

Versus

- Downloaded on - 05/01/2026 18:24:47

Mr. Siddharth R. Ronghe for the Appellant
Mr. Rishikesh M. Pethe for the Respondents.

CORAM : GAURI GODSE, J.

RESERVED ON : 16th SEPTEMBER 2025

PRONOUNCED ON : 5th JANUARY 2026

JUDGMENT :-

1. This second appeal is filed by the original plaintiff to challenge the concurrent judgments and decrees dismissing the suit for a declaration that the plaintiff has the right, title and interest and the authority to develop the suit property. The suit was filed with respect to the plot of land bearing Plot No. 14(part of old survey no.3) out of Survey No. 133, Hissa No. 5B, 6B, 7B ('said land'). The plaintiff's prayer was for a declaration that the plaintiff ('society') has the right to develop the said plot and construct a commercial building in its capacity as the owner. The suit also prayed for a permanent injunction restraining the respondent ('corporation') from obstructing the lawful title of the society as owner and in possession, and the society's right to develop the said plot

and construct the commercial building. The second appeal is admitted by order dated 2nd December 2005 on the following substantial question of law:

i) In the absence of any acquisition of the property belonging to the Appellant, under the provisions of Section 78 of the Bombay Provincial Municipal Corporation Act, 1949 and in the absence of any agreement under Section 77(1), is the title of the Appellant divested on the basis of a possession receipt (Exh. 69)?

ii) Whether the Courts below were justified in dismissing the suit filed by the Appellant for a declaration and injunction in the absence of the title of the Appellant having been extinguished, either by the acquisition of the property or an agreement for the transfer of the property by the Appellant to the Respondents in a manner recognized by the provisions of the Bombay Provincial Municipal Corporation Act, 1949?

The plaintiff's pleadings are summarised as follows:

2. The plaintiff is the cooperative housing society that purchased the land bearing Survey No. 133, Hissa No. 5B, admeasuring about 49 R, 6B, admeasuring about 33 R and 7B, admeasuring about 38 R by way of two sale deeds dated 26th December 1967. Thus, the society claimed title and possession over the entire land, totalling about 1 hectare 20 R. After acquiring the aforesaid land, the society decided to divide the total land into a number of plots and to allot such plots to its respective members. Accordingly, the layout plan was approved, and plots were allotted to the members of the society. The open space in the layout was intended for persons who would carry out construction in accordance with the approved layout and was primarily reserved for a playground and a recreational area for the occupants. The open space comprising 10% of the net area of the land in the layout was for the benefit of the members. However, the corporation insisted on retaining 10% of the gross total area as open space. The reservation for the shopping centre was buildable by the persons entitled to carry out construction on

the plot allotted, in accordance with the sanctioned layout.

3. The society raised an objection to a letter dated 9th September 1968, issued by the corporation, calling upon the society to hand over the physical possession of the land admeasuring 12741 square feet, free of cost (equivalent to 10% of the layout area). The officers of the corporation used coercion to obtain a letter from the then office bearers of the society regarding the transfer of the area, to the extent of 12741 square feet, free of cost. The society had requested that the corporation sanction the plan without requiring the 10% open space requirement, on the ground that the layout provided approximately 4% to 6% open space. By taking undue advantage of the fact that the members of the society belonged to a lower or middle-income group, the officers of the corporation coerced the members and the office bearers of the society into agreeing to the transfer of the open space at no cost. Although the possession receipt dated 9th October 1970 was executed, physical possession was always held by the society. The possession receipt was executed solely for the purpose of approving the construction plan. Hence, the

plaintiff prayed for a declaration that the plaintiff was entitled to develop the plot reserved for a shopping centre.

