

(2025) 12 BOM CK 1673
In the Bombay High Court
Case No : Writ Petition No.1239 Of 2002

Vijay Anandrao Sawant

APPELLANT

Vs

Rekha Vijay Sawant

RESPONDENT

Date of Decision : 03-12-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 300(A)
Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965
— Section 330(2), 330(4)

Citation : (2025) 12 BOM CK 1673

Hon'ble Judges : Manjusha Deshpande, J; Manish Pitale, J

Bench : Division Bench

Advocate : Ashutosh Kulkarni, Gourav Shahane, Shreyas Zarkar, Sweta Shah,
Abhishek Roy, Prafulla B. Shah, V.R. Raje

Final Decision : Rejected

Judgement

Manish Pitale, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. This writ petition has been pending in this Court since the year 2002. The record shows that it was directed to be taken up for final hearing, but it could not be finally heard despite having remained part-heard on a few occasions. The respondents filed their reply affidavits to oppose this petition and considering that this petition has been pending in this Court for the past 23 years, by an order dated 12.11.2025, it was directed to be listed for final hearing today.

3. The original petitioner is now represented by his legal representatives, as he expired during the pendency of this writ petition. The principal grievance of the petitioner was that a piece of land belonging to him and his predecessor was utilized by Respondent No.1-Municipal Council for the construction of road and despite being deprived of the piece of land, no steps were taken for adequately

compensating the petitioner.

4. Before appreciating the rival submissions, a reference to the chronology of the events would be necessary. The documents on record show that on 11.06.1979, a layout was sanctioned concerning CTS No.683A/1B, situated in municipal limits of Baramati, District Pune. The order sanctioning the layout specified certain conditions. The Respondent No.1-Municipal Council heavily relies upon these conditions to oppose the prayer made in the present petition.

5. On 07.02.1991, the Chief Officer of Respondent No.1-Municipal Council sent a communication to the predecessor of the original petitioner, stating that the subject piece of land would be required for the construction of road and that she should co-operate in handing over possession, even prior to the determination of the value of the piece of land. The predecessor of the original petitioner responded positively to the offer made on behalf of Respondent No.1-Municipal Council and accordingly, possession of the piece of land was handed over. It would be relevant to mention here that the said piece of land, on which the road was eventually constructed by Respondent No.1-Municipal Council, admeasured 1344.94 square meters at CTS No.683A/1B in Taluka Baramati, District Pune. Although the writ petition refers to a larger area, the learned counsel for the petitioners, in all fairness, referred to 'Exhibit N' to submit that the area with which this petition is concerned admeasures 1344.94 square meters.

6. Thereafter, on 11.03.1991, the predecessor of the original petitioners sent a communication to the Chief Officer of Respondent No.1-Municipal Council demanding compensation at the rate of Rs. 50 per square feet, considering the market value of the land at the relevant point in time. In this context, on 26.04.1991, the Chief Officer of Respondent No.1-Municipal Council sent a letter to the Assistant Director, Town Planning, stating that if the valuation of the subject land was determined, the Municipal Council was ready to pay the amount to the predecessor of the original petitioners. This communication is crucial, as it indicates willingness on the part of Respondent No.1-Municipal Council itself to adequately compensate the land owner for utilization of the subject piece of land. It appears that further steps in that regard were not being taken due to which, the predecessor of the original petitioners had to approach the Office of the Chief Minister of the State of Maharashtra. The Private Secretary of the Chief Minister sent a communication to the Chief Officer of Respondent No.1-Municipal Council on 13.03.1991, directing that the demand made by the said land owner be considered sympathetically.

7. On 11.08.1991, the Chief Officer of Respondent No.1-Municipal Council sent a communication to the predecessor of the original petitioner calling upon her to submit an affidavit, which would facilitate valuation and payment of compensation concerning the subject piece of land. Accordingly, on 13.11.1991, such an affidavit was prepared and submitted.

