
(2023) 08 BOM CK 0010

Bombay High Court

Case No: Writ Petition No. 10899 Of 2022

Chandrakant Uttam
Kolekar And Others

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Aug. 2, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 14, 21, 300A
- Maharashtra Town Planning Schemes Rules, 1974 - Rule 4, 24
- Maharashtra Regional And Town Planning Act, 1966 - Section 60, 61, 61(1), 63, 64, 64(a), 65, 66, 67, 68, 68A, 68(2), 69, 71, 72, 72(1), 72(3), 72(3)(xiv), 72(3)(xv), 72(3)(xvi), 72(6), 73, 74, 74(4), 75, 76, 80, 82, 83, 84, 85, 86, 86(1), 86(1)(a), 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 97(1)(f), 102, 106
- Monopolistic And Restrictive Trade Practices Act, 1969 - Section 40(1), 62
- Maharashtra Land Revenue Code, 1966 - Section 122, 126

Hon'ble Judges: G. S. Kulkarni, J; R. N. Laddha, J

Bench: Division Bench

Advocate: Madhavi Ayyappan, B. V. Samant, Rupali M. Shinde, Rajiv Chavan, Vijaykumar Dhakane, Dinesh Adsule

Final Decision: Disposed Of

Judgement

R. N. Laddha, J

1. By this petition under Article 226 of the Constitution of India, the petitioners seek to challenge the Mahalunge-Maan Preliminary Town Planning

Scheme No.1 sanctioned under Section 86(1)(a) of the Maharashtra Regional and Town Planning Act, 1966 (for short "the Act"). The

petitioners further seek to challenge the Mahalunge-Maan final town planning scheme, prepared by an Arbitrator under Section 72(6) of the Act. The

petitioners claim they were denied compensation for their lands acquired for public purposes under the Scheme. It is the contention of the petitioners

that the acquisition should have followed the procedure outlined in either the Act or the Right to Fair Compensation, Rehabilitation and Resettlement in

Land Acquisition Act, 2013 and that compensation should have been paid to the land owners.

2. It is the case of the petitioners that the Pune Metropolitan Region consists of the important cities of Pune and Pimpri Chinchwad, as well as seven

Municipal Councils, including Lonavala Hill Station, Nagar Panchayat of Vadgaon Maval and three Cantonment Boards; Khadki, Dehu and Pune.

Additionally, it covers 842 villages and has a population of 7.5 million, according to the 2011 census.

3. Mahalunge and Maan villages are located within the Pune Metropolitan Region near the rapidly growing IT park at Hinjewadi. They are also

adjacent to the Pune Municipal Corporation boundary and the Mumbai Bangalore Highway. Despite their high potential, they have remained

underdeveloped due to their classification as agricultural or no development zones in the existing regional development plan.

4. On 11 July 2016, the Government of Maharashtra established the Pune Municipal Region Development Authority (for short the PMRDA)

to plan the development of Pune City, Pimpri Chinchwad Industrial City, and the surrounding area of about 7357 sq. km. In 2018, PMRDA was

declared as the Special Planning Authority for Pune Metropolitan Region under Section 40(1) of the MRTP Act. In 2017, due to the growth of the IT

park at Hinjewadi and the potential for development of the nearby villages, the PMRDA announced its intention to prepare Mahalunge-Maan Town

Planning Scheme No.1, which was published in the Maharashtra Government Gazette. Later that year, the Government of Maharashtra delegated its

powers under Section 68(2) of the Act to the Metropolitan Commissioners of the concerned Metropolitan Region Development Authorities. However,

according to the petitioners, this delegation of power was inappropriate as sanctioning a draft Scheme prepared by a planning authority was essentially

a function of the State Government.

5. The petitioners claim that the Metropolitan Commissioner and Chief Executive Officer of PMRDA met the villagers whose land was included in the

draft scheme under Rule 4 of the Maharashtra Town Planning Schemes Rules, 1974. The authorities told the villagers that they would acquire half of

their lands for the project and offer them either FSI or monetary compensation. The villagers were also told that they would be given developed plots

for the 50% of their land. However, the petitioners claim that no further details were provided in regard to the project and on its development or in

regard to its completion time. The petitioners reportedly expressed their objections to the draft Scheme and its implementation and refused to accept

FSI as compensation. They demanded compensation under new acquisition laws and pointed out that the proposed 36-meter DP road would affect

many villagers's residential and commercial properties, which they believed warranted compensation.