The defendant's pleadings are summarised as follows:

4. The corporation denied the suit claim, contending that, under the regulations, 10% of the net plot area must be open space. However, the society requested that the said condition be waived, as it was not possible for the society to accommodate all members within the available area. According to the development plan, there was a reservation of the shopping centre and two DP roads of 40 feet and 60 feet in width on the land belonging to the society. Accordingly, the society agreed to surrender 10% of the total land area, free of cost, for the purpose of the shopping centre. In lieu of the reservation of the shopping centre, the society was granted a waiver from the requirement to retain 10% of the land as open space. Thus, in lieu of a waiver of the condition requiring the retention of 10% of the total area as open space, the society surrendered the area reserved for the shopping centre. According to the possession receipt, the corporation was in possession of the surrendered area.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

5. Learned counsel for the appellant submitted that though the erstwhile office bearers executed the possession receipt, the society has led evidence to show that the actual physical possession was never handed over. The said land was reserved for a shopping centre; hence, in view of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP'), read with Section 4 of the Land Acquisition Act, there cannot be any vesting in the corporation unless the procedure under these provisions was adopted by the corporation for acquiring the land and taking over physical possession. No registered agreement was executed in favour of the corporation for the transfer of the land. The area under compulsory reservation cannot be transferred free of cost as a condition precedent to the sanction of the plan. Therefore, the possession receipt was *void ab initio*, and there was no necessity to seek any declaration that the possession receipt was illegal. Accordingly, the society prayed for a declaration that it was the owner and in possession of the said land and is entitled

to develop it. The corporation's letter dated 18th November 2003 supported the society's contention that possession was always with the society.

6. In the trial court, no objection was raised on the point of limitation. The first appellate court erred in holding that the suit was barred by limitation. Learned counsel for the appellant relied upon the following decisions to support his submissions that, in the absence of any valid procedure followed for acquisition, the right, title, and interest in the area reserved would not vest in the corporation.

i. ***Yogendra Pal and Ors Vs. Municipality Bhatinda and Anr***¹

ii. ***Pt. Chet Ram Vashist(Dead) by Lrs Vs. Municipal Corporation of Delhi***²

iii. ***Shree Vinayak Builders and Developers Vs. The State of Maharashtra and Ors***³

iv. ***Purnima Talkies Vs. Chief Officer, Dhahanu Nagar Parishad and Ors***⁴

1 AIR 1994 SC 2550

2 AIR 1994 SC 430

3 2022 (4) Mh LJ 739

4 2025 (2) ALL MR 468

7. Learned counsel for the appellant submitted that, admittedly, no procedure was followed for acquiring the area reserved for the shopping centre by the corporation. Hence, there was no vesting in the corporation. Thus, according to the learned counsel for the appellant, the title to the said land continued with the society, which was the owner, and it was entitled to develop the same as a shopping centre in terms of the reservation on the said land.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

8. Learned counsel for the respondent ('corporation') supported the impugned judgments and decrees. He submitted that in accordance with the rules and regulations prevailing at the relevant time, the society was obligated to retain 10% of the net plot area as open space. However, the society couldn't accommodate all its members in the available area. Hence, as per the conditions laid down by the corporation, in lieu of surrendering the area reserved for the shopping centre, the requirement of keeping 10% of the net plot area as open space was waived, and the society was allowed to carry out construction without keeping the 10% area open.

9. Learned counsel for the corporation submitted that the copy of the resolution relied upon by the society to support the contention that the society was in possession was never exhibited in evidence. The witness of the society admitted in the cross-examination that no objection was raised on handing over possession for getting the layout sanctioned. Therefore, society was estopped from raising any objections to the possession receipt, as physical possession was handed over to the corporation. No evidence was produced to support the society's contention that the physical possession was not handed over. Witness no. 1, examined by the society, had admitted that she had no personal knowledge about the actual handing of the possession at the relevant time. Witness no. 2, examined by the society, failed to produce any document evidencing his membership in the society. Hence, there was no sufficient evidence on the record to support the society's claim that physical possession was with the society.

10. According to the learned counsel for the corporation, if the corporation had not waived the condition of keeping 10%

of the space open, the society would not have had valid or sufficient FSI for carrying out the construction to accommodate all its members. Hence, once the society surrendered the land in lieu of a waiver of the condition to keep 10% of the area open, the society would not be entitled to claim ownership of the area validly surrendered in favour of the corporation.