8. Since no further steps were being taken in that regard, the original petitioner,

i.e, Vijay Anandrao Sawant, was constrained to address further communication to the Chief Minister of the State of Maharashtra raising grievance with regard to the fact that instead of adequate compensation being paid, at least at the rate of Rs. 40 per square feet, which was given to owners of adjacent lands, nominal compensation of Re. 1/- was proposed by Respondent No.1-Municipal Council. It was submitted that appropriate compensation may be granted. This was followed up with further communications in the years 1993, 1996 and 2000 to Respondent No.1-Municipal Council, as also the Director of Town Planning, but to no avail. It is in these circumstances that the present writ petition was filed in December 2001 praying for appropriate relief for determination of market value and payment of compensation for deprivation of use and enjoyment of the aforesaid piece of land.

9. The Respondent No.1-Municipal Council as well as Respondent Nos.2 to 4, being State Authorities, filed reply affidavits in this writ petition and opposed the relief primarily relying upon Regulation 19.3 of the Development Control Regulations (for short, 'DCR') applicable to Respondent No.1-Municipal Council. It was submitted that the said regulation provided that areas of land under roads and open spaces in the layout were to be handed over to the Planning Authority for a nominal amount of Re. 1/-. In this regard, Respondent No.1-Municipal Council in its reply also referred to the Rule/Regulation No.13.2.3.3 of the Standardized Development Control and Promotional Regulations for Municipal Councils and Nagar Panchayats in Maharashtra, which also specified that only a nominal amount of Re. 1/- would be paid by the Planning Authority in such circumstances. On this basis, it was submitted that the relief claimed in the writ petition cannot be granted apart from the fact that the original petitioners approached this Court after more than 10 years of having handed over the subject piece of land to Respondent No.1-Municipal Council.

10. Mr. Ashutosh Kulkarni, learned counsel for the petitioners submitted that this was a classic case of violation of constitutional right of the Petitioners guaranteed under Article 300A of the Constitution of India. It was submitted that the petitioners are clearly entitled to just and fair compensation for deprivation of enjoyment of the subject piece of land. It was submitted that Respondent No.1-Municipal Council itself had recommended valuation and payment of compensation to the predecessor of the petitioners and yet, no steps were taken in that regard for all these years. It was submitted that in such cases where the land owner has been deprived of the enjoyment of land, the argument of delay and laches cannot be raised as the constitutional right guaranteed to the land owner has to be recognized and just and fair compensation has to be paid for utilization of the land belonging to the owner.

11. It was further submitted that reliance on the said DCR was wholly misplaced for the reason that this Court in various judgments repulsed such a contention raised on behalf of the State Authorities and municipal bodies by relying upon the judgment of the Hon'ble Supreme Court in the case of Pt. Chet Ram Vashist

& Ors. V/s. Municipal Corporation of Delhi, (1995) 1 SCC 47. It was submitted that a Division Bench of this Court in the case of Vrajlal Jinabhai Patel & Anr. V/s. State of Maharashtra & Ors., [2003 (3) Mh.L.J.], specifically considered such a rule/regulation, which provided for a nominal amount of Re. 1/- to be paid by the Planning Authority. After considering the same, it was found that such a rule/regulation was in the teeth of Article 300A of the Constitution of India and in that light, the writ petition filed by the petitioners therein was allowed. The said position of law was followed in subsequent judgment of this Court in the case of The State of Maharashtra V/s. Bhimashankar Sidramappa Chippa, [2009 (5) Mh.L.J.] and in the case of Manoharlal Baburam Gupta V/s. The State of Maharashtra & Ors., vide judgment and order dated 03.05.2019, passed in Writ Petition No.9779 of 2007.

12. It was further submitted that the Hon'ble Supreme Court in a recent judgment, in the case of Bernard Francis Joseph & Ors. V/s. Government of Karnataka & Ors., [(2025) 7 SCC 580], reiterated the significance of the constitutional right guaranteed under Article 300A of the Constitution of India. In that context, the Hon'ble Supreme Court emphasized upon the power to be exercised by the High Courts under Article 226 of the Constitution of India to do justice to such land owners, who were deprived of enjoyment of their land, without payment of just and fair compensation. It was submitted that in light of the said position of law, the stand taken by the respondents is unsustainable and therefore, the present writ petition ought to be allowed.