6. The villagers objected to the merger and division of their lands, stating that it would create disputes and jeopardize their livelihoods. They also

informed the authorities that MIDC had proposed compensation under new land acquisition laws for building a 36-meter-wide road and asked that the

PMRDA take this into account when finalising the Scheme. The villagers requested a hearing by sending notices on 6 December 2017, 8 December

2017 and 3 January 2018. Meanwhile, the authority decided to change the boundary of the TP Scheme under Section 62 of the MRTP Act and

published it in the Gazette on 15-21.02.2018.

7. It is the grievance of the petitioners that the authority prepared a draft scheme for the purposes of Section 61 of the Act vide Resolution No.2 dated

24 March 2018, without considering the objections and suggestions made by the villagers.

8. The petitioners have expressed concerns that the draft Scheme does not include provisions for the acquisition of final plots designated for local

society amenities development, as required by Section 64(a) of the Act. The draft Scheme includes a map with final plot numbers, but it does not

specify plot allotment. Additionally, the draft scheme does not propose the formation, merging, or alteration of a final plot to a dispossessed owner or

the transfer of ownership of an original plot, as required by Section 65 of the Act.

9. Further, it is the case of the petitioners that they, along with other villagers, filed complaints about the unfair division, reservation, and allotment of

plots, as well as the non-payment of compensation. The Special Executive Officer and Deputy Collector of the PMRDA invited the petitioners to

discuss their objections on 4 June 2018. Meanwhile, the respondent authorities conducted a joint measurement of the lands owned by the petitioners

and other villagers and created an inventory of fruit-bearing trees and buildings for valuation purposes. The petitioners were informed that their

compensation claim was being considered based on the property valuation determined by the joint measurement.

10. It is the grievance of the petitioners that the Metropolitan Commissioner and the CEO of the PMRDA approved the draft town planning Scheme

without considering their objections or those of other villagers. This was done under Section 68(2) of the Act, as stated in the Notification dated 22

June 2018. The Metropolitan Commissioner and CEO of the PMRDA did not consult the Director of Town Planning or conduct any enquiry before

approving the Scheme. They justified this by stating that consultation with the Director of Town Planning, MS, Pune, had already taken place before

the draft Scheme was published under Section 61(1) of the Act, so further consultation was not necessary before approving the Scheme under Section

68(2) of the Act.

11. According to the petitioners, Sections 61 and 68 of the Act operate at different stages. The language in Section 68 concerning consultation with

the Director of Town Planning is mandatory and cannot be ignored simply because the Director of Town Planning approved it under Section 61 of the

Act. The respondent authority neglected to consult the Director of Town Planning, resulting in the revocation of the Notification dated 22 June 2018

by the Government of Maharashtra. On 9 August 2018, the PMRDA prescribed the Scheme to the Director of Town Planning. The Director

instructed the authority to make necessary modifications and take appropriate legal measures vide letter dated 18 September 2018. On 19 September

2018, the PMRDA's Metropolitan Commissioner and CEO approved the draft town planning Scheme. On 16 October 2018, Mr D.S. Khot, an

Assistant Director of Town Planning, was appointed as the Arbitrator for approving the draft Scheme by the Maharashtra Government's Urban

Development Department under Section 72(1) of the Act.

12. The petitioners claim that the Arbitration is required by Section 72(3) of the Act to divide the town planning Scheme into a preliminary and final

Scheme, following due procedure. The preliminary Scheme must be prepared within nine months, and the final Scheme within eighteen months of the

Arbitrator's appointment. The Arbitrator then asked the villagers to submit objections to the final plot allotment in the draft town planning Scheme

and file compensation claims under Section 102 within sixty days of receiving the notices. The villagers were called for hearings on different dates.

Some petitioners attended the hearings and raised objections to the final plot allotments, while others requested alternative dates due to personal

difficulties.

13. The petitioners raised objections to the division of their land into smaller units and the reshuffling of their plots, stating that it would cause them

undue hardship. They requested that their original survey numbers be retained to allow them to continue farming. They also objected to the allotment

of non-contiguous plots and requested for allotment of a consolidated plot. The petitioners brought to the Arbitrator's attention that some of the allotted plots were not developable or non-buildable. They also raised a claim for compensation, which the Arbitrator assured would be considered before taking possession of their lands.

14. The petitioners have raised concerns that their objections were ignored by the Arbitrator. They contend that in a surprising move, the respondent authority issued notices on 17 May 2019, asking the villagers to hand over possession even before finalising the preliminary compensation Scheme.

The petitioners objected, stating that their claims should be settled and compensation paid before taking possession.