11. Learned counsel for the corporation submitted that the society had produced the notice dated 18th November 2003 in the appeal to support the contention that the society was in possession of the suit property; however, it was not admitted in evidence and was not proved. Hence, there was no material on record to support the society's contention that the physical possession was with the society.

12. As to the findings of the first appellate court that the suit was barred by limitation, the learned counsel for the corporation submitted that the society had passed a resolution in 1968 to accept the sanctioned plan. The new members raised new contentions as the price of the land has risen. Hence, a false claim is raised in the suit arising from

the price hike. Learned counsel for the corporation, therefore, submits that once the society had handed over physical possession of the said land in lieu of waiver of the condition to keep 10% of the net area open, the area under reservation for the shopping centre was validly handed over to the corporation and is vested with the corporation.

13. To support his submissions, learned counsel for the corporation relied upon the decision of the Division Bench of this court in the case of *Jayshakti Co-operative Housing Society Ltd Vs Pune Municipal Corporation and Others*⁵ and the decision of the Hon'ble Apex Court in the case of *Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar Vs. Chandran and Others*⁶. He submitted that this court, in *Jayshakti Co-operative Housing Society Ltd*, held that after furnishing an undertaking, handing over possession and taking benefit of the development permission, the society was not entitled to raise a grievance after a lapse of unexplained delay. He submitted that, in the present case, after handing over possession by executing a

⁵ Writ Petition No. 4915 of 2006, dated 20th March 2014

⁶ (2017) 3 SCC 702

possession receipt and availing the benefit of the waiver of the condition to retain 10% of the area as open space, the society would not be entitled to claim any right, title, or interest in respect of the surrendered area.

14. Learned counsel for the corporation submitted that in the decision of *Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar*, the Hon'ble Apex Court held that once the facts are admitted, they need not be proved by adducing independent evidence. He therefore submits that in the present case, once the society admitted the possession receipt, there was no reason to hold that the society was in physical possession of the property. Hence, learned counsel for the corporation submits that, in view of the surrender of the land reserved for the shopping centre to avail of extra area for construction, the right, title, and interest in the surrendered area vest in the corporation. Since the physical possession was also handed over, the right, title, and interest vested in the corporation; hence, for want of any procedure for acquiring the land, the vesting in favour of the corporation, in lieu of the handing over of physical

possession against availing the benefit for construction, cannot be disturbed. Hence, both the questions of law must be answered in favour of the corporation.

LEGAL PRINCIPLES:

15. The Apex Court in *Yogendra Pal vs. Municipality*, decided a group of appeals and a writ petition that raised a common question of law, whether the provisions of Section 192(1)(c) of the Punjab Municipal Act, 1911 and the corresponding provisions of Section 203(1)(c) of the Haryana Municipal Act, 1973 for compulsory transfer of the land to the Municipal Committees without payment of compensation, are valid. The Apex Court held that when the land was transferred under Section 192(1)(c) of the Act, the transfer was nothing short of acquisition, divesting the landowner of all his rights as owner of the land. The Apex Court held the provisions of Section 192(1)(c) to be violative of Article 14 of the Constitution of India as under the said provision, the Municipal Committee which prepared the town planning scheme was given absolute power of acquiring the land without payment of compensation if the land acquired is up to

25 per cent of the holding of the landowner and of payment of compensation according to the discretion of the Municipal Committee without laying down the principles for payment of compensation if the land acquired was above 25 per cent of the holding.

16. In *Pt. Chet Ram Vashist* the question of law that arose before the Apex Court for consideration was whether the Municipal Corporation of Delhi, in the absence of any provision in the Delhi Municipal Corporation Act, 1957, was entitled to sanction the plan for building activities with the condition that the open space for parks and schools be transferred to the Corporation free of cost. The Apex Court held that in the absence of any statutory provision vesting such land in the Corporation, it cannot become the owner of it. After referring to Section 313 of the Delhi Corporation Act, the Apex Court held that the power to accord sanction on conditions cannot be construed to mean that the Corporation in the exercise of placing restrictions or imposing conditions before sanctioning a layout plan can also claim that it shall be sanctioned only if the owner surrenders a portion of the

land and transfers it in favour of the Corporation free of cost. It was held that the resolution of the Standing Committee, that the area specified in the layout plan for the park and school shall vest in the Corporation free of cost, was not in accordance with law.