13. On the other hand, Mr. Praful Shah, learned counsel for Respondent No.1- Municipal Council referred to the conditions specified in the order dated 11.06.1979, whereby the layout was sanctioned and he placed particular emphasis on Condition Nos.4, 6, 8, 13 and 15, to contend that having obtained sanction of the layout on such conditions, the petitioners cannot turn around to claim payment of compensation. Reliance was also placed on the aforesaid rule/regulation of the DCR concerning the said Municipal Council to contend that nominal payment of Re. 1/- was justified. The documents on record demonstrated that such an offer was made to the predecessor of the petitioners

way back in 1991 itself. It was emphasized that if the predecessor of the petitioners was dissatisfied with such nominal payment, she should have approached the district court under section 330(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, within 30 days. Having failed to do so, the writ petition filed by the original petitioner, more than 11 years after handing over of the subject land, cannot be entertained. It was emphasized that the remedy available in the law was not resorted to, and in such a situation, the writ petition ought to be dismissed on this ground itself. It was, therefore, submitted that the petitioners cannot rely upon the position of law laid down by this Court in the aforementioned judgments based on the judgment of the Hon'ble Supreme Court in the case of Pt. Chet Ram Vashist & Ors. (supra).

14. Smt. V.R. Raje, the learned AGP for the Respondent Nos.2 to 4, i.e, the State

referred to the reply affidavit on record. It was submitted that the unauthorized non-agricultural use of land by the predecessor of the petitioners was regularized by imposition of fine and thereupon, the layout was sanctioned subject to the conditions referred to hereinabove. It was submitted that in such a situation, when offer of payment of nominal amount of Re. 1/- was made in accordance with the relevant regulations in the year 1991 itself, the prayer for payment of market value or for initiation of acquisition, cannot be entertained in this writ petition, particularly in the light of the peculiar facts and circumstances brought to the notice of this Court. On this basis, it was submitted that the writ petition deserved to be dismissed.

15. The learned AGP further submitted that there was no question of acquisition of land in the light of the fact that the land was handed over by the predecessor of the petitioners through private negotiation.

16. We have considered the rival submissions on the basis of the documents on record and the position of law clarified by this Court and the Hon'ble Supreme Court in the context of Article 300A of the Constitution of India.

17. Article 300A of the Constitution of India specifies that 'no person shall be deprived of his property save by authority of law'. It cannot be disputed that the constitutional right recognized in Article 300A of the Constitution of India also recognizes the necessity of payment of just and fair compensation to a person, who is deprived of his property. A person being deprived of property without payment of just and fair compensation would amount to deprivation of property without authority of law. Although such a right to property ceased to be a Fundamental Right and is now recognized only as a constitutional right, its significance has been recognized and reiterated by the Hon'ble Supreme Court in various judgments. In the case of Pt. Chet Ram Vashist & Ors. (supra), a similar question arose for consideration of the Hon'ble Supreme Court, wherein the Municipal Corporation took a stand that when layouts of private colonizers were sanctioned, the land concerning roads and common spaces stood vested in the Corporation free of cost. In the context of the aforesaid stand taken by the Municipal Corporation, the Hon'ble Supreme Court in the said judgment, held as follows :

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of

cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.”

18. After recognizing the said position of law, the Hon’ble Supreme Court directed that market value of the common spaces be paid to the land owners.

19. Therefore, there can be no dispute about the fact that when certain portions of land in a sanctioned layout are utilized for roads or common facilities, the land owner, being deprived of use of such pieces of land, needs to be adequately compensated for the same.