15. On 24 July 2019, the Arbitrator announced that he had drawn up the preliminary town planning Scheme, Mahalunge-Maan No.1, in accordance with the provisions of the Act. This was confirmed through a public notice published in the Government Gazette on 26 July 2019. The State

Government approved the Scheme with some modifications as described in Schedule I (pertaining to final plots) and Schedule II (pertaining to special

development control and promotion regulations of town planning Scheme No.1) vide Notification issued on 2 December 2019. The sanctioned

preliminary town planning Scheme No.1 came into effect on 10 February 2020.

16. The petitioners claim that the Arbitrator made changes to the allotment of plots as outlined in Schedule-I of the Notification dated 2 December

2019. It is their grievance that the Arbitrator altered the draft town planning Scheme to accommodate the preferences of some landowners by giving

them their desired plots. The shape and size of these plots were changed according to their demands, and different plots were merged by altering their

boundaries.

17. According to the petitioners, the Government of Maharashtra has approved special development control regulations for the Maan-Mahalunge town

planning Scheme, as detailed in Schedule II of the Notification. The maximum allowed FSI for final plots without monetary compensation, amenity

plots, and EWS/LIG plots will vary from 2.5 to 3.3 depending on the width of the road. These Special Development Control Regulations will only apply

if villagers decide to build on their plots. Section 65 of the Act states that an owner's property cannot be taken by the planning authority or any

other authority without their consent. Any changes to the property's boundaries, including merging or separating, must also be done with the

owner's consent and for consideration. However, the planning authority and the Arbitrator proceeded to make changes to the original plot without

the consent of the petitioners and land owners, which is in violation of Section 65 of the Act.

18. Miss Madhavi Ayyappan, learned counsel appearing on behalf of the petitioners, submitted that the State is obligated to provide compensation

when acquiring private property for public use. She submitted that seizing the petitioners' land without determining and providing compensation is a

violation of not only Article 300-A but also Articles 14 and 21 of the Constitution of India. It is submitted that additional FSI cannot be considered as a

substitute for monetary compensation and that providing 50% developed plots in exchange for their entire land is not a valid justification for withholding

monetary compensation. It is submitted that the respondent authorities should have included the compensation amount in the project cost estimate as

mandated by Section 97 of the Act, and the Arbitrator was required to determine the compensation for land owners whose land was being acquired

for the Scheme. It is submitted that dividing the petitioners' contiguous land into smaller plots and allocating them to other villagers without their

consent is a violation of Section 65 of the Act.

19. Relying on the Judgment of the Hon'ble Supreme Court in Hari Krishna Mandir Trust v/s. State of Maharashtra, reported in (2020) 9 SCC

356, the learned counsel for the petitioners, submitted that any transfer, division or amalgamation of existing plots without the parties' consent is

unlawful and invalid. Despite a public notice on 14 February 2020 stating that individual awards were communicated, the petitioners claim they never

received any communication.

20. It is submitted that the Arbitrator did not address the petitioners' objections regarding plot allotment or compensation payment when finalising

the Scheme. It is submitted that the final draft town planning Scheme fails to meet the legal requirements specified in Section 72(6) of the Act. The

final draft does not include an estimated amount of compensation payable u/s 66 or an estimate of compensation for loss of original plot area as per

Clause (f) of sub-section (1) of Section 97. It also fails to estimate compensation for property or rights affected by the town planning Scheme as per

Section 102 or determine if the area reserved for public purposes is beneficial to owners or residents within the Scheme area.

21. It is submitted that the town planning Scheme, both in its draft and final form, did not comply with the statutory requirements. It is also submitted

that the petitioners were not given written reasons for the denial of compensation by either the Arbitrator or the authority. Instead, they were orally

informed that they would receive developed plots and an FSI of 2.5 instead of compensation. However, it is submitted that these alternatives are not

equivalent to monetary compensation and that the additional FSI would only be useful if they planned to use their land for construction. Since their

lands are agricultural, the FSI would be of no use to them.

22. It is submitted that despite being asked the petitioners to submit their claims against the Arbitrator's decision, they have not received any

personal communication to date and are unaware of why their requests for compensation were denied. It is submitted that the State of Maharashtra

has not established an Appellate Tribunal to review the claims of the petitioners against the Arbitrator's decision. Furthermore, it is alleged that

respondent authorities/officers, accompanied by police, have visited land owners and pressured them to surrender their lands.

