of appeal before the Tribunal under the provisions of the MRTTP Act. On the final scheme being sanctioned by the State Government under Section 88(a), the property vests free of all encumbrances in the State Government and all rights of the original holders in the original plot of land stand extinguished, the rights of the parties are those governed by the provisions of the said scheme and cannot be dealt with outside the scheme."

"49. Once the town planning scheme is finally sanctioned under Section 86, compensation is finally determined by the Arbitrator, the property vests under Section 88 in the State Government, then there is no question of resorting to further acquisition under Section 126(2) of the Act. The words "town planning scheme" used in Section 126(2) is in respect of the town planning scheme which is yet to be finalized and sanctioned under Section 86 by the State Government as a final scheme for inviting objections under Section 67 of the Act. Provisions of Section 126(2) providing for acquisition of land, therefore will apply only prior to the town planning scheme is finally sanctioned under the provision of Section 86 of the Act."

"50. We therefore hold that the provisions of Section 126 can apply only when the scheme is not sanctioned and the amount of compensation has not been determined by the Arbitrator. Therefore, in cases where town planning scheme is already sanctioned and the property vests in the State Government under Section 88 (a) of the Act, the question of resorting to Section 126(2) of the Act does not arise."

35. Pertinently, Section 86 and 88 of M.R.T.P. Act are *pari materia* to Sections 40 and 41 of Bombay Town Planning Act of 1915. Therefore, the observations and the ratio laid down by the Apex Court in above referred paragraphs can be made applicable to the facts of the present case. In view of the ratio laid down by the Apex Court, it is not possible to countenance submissions of learned counsel Mr. Kale and Mr. Andhale that the appellants are obliged to follow procedure of acquisition which includes payment of compensation. Appellants have made out a case for causing interference in the impugned judgment and decree.

36. It reveals from record that Arbitrator determined compensation of Rs.3,001/- for the plots in question which can be seen from Exh.72. It is the case of the defendants that plaintiffs or their predecessor in title did not come forward to receive the compensation. It is trite law that to receive compensation for acquisition is a constitutional right under Article 300-A. If Rs.3,001/- is remained to be disbursed, then plaintiffs are entitled to receive it with interest. Being public body, earlier provincial Government, then Municipal Council and present Corporation should have taken steps to disburse the amount. Applicants are entitled to receive the compensation with interest. Considering overall circumstances, I find that appellant/Municipal Corporation is liable to pay Rs.3,001/- @ Rs.10% per annum to respondent Nos.1 to 5.

37. For the reasons assigned above, I find that there is merit in the substantial questions of law in ground Nos.I, II, III which are required to be answered in favour of the appellants. Impugned judgments are vitiated due to patent illegality and grave error of jurisdiction. Hence, second appeal succeeds.

38. Second appeal is allowed.

39. The judgment and decree dated 17.01.1995 passed by the Trial Court as well as judgment and decree dated 09.12.1998 passed by Lower Appellate Court are quashed and set aside.

40. Regular Civil Suit No.913 of 1989 filed by respondent Nos.1 to 5 shall stand dismissed. However, there shall be no order as to costs.

41. Appellants shall pay Rs.3,001/- with interest @ Rs.10/-to respondent Nos.1 to 5 within a period of eight (8) weeks from today.

42. Decree be drawn accordingly.