

(1980) 02 BOM CK 0028**Bombay High Court****Case No:** Second Appeal No. 1154 of 1973

The Municipality of Trimbak

APPELLANT

Vs

Ramchandra Kisan Aher

RESPONDENT

Date of Decision: Feb. 15, 1980**Acts Referred:**

- Maharashtra Municipalities Act, 1965 - Section 88

Citation: AIR 1981 Bom 18**Hon'ble Judges:** D.B. Deshpande, J**Bench:** Single Bench**Advocate:** V.M. Limaye, for the Appellant; D.K. Ghaisas, for the Respondent

Judgement

D.B. Deshpande, J.

The short question for decision in this appeal is whether the word "acquire" in this case means the acquisition by the defendant-Municipality under the Land Acquisition Act or whether it includes the acquisition by the defendant-Municipality by way of private purchases also and this question arises in the following manner:--

2. The plaintiff is the owner of City Survey Nos. 728, 729 and 730, situated within the Municipal limits of Trimbak in Nasik District, immediately to the south and east of the plaintiff's property, there are public roads and there are open spaces, in question, on the other end of that road. These open spaces also are located within the Municipal limits of Trimbak Municipality. These open spaces are being leased out by the Trimbak Municipality for the purpose of business stalls. The plaintiff has got his shops and a rice mill abutting on that road. Previously, this road was a very narrow one and the Municipal Council decided to widen the road and that is why it acquired many properties lying beyond that line and actually widened the road. Most of these properties were acquired by private purchases from different owners, The plaintiff's property is located in bazar area and to the east of the road in question, there is river-bed of river Godawari. The river-bed is covered by the

Government by constructing a slab. It appears that the Municipality wanted permission from the Government to lease out portions on this slab to businessmen, but the Government refused permission for such leases. Thereafter, the Municipal Council wanted to lease out portions from the public road, close to the slab on the west, thereby reducing the width of the road. It may be mentioned here that the properties were acquired by the Municipal Council for widening the road and even in this background, the Municipal Council wanted to lease out the open spaces so as to reduce the width of the road. The plaintiff alleged that if the Municipal Council is allowed to lease out the portion of public street to private business, the width of the road would be reduced and would materially affect his business. Hence, he filed a suit for perpetual injunction against the Municipal Council restraining the Council from leasing out the open spaces for private business purposes.

3. The defendant-Municipal Council resisted the plaintiff's claim. The Municipal Council denied that the properties were acquired by it only for the purposes of widening the road. The Council denied that the Government refused permission for leasing out the portions on the slab. Similarly, the Council denied that the open spaces that are being leased out by it are portions of a public street. It denied that the plaintiff's right is being affected in any manner by way of obstruction. The Council contended that it had right to utilise its property in any manner within the limits of the Municipal Act that is applicable.

4. Issues were framed and evidence was led and thereafter, the learned trial Judge held that the plaintiff proved his right to use lands covered by the plots bearing serial Numbers 1 and 8 to 11 in Ex. 63. The learned trial Judge further held that the defendant-Municipal Council was unauthorisedly obstructing the same by constructing shops/stalls thereon and leasing out the same. The trial Court rejected the defendant's contention that the members of the public who are likely to be obstructed in taking their vehicles to the mill of the plaintiff are necessary parties to the suit. The learned trial Judge held that the suit was properly valued and consequently he passed a decree in favour of the plaintiff and defendant was permanently restrained from leasing out by auction or in any other manner, the land covered by plots bearing serial Nos. 1, 8, 9, 10 and 11 in Exhibit 63 and granted some other reliefs to the plaintiff. Being aggrieved by this decision, the defendant-Municipal Council preferred Civil Appeal No. 327 of 1972 in the District Court at Nasik. The learned appellate Judge practically concurred with all the findings of the trial Court except with respect to the finding on plot No. 1. Consequently, he allowed the appeal partly and deleted reference to plot No. 1 in the judgment and decree of the trial Court and confirmed the judgment and decree so far as the remaining plots are concerned. He directed the appellant to bear the costs of the respondent. Being aggrieved by this decision, the defendant-Municipal Council has filed this second appeal.

5. The only question for my consideration is about the meaning to be given to the word "acquire". According to Mr. Limaye, appearing for the Municipal Council, if the Municipal Council acquired the land under the Land Acquisition Act, then only the restriction of leasing out the plots is applicable. Moreover, if the land is acquired by private purchases, there is no restriction against the Municipal Council from leasing out the open spaces to the members of the public. I am unable to agree with this submission made by Mr. Limaye. The word "acquire" must have its simple meaning, If the legislature wanted to assign such meaning to the word "acquire" as urged by Mr. Limaye, the legislature could have made it clear in that behalf, and could have said that the restriction would apply to the lands secured under the Land Acquisition Act. Instead of doing so, the word "acquire" is merely used. The word "acquire" must carry its ordinary and simple meaning and it means that this acquisition may be in any way, namely it may be by private purchases or it may be by acquisition under the Land Acquisition Act and hence, if this meaning is once accepted, there is no merit in this appeal and it accordingly deserves to be dismissed. The appeal is accordingly dismissed with costs.

6. Appeal dismissed.