
(2021) 07 BOM CK 0027

Bombay High Court

Case No: Writ Petition No. 9146 Of 2011

Lalchand Kalmal Barant
& Ors

APPELLANT

Vs

Director Of Town
Planning

RESPONDENT

Date of Decision: July 1, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Maharashtra Municipal Corporation Act, 1949 - Section 451, 451(1)
- Land Acquisition Rehabilitation And Resettlement Act, 2013 - Section 19, 19(1)

Hon'ble Judges: R. D. Dhanuka, J; V.G.Bisht, J

Bench: Division Bench

Advocate: Surel S. Shah, Amey C. Sawant, A.A.Alaspurkar, S.S.Patwardhan

Final Decision: Disposed Of

Judgement

1. By this petition filed under Article 226 of the Constitution of India, the petitioners pray for quashing and setting aside the reservation being Site No.

58 for public play ground bearing Survey No. 59/2/1 to 9/1 admeasuring 1 Hectar 19 Ars situated at Malegaon Camp, Taluka Malegaon, District

Nashik. The petitioners also pray for an order or direction against respondent No.5 to publish the lapsing of reservation or allocation of Site No. 58

Trupti described in prayer clause (b) of the petition and further seeks permission to develop the land described in prayer clause (c).

2. The matter was heard at length by this Court on various dates. On 21st January, 2021, this Court after hearing the learned Counsel for the parties,

closed the matter for passing orders. This Court directed the respondent No. 6 - Corporation to make its position clear whether the respondent No. 6

at this stage is interested in acquiring the property of the petitioners and if so, whether further steps in completion of acquisition would be taken by the

Government expeditiously and not later than six months from the date of the said order. We accordingly directed the learned AGP to make statement

whether Government will complete the acquisition procedure within six months.

3. On 2nd February, 2021, Mr. Patwardhan, learned Counsel for respondent No. 6, on instructions, made statement before this Court that the proposal

as to whether respondent No. 6 still seeks to acquire the land of the petitioner or not, would be placed before the General Body Meeting of respondent

No. 6.

4. On 3rd March, 2021, the learned Counsel for respondent No. 6 made statement that pursuant to the order passed by this Court on 2nd February,

2021, the decision as to whether respondent No. 6 still seeks to acquire the land of the petitioner or not was placed before the General Body Meeting

of respondent No. 6 on 18th February, 2021. It was resolved that respondent No. 6 did not require the land in question. Respondent No. 6 has sent

the proposal dated 1st March, 2021 to the State Government for approval under Section 451 of the Maharashtra Municipal Corporation Act and the

same is awaited.

5. Respondent No. 6 thereafter filed an affidavit dated 22nd March, 2021 thereby placing a copy of the said Resolution dated 18th February, 2021 on

record. In the said affidavit, it is stated that the Resolution was passed by respondent No. 6 for not acquiring the land in dispute since it did not get the

requisite financial support from the State Government. The proposal made by respondent No. 6 was pending before the learned Minister and hence

required some time.

6. On 6th May, 2021, the learned AGP tendered a copy of the order dated 22nd April, 2021 passed by the State Government stating that the resolution

dated 18th February, 2021 passed by respondent No. 6 Corporation is suspended under Section 451 (1) of the Maharashtra Municipal Corporation Act

and appropriate order would be passed within 30 days from the date of the said order.

7. On 29th June, 2021, Mr. Alaspurkar, learned AGP for respondent Nos. made statement that the State Government has rescinded the resolution

passed by respondent No.6- Corporation in the public interest. A copy of the said resolution passed by the State Government has been placed on

record before this Court subsequently. This Court, accordingly, directed the learned AGP to make a statement on the next date as to when the land in

question would be acquired by the State Government.

8. The learned AGP, on instructions, states that the land in question would be acquired by following the provisions of the Right to Fair Compensation

and Transparency in Land Acquisition, Trupty Rehabilitation and Resettlement Act, 2013 (for short, "the said Act") including the procedure prescribed

under Section 19 of the said Act.

9. Mr. Patwardhan, learned Counsel for respondent No.6- Corporation, on instructions, states that his client would deposit the amount within eight

weeks from the date of publishing a summary of rehabilitation and resettlement scheme along with declaration referred in Section 19 (1) by the

Collector. Statement is accepted. He, on instructions, states that the Municipal Corporation now wants to acquire the said land and to develop the said

land for public purpose. The decision of the Corporation is already placed on record in the affidavit. Statement is accepted.

10. Mr. Shah, learned Counsel for the appellant, states that respondent No. 6 had earlier taken decision and more particularly in General Body

Meeting held on 18th February, 2021 that respondent No. 6 could not acquire the land in dispute since it did not get the requisite financial support from

the State Government. It is submitted that in view of the stand taken by respondent No.6 earlier, the land in dispute should not remain under acquisition

for Trupty indefinite period. He strenuously urged that if respondent No.6 does not deposit the amount contemplated under Section 19 within time

prescribed and if the State Government does not complete the process of acquisition within time prescribed, the reservation on the plot in question in

that event shall be declared lapsed without any further delay.

11. We have perused the prayers in the Writ Petition. Prayer clause (a) is for quashing and setting aside the reservation in respect of the plot in

question. Insofar as the said prayer is concerned, since the State Government has rescinded the resolution passed by respondent No. 6 and since the

respondent No. 6 has now taken a stand that they proposed to acquire the land and use the land for public purpose, we are not inclined to grant prayer

clause (a).

12. It is made clear that if the respondents do not comply the process of acquisition within the time prescribed under Section 19 of the said Act, the

petitioners in that event would be at liberty to apply for restoration of petition and to press for reliefs in terms of prayer clauses (a) to (c).

13. Writ Petition is disposed of in aforesaid terms.

14. Parties are at liberty to apply in case of difficulty.