23. On the other hand, Mr B. V. Samant learned Additional Government Pleader appearing for respondent no.1, inviting our attention to the affidavit

filed on behalf of respondent no.1 submitted that the State Government did not set up an Appeal Tribunal as per the PMRDA's suggestion

because the PMRDA has proposed changes to the preliminary draft town planning Scheme (Mahalunge-Maan) and they wanted to avoid doing the same work twice.

24. Mr Rajiv Chavan, learned senior counsel appearing on behalf of respondents no. 2 and 3, submitted on 14 February 2020, the Arbitrator split the

Scheme into a preliminary and final Scheme under Section 72(3) of the Act. The Government has approved the preliminary Scheme, which had details

of land owners' area, share, and ownership as per Section 72(4). However, the Arbitrator still has to prepare the final Scheme after the Tribunal

of Appeal's decision as per Section 72(6) of the Act. The final Scheme would determine and give compensation to the concerned landowners

after getting Government approval.

25. The learned senior counsel submitted that the PMRDA suggested setting up the Tribunal of Appeal on 20 May 2022, but the Director of Town

Planning, MS, thought that it would be better to set up the Tribunal of Appeal after sanctioning preliminary Mahalunge-Maan TPS-1 (first variation)

and completing arbitration procedures. So the Government decided to set up the Tribunal of Appeal after finalising these procedures.

26. The learned senior counsel submitted that the PMRDA finalised plots as per Government approval and marked their boundaries with pillars

showing plot details. They paid a fee to the Deputy Superintendent of Land Records for demarcation. On 15 March 2022, the Collector Pune

published a Notification that included lands in TPS-1 in the Gaothan area under Section 122 of the Maharashtra Land Revenue Code, 1966. The

Government's Revenue and Forest Department passed a Resolution on 23 June 2022 to measure and prepare records for the TPS-1 area under

Section 126 of the Maharashtra Land Revenue Code, 1966. The PMRDA prepared a draft property card for the final plot and submitted it to the Land

Record Department for further action on

27 May 2022. It is submitted that as per Section 106 of the said Act and Rule 24 of the said Rules of 1974, the PMRDA would pay the amount due to

concerned parties after the Government sanctions the final Scheme.

27. According to the learned senior counsel, the PMRDA followed the procedure outlined in the Act while preparing the draft Scheme. The Arbitrator

heard all land owners and submitted a report to the Government, which sanctioned the preliminary TPS under Section 86(1) of the Act vide a

Notification dated 9-15 January 2020. It is submitted that the PMRDA decided to change the preliminary TPS-1 under Section 92 of the said Act vide

Resolution No.3 dated 14 October 2021, following the procedure laid down in the Act. It is submitted that after sanctioning the draft Scheme (first

variation), the petitioners would get an opportunity to be heard by the Arbitrator.

Therefore, it is submitted that the petition is premature and deserves

to be dismissed.

28. The rival contentions now fall for our determination.

29. Considering the contentions of the petitioners, it would be appropriate to have a survey of the relevant provision of the MRTP Act. According to

Section 60, a Scheme must be prepared for any area within the jurisdiction of the planning authority and published in the official gazette along with a

copy of the plan. Section 61 mandates the publication of a draft Scheme for the declared area within a specified time frame and if not published within

the specified time, it will lapse. Section 62 allows for the inclusion for additional areas in the draft Scheme, subject to procedural formalities. Section 63

empowers the State Government to direct Planning Authority to make such a Scheme, and if it fails to comply, the State Government can appoint an

officer to make and submit the Scheme. Section 64 outlines the contents of the draft Scheme, which may include provisions for land reservation,

acquisition, or allotment, plot reconstitution by altering boundaries, laying out or relaying out land for comprehensive development, and an estimate of

the total cost of the Scheme with the net costs to be borne by the planning authority.

Section 65 specifies that in the draft Scheme, the size and shape

of reconstituted plots will be determined to make them suitable for building purposes. If already build upon, it must be ensured that structures do not

violate open space stipulations in the draft Scheme as far as possible. Section 66 of the Act outline the process for compensating a land owner when

their land used is discontinued after a final Scheme is implemented. Section 67 allows for objections to be raised by affected persons and for

modifications to be made to the draft Scheme, if necessary. Section 68 deals with power of State Government to sanction draft Scheme. Section 68A

deals with effect of sanction on draft Scheme. Section 69 prohibits any changes or development on the land once the intention to create Scheme has

been published, unless the necessary permission has been obtained. Section 71 provides for a summary inquiry to resolve issues regarding disputed

ownership. Section 72 provides for the appointment of an Arbitrator. Section 73 makes certain decisions of the Arbitrator final. Section 74 deals with

appeal. Section 75 outlines the formation of an Appellate Tribunal, while Sections 76-82 provide procedural detail for the tribunal. Section 80 clarifies

that the Appellate Tribunal is not a Court. Section 83 allows a planning authority to take possession of land for development by applying to the State

Government through an Arbitrator. If approved, the State Government will authorise the Arbitrator to take possession vide an official notification.