17. In *Shree Vinayak Builders and Developers*, the Full Bench of this Court decided the reference on the questions regarding modes of acquisition provided under section 126(1)(a) and (b) of the MRTP Act, and whether the land owner can withdraw his request for TDR (Transferable Development Rights) and refuse or decline to surrender the land. The Full Bench also decided the question whether the approval by the authorities concerned for the grant of TDR in lieu of monetary compensation should be treated as a step in the acquisition of land and thereby as commencing the proceedings for the acquisition of the land.

18. The Full Bench of this Court held that Section 126(1)(a) and (b) of the MRTP Act has to be by consensus between both parties and not only at the option of the Acquiring Authority. It is held that mere approval of the request of the

land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract, and the question would have to be determined in the facts and circumstances of each case. Therefore, the landowner may withdraw his request and refuse to surrender the land, provided that no contract has been concluded between the parties. It is further held that the mere grant of approval or passing of a resolution by the authorities concerned for the grant of TDR/FSI in lieu of monetary compensation is not a step for the acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.

19. In *Purnima Talkies*, the challenge was to the order of the Corporation, which refused to grant compensation to the petitioner as prayed for and holding that the petitioner is entitled only to TDR/FSI rights. This Court held that compensation has always been considered to be an integral part of the acquisition process and in the absence of following due process of law as prescribed under Section

126 of the MRTP Act, the option would be by payment of compensation, to be determined and paid in accordance with the applicable laws.

20. In *Jayshakti Cooperative Housing Society*, the prayer was for the grant of compensation in respect of the area reserved for the development plan road and in the alternative, for a declaration that the reservation stands lapsed. The Corporation rejected the purchase notice under Section 127 of the MRTP Act on the ground that the layout plan had been sanctioned on the condition and undertaking of the society that the property would be handed over to the Corporation free of cost. Accordingly, possession was handed over, and a road was constructed, which was maintained by the corporation. The society contended that at no stage had it given any undertaking, and, in any event, the condition contained in the development permission was illegal and unenforceable. The society contended that, although the road had been constructed and was being maintained by the corporation, the corporation had never taken formal possession. Hence, it was the petitioners'

contention that the corporation should pay compensation at the market value or at FSI, and, in the alternative, declare that the reservation stands lapsed and the possession be restored to the society. This Court held that the society had taken advantage of the development permission, which was granted based on the undertaking that the area would be handed over free of cost. The society had not challenged the clause in the development permission for over 30 years, and even in the petition, no relief was sought against that clause. There was no valid explanation for the delay and latches. This court therefore refused to grant any relief.

21. In *Arulmigu Chokkanatha Swamy Koil Trust*, the Apex Court held that, since the plaintiff was not found to be in possession and had sought only declaratory relief, the suit was not maintainable and was rightly dismissed by the trial court.

ANALYSIS AND CONCLUSIONS:

22. In the present case, the suit is filed for a declaration that the plaintiff has the right, title, and interest, and the

authority to develop an area of the land surrendered in favour of the corporation. This surrender was in lieu of the waiver of a condition requiring the retention of 10% of the net plot area as open space. This area was equivalent to the land reserved for a commercial building. The society couldn't accommodate all the members of the society in the available area; hence, as per the conditions laid down by the corporation, in lieu of surrendering the area reserved for the shopping centre free of cost, the requirement of keeping 10% of the net plot area as open space was waived, and construction was permitted. Accordingly, the society submitted an undertaking for surrendering the area free of cost, and a possession receipt was executed on 9th October 1970, handing over possession of 12741 square feet, equivalent to the 10% compulsory open space.