20. Since the respondents have specifically relied upon rule/regulation of the DCR applicable to Respondent No.1-Municipal Council, which specifies payment of nominal amount of Re. 1/- for utilization of land for roads, it would be appropriate to refer to the judgments upon which the petitioners have placed reliance. In the case of Vrajlal Jinabhai Patel & Anr. (supra), the Municipal Authority therein relied upon Bye-law 14 of the Standardized Building Bye-Laws and Development Control Rules for A Class Municipal Councils of Maharashtra framed by exercising power under the provisions of the aforementioned Act. Bye-Law No.14.3 of the said bye-laws provided for a similar condition that areas of lands under roads and open spaces shall be handed over to the Planning Authorities for which a nominal amount of Re. 1/- shall be paid by the Planning Authorities. This bye-law was specifically relied upon by the concerned Municipal/ Planning Authority in the said case to contend that it was enough and that the land owner could not ask for more. In this context, in the said judgment, a Division Bench of this Court held as follows :

“7. Rule 14 appears to have been framed in furtherance of section 183 of the Act which relates to laying out or making of a new streets. It nowhere provides for the open spaces. Therefore, the power, if any, of acquiring the land under the streets is only contemplated under section 183. Acquisition of open spaces is not contemplated under section 183. Rule 14.3 which is a delegated legislation cannot, confer a power of acquisition of the open space under the lay out. Under Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law. The authority of law means by or under any law made by a competent legislature. No law made by the legislature was shown to us under which the ownership in the open space could be vested or transferred to the Municipal Council whether by payment of compensation of Re. 1/- or otherwise. In the circumstances, we reject the alternative contention of Shri Joshi that the open space under the layout would be vested in the

Municipality on payment of compensation of Re. 1/-."

21. On this basis, the writ petition filed by the land owner therein was allowed. The said position of law was subsequently followed by another Division Bench of this Court in the case of the State of Maharashtra V/s. Bhimashankar Sidramappa Chippa, [2009 (5) Mh.L.J.]. The above quoted Paragraph No.7 from the judgment in the case of Vrajlal Jinabhai Patel & Anr. (supra), was specifically relied upon and after referring to the law laid down by the Hon'ble Supreme Court in the case of Pt. Chet Ram Vashist & Ors. (supra), it was held that reliance could certainly not be placed on any such rule/regulation requiring payment of nominal amount of Re. 1/- for utilization of land of the land owner for roads and common spaces.

22. This position was again reiterated by a Division Bench of this Court in its judgment in the case of Manoharlal Baburam Gupta (supra), and this Court held in favour of the Petitioner.

23. The oral submissions made in this petition on behalf of the respondents are based on specific stand taken on their behalf in the respective reply affidavits. In the reply affidavit filed on behalf of Respondent Nos.2 to 4-State Authorities, we find that such a stand is taken in Paragraph No.9, while Respondent No.1-Municipal Council in its reply affidavit has also relied upon such rule/regulation in Paragraph Nos.8 and 9 of its reply.

24. In the light of the position of law clearly laid down by Division Benches of this Court in the aforementioned judgments, relying upon the law clarified by the Hon'ble Supreme Court Pt. Chet Ram Vashist & Ors. (supra), we are of the opinion that the aforesaid contention raised on behalf of the respondents by relying upon the DCR is wholly unsustainable and it has to be rejected. Accordingly, the said contention is rejected.

25. We are also of the opinion that in the context of the said position of law, reliance placed on Condition Nos.4, 6, 8, 13 and 15 of the order dated 11.06.1979 sanctioning the layout, is also unsustainable.

26. The offer made of payment of nominal amount of Re. 1/- in the year 1991 also can be of no avail, as it is found to be in the teeth of the law laid down by this Court. In any case, such a regulation is in the teeth of Article 300A of the Constitution of India, as it amounts to offering illusory compensation to the land owner. As regards the contention raised on behalf of Respondent No.1-Municipal Council that recourse should have been taken by the petitioners to Section 330(2) of the aforementioned Act within the time period of one month, suffice it to say that the aforesaid provision cannot override the constitutional right of the petitioner guaranteed under Article 300A of the Constitution of India. In any case, Section 330(4) of the aforesaid Act refers to the provisions of the Land Acquisition Act, 1894, and sub-section 5 thereof, specifically stipulates that after compensation is determined and paid, the possession of the land or building can be taken by the Municipal Council. In the present, admittedly, the possession of