Section 84 requires the Commissioner of Police or District Magistrate to secure delivery of possession. Section 85 grants the right to receive 4%

interest from the date of loss of possession until compensation is paid. Section 86 requires the State Government to approve the final Scheme with a

specified period after receiving it from the Arbitration, while Section 87 outlines circumstances in which the Scheme can be withdrawn. Section 88

mandates that all lands required for the Scheme vest in and be handedover to the planning authority upon its finalization. Sections 89 and 90 address

enforcement of Scheme while Sections 91-93 deal with variations in the Scheme. Section 94-95 outline procedure before the Arbitrator.

30. It is, therefore, quite clear from the statutory provisions that there is complete mechanism provided in the Act. In this background, to ascertain

whether the petitioners' grievance at this stage needs to be gone into by this Court in the present proceeding or otherwise. It is not in dispute that

the State has to award compensation when acquiring private property for public use or that taking away someone's land in exercising its power of

eminent domain in expropriating private property for public use as without determining and providing compensation is against Article 300A of the

Constitution of India. Also it is not in dispute that the State Government has the power to set up an Appeal Tribunal for Town Planning Schemes under

Section 75 of the Act, which reads thus:-

Section 75 "Construction of Tribunal of Appeal

(1) The Tribunal of Appeal shall consist of a President and two Assessors.

(2) The President shall -

(a) in Greater Bombay, be the Principal Judge of the Bombay City Civil Court or such other Judge of the said Court as may be appointed by the State

Government on the recommendation of the Principal Judge; and

(b) elsewhere, be the District Judge or the Civil Judge of the Senior Division as may be appointed by the State Government on the recommendation of

the District Judge:

Provided that, the State Government may, if it thinks fit appoint as President any person who has held the post (i) in Greater Bombay of a Judge of the

High Court or of the Bombay City Civil Court, and (ii) elsewhere of a Judge of the District Court.

(3) The President shall appoint fit and proper persons as Assessors, who shall as far as possible have knowledge, or experience of town planning,

valuation of land or civil engineering.

(4) The President and the Assessors shall be appointed members of the Tribunal of Appeal for such period as may be required by such Tribunal to

decide an appeal made against the decision under clauses (iv) to (xi) (both inclusive), and clauses (xiv), (xv) and (xvi) of the sub-section (3) of Section

72.

(5) The State Government may, if it thinks fit, remove for incompetence or misconduct or any goods and sufficient reason any Assessor appointed

under sub-section (3).

(6) If any Assessor is removed or dies or refuses or neglects to act or becomes incapable of acting, the President shall appoint forthwith a fit and

proper person to take the place of such Assessor.

31. There is no disagreement that the PMRDA suggested changes/modifications to the draft town planning Scheme No.1 (Mahalunge-Maan) vide

Resolution No.3. There is also no disagreement that these changes/modifications will substantially change/alter the final plots and assessment details

of the Scheme, requiring a new start of arbitration proceedings. It is not in dispute that the PMRDA recommended the creation of the Tribunal of

Appeal on 20 May 2022. On 26 July 2022, the Director of Town Planning, MS, issued a communication stating that it would be appropriate to establish

the Tribunal of Appeal after the draft Mahalunge-Maan TPS-1 was approved and published. It was also brought on record that the PMRDA started a

variation to TPS-1 under Section 92 and to that effect has provided a draft under Section 61(1) to the Director of Town Planning for consultation.

There is also no disagreement that after the approval of the draft Scheme (first variation), the petitioners will have an opportunity to be heard by the

Arbitrator.

32. In the light of the above discussion, it is quite clear that the petitioners would have an opportunity to echo all their grievances, if any, in a manner

known to law at the appropriate time, including before the Arbitrator, after the final Scheme is notified. Thus we refrain from expressing our opinion

on the merits of any of their contentions as being canvassed in the present proceedings, or in respect of any grievances/issues the petitioners may

have in future. In such circumstances, in our view, the present petition is premature and deserves to be disposed of accordingly.

33. It is accordingly disposed of. There shall be no order as to cost.