23. Accordingly, the society's layout was sanctioned by the corporation, and construction was permitted without retaining 10% of the net area as open space. The society did not challenge this condition for the surrender of the area free of cost. It was only after 28 years in the suit filed on 30th

September 1998, that the society challenged the possession receipt and surrender of the land free of cost. The society also prayed for an injunction to protect its title and possession, contending that although a possession receipt was executed, the physical possession was never delivered.

24. The plaintiff's prayer was for a declaration that the society has the right to develop the said plot and construct a commercial building in its capacity as the owner. The suit also prayed for a permanent injunction restraining the corporation from obstructing the lawful title of the society as owner and in possession, and the society's right to develop the said plot and construct the commercial building.

25. The trial court held that it was not disputed that the possession receipt was executed in 1970 and that the society held title to the suit property, but failed to prove possession of the said land. The reservation of the shopping centre was also not in dispute. The trial court disbelieved the society's contentions that the possession receipt was executed by coercion and undue influence. In view of the possession receipt and the surrender of the land area for

reservation, the trial court held that the corporation would be entitled to possession without payment of any monetary consideration. The society's contention that they would be entitled to develop the suit land was not accepted. The corporation's contentions that the society voluntarily surrendered 10% of the land in lieu of a waiver of the condition to keep 10% of the area open were accepted by the trial court, based on the evidence on record. Hence, the suit was dismissed. In the appeal preferred by the society, the findings of the trial court were confirmed, and the dismissal of the suit was upheld.

26. The legal principles in the Apex Court's decision in *Yogendra Pal* were regarding the provisions of the Punjab Municipal Act, 1911 and the corresponding provisions of the Haryana Municipal Act, 1973, for compulsory transfer of the land to the Municipal Committees without payment of compensation. In *Pt. Chet Ram Vashist* the question of law that arose before the Apex Court for consideration was whether the Municipal Corporation of Delhi, in the absence of any provision in the Delhi Municipal Corporation Act, 1957,

was entitled to sanction the plan for building activities with the condition that the open space for parks and schools be transferred to the Corporation free of cost. The Apex Court, therefore, modified the order by directing that the Corporation was at liberty to have the land transferred in its favour upon payment of the market price prevailing on the date the sanction to the layout plan was accorded. In the present case, the question concerns the validity of the acquisition in terms of Section 126 of the MRTP Act, which sets out the modes of acquisition. Hence, the aforesaid legal principles would not apply to the present case.

27. The Full Bench of this Court in ***Shree Vinayak Builders and Developers*** held that under Section 126(1)(a) and (b) of the MRTP Act mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract, and the question would have to be determined in the facts and circumstances of each case. In ***Purnima Talkies***, this Court held that compensation has always been considered to be an integral part of the

acquisition process as prescribed under Section 126 of the MRTP Act. In *Jayshakti Cooperative Housing Society*, this Court refused to grant any relief because the society had taken advantage of the development permission, which was granted on the condition that the area would be handed over free of cost, and the society had not challenged the clause in the development permission for over 30 years.

28. In the present case, there is no dispute that the society took advantage of obtaining construction permission in lieu of the waiver of the condition requiring the retention of 10% of the area open. Thus, it was an agreement with concluded terms between the society and the corporation that the society shall surrender the area equivalent to 10% of the compulsory open space free of cost for utilisation of the reservation of the commercial building, and in lieu of the surrender, the corporation shall sanction the layout and permit construction enabling the society to accommodate all its members.

29. The language of Section 126 of the MRTP Act indicates that the corporation need not undergo the rigours of the

acquisition process, as it permits the corporation to acquire land reserved for a public purpose specified in the development plan by an agreement to pay an amount agreed upon. FSI has monetary value. Hence, acquisition of the land reserved under the sanctioned development plan, by an agreement to grant FSI or development rights, is a valid acquisition for a consideration permissible under Section 126(1)(a)(b) of the MRTP Act. Thus, by applying the legal principles settled by this Court in the decisions discussed in the above paragraphs, an agreement between the corporation and an owner to surrender the land reserved for public purposes in the development plan, free of cost but in lieu of the benefit of a higher FSI (Floor Space Index) or development rights, would constitute a valid acquisition of the land by an agreement in terms of Section 126 of the MRTP Act. Once the acquisition is valid as contemplated under Section 126 of the MRTP Act and possession is handed over, the land would vest in favour of the corporation.

