



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 858 OF 1994**

- 1) Kishor Manohar Namjoshi. ]  
S/D., by Heirs :- ]
- 1a. Bina Kishore Namjoshi ]  
Aged : 64 yrs, ]  
]
- 1.b) Pritha Kishore Namjoshi ]  
Aged : 34 yrs. ]  
Both R/o at :- Anant Lane-13, Prabhat ]  
Road, Pune 411 004 ]
- 2) Vinayak Manohar Namjoshi,(Since ]  
deceased through L.R.s) ]
- 2A. Sunita Vinayak Namjoshi, ]  
Age: 71 yrs., Occ: Household, ]  
R/o. No. 1, "Sayali", ICS Colony, Off ]  
Ganeshkhind Road, Pune 411 007 ]
- 2B. Yamini Vinayak Namjoshi, ]  
Age: 44 yrs., Occ: Psychologist, ]  
R/o. 2603 Lodha Primero, NM Joshi ]  
Marg, Apollo Mills Compound, Mumbai- ]  
11 ]
- 3) Suniti Manohar Namjoshi ]  
age 50 years, Occupation Professor. ]
- 4) Bharati Manohar Namjoshi,(Since ]  
deceased through L.R.s) ]
- 4A. Bina Kishor Namjoshi, ]



- Age:36 yrs., Occ:..... ]  
Both R/o. Anant Lane-13, Prabhat Road, ]  
Pune 411 004. ]
- 4B. Sunita Vinayak Namjoshi ]  
Age: 71 yrs., Occ: Household, ]  
R/o No. 1, "Sayali", ICS Colony, Off ]  
Ganeshkhind Road, Pune 411 0074. ]
- 4C. Yamini Vinayak Namjoshi ]