the subject piece of land was taken in a hurry in 1991 itself with promise made to the predecessor of the petitioners that appropriate valuation would be done and compensation would be paid to her. Respondent No.1-Municipal Council recommended the requests made on behalf of the predecessor of the petitioners for grant of compensation and yet, it turned around and offered nominal amount of Re. 1/-, as compensation, which amounts to illusory compensation. Thus, Respondent No.1-Municipal Council cannot rely upon its own communications to deprive the petitioners of their right.

27. As regards delay and laches, the said aspect pales into insignificance in the face of the admitted position on facts that despite the petitioners and their predecessors being deprived of enjoyment of the subject land since the year 1991, not a single paisa was paid towards compensation till date. The Hon'ble Supreme Court in the recent judgment in the case of Bernard Francis Joseph & Ors. (supra), reiterated the significance of the constitutional right guaranteed under Article 300A of the Constitution of India. The Hon'ble Supreme Court in the said judgment observed as follows :

"49. It cannot be gainsaid that the appellants herein have been deprived of their legitimate dues for almost 22 years ago. It can also not be controverted that money is what money buys. The value of money is based on the idea that money can be invested to earn a return, and that the purchasing power of money decreases over time due to inflation. What the appellants herein could have bought with the compensation in 2003 cannot do in 2025. It is, therefore, of utmost importance that the determination of the award and disbursement of compensation in case of acquisition of land should be made with promptitude."

"50. We find that in the present case, the appellants were required to knock at the doors of the courts on number of occasions during the period of last twenty-two years. The appellants have been deprived of their property without paying any compensation for the same in the said period of last twenty-two years. As already discussed hereinabove, the appellants had purchased the plots in question for construction of residential houses. Not only have they not been able to construct, but they have also not been even paid any compensation for the same. As discussed hereinabove, though right to property is no more a fundamental right, in view of the provisions of Article 300-A of the Constitution of India, it is a constitutional right. A person cannot be deprived of his property without him being paid adequate compensation in accordance with law for the same."

28. In fact, in Paragraph No.53 of the said judgment, the Hon'ble Supreme Court emphasized that in such situations, High Courts ought to exercise powers under Article 226 of the Constitution of India to give complete justice to the land owners, who are deprived of their land without payment of compensation. The State Authorities can also not escape by taking a stand that this was a case of acquisition by private negotiations. The predecessor of the petitioners was asked to hand over possession of the subject piece of land with a promise of adequate

compensation. Possession was taken in the year 1991 and till date not a farthing has been paid.

29. Hence, the argument on delay and laches is also rejected. We find that in the facts and circumstances of the present case, the writ petition deserves to be allowed. As noted hereinabove, the relief in the present writ petition shall be restricted to area of 1344.94 square meters concerning CTS No.683A/1B of Baramati, District Pune.

30. We are of the opinion that in these circumstances, the respondents ought to initiate process for acquisition of the aforesaid piece of land to determine and pay compensation to the petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013').

31. In view of the above, the writ petition is allowed in the following terms :

(a) The Respondent No.1-Municipal Council shall move a proposal before the Special Land Acquisition Officer (for short, 'SLAO') of the Respondent-State within four weeks for acquisition of the aforesaid piece of land.

(b) Thereupon, the SLAO shall take appropriate steps under the Act of 2013, in accordance with law for determination of compensation payable to the petitioners.

(c) The entire exercise of initiating the process of acquisition, pronouncing the award and payment of compensation shall be completed within a period of one year from today.

32. Rule made absolute in the above terms.

33. At this stage, the learned counsel for Respondent No.1-Municipal Council prayed for stay of this order for a specified period in order to challenge the same.

34. Considering the fact that the petitioners and their predecessors have been struggling for relief for the past more than three decades, we see no reason to grant the aforesaid prayer. Accordingly, the prayer is rejected.