30. There is no dispute that in the present case, an area was reserved for a shopping centre from the original plot

owned by the society. Hence, the undertaking by the society to surrender land equivalent to the area reserved, and in lieu of the waiver of the condition to retain 10% of the total area as open, constituted an agreement for the acquisition of the reserved land as contemplated under Section 126 of the MRTP Act. Hence, the condition of the surrender of land was not in terms of acquisition as contemplated under Section 77, read with Section 78 of the Maharashtra Municipal Corporation Act 1949. The provisions of sections 77 and 78 of the said Act of 1949 are applicable when the Commissioner acquires land necessary for any of the purposes of the said Act, irrespective of whether the same is reserved under the sanctioned development plan or not.

31. In the present case, the acquisition is for the land reserved for commercial building under the sanctioned development plan. The area equivalent to the land under reservation was surrendered to obtain permission to construct, without retaining 10% of the area as open space, to enable the society to accommodate all its members. Thus, it is clear that, but for the waiver of the condition requiring the

10% area to remain open, the society would not have been able to obtain construction permission to accommodate all its members. Therefore, it cannot be said that the surrender of the area was without any consideration. The consideration may not be in the form of money, but it is in the form of permission to construct in an area higher than permitted. Consequently, the calculation of FSI was also in proportion to the area, higher than it was otherwise permissible. FSI can be valued in monetary terms. Therefore, in the present case, the acquisition was for a valid consideration. Accordingly, the first question of law is answered by holding that in the present case, the acquisition of the reserved area is in terms of the agreement as contemplated under Section 126 (1) (a) (b) of the MRTP Act and the handing over of possession as recorded in the possession receipt (Exhibit 69). Therefore, the title of the Appellant (society) was validly vested in favour of the Corporation.

32. The declaratory and injunctive reliefs claimed by the society are discretionary. The Hon'ble Apex Court in ***Executive Committee of Vaish Degree College v. Lakshmi***

Narain⁷, held that while decreeing the plaintiff's suit, it is necessary to consider whether it is a fit case in which the discretion should be exercised in favour of the plaintiff. It is held to be manifestly clear that the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary, and the plaintiff cannot claim it as of right. In paragraph 27, the Apex Court observed as under:

“The relief has to be granted by the court according to sound legal principles and ex debito justitiae. The court has to administer justice between the parties and cannot convert itself into an instrument of injustice or an engine of oppression. In these circumstances, while exercising its discretionary powers the court must keep in mind the well settled principles of justice and fairplay and should exercise the discretion only if the ends of justice require it, for justice is not an object which can be administered in vacuum.”

33. In the present case, under a concluded contract between the society and the corporation, the society surrendered the area equivalent to 10% of the compulsory open space free of cost for utilisation of the reservation by the Corporation, and in lieu of the surrender, the corporation

⁷ (1976) 2 SCC 58

sanctioned the layout for an higher area than otherwise permissible and permitted construction with a FSI to enable the society to accommodate all its members. The society, after taking advantage of the waiver of the condition requiring retention of 10% of the area to be kept open, challenged the condition for sanctioning the layout only in the suit filed 28 years after surrendering the land. Therefore, both courts have rightly refused to exercise the discretion in favour of society. Hence, the second question of law is answered by holding that both Courts were justified in dismissing the suit filed by the Appellant for a declaration and injunction.

34. For the reasons recorded above, the impugned judgments and decrees need no interference. Hence, the Second Appeal is dismissed.

(GAURI GODSE, J.)

VARSHA
VIJAY
RAJGURU
Digitally
signed by
VARSHA
VIJAY
RAJGURU
Date:
2026.01.05
16:12:07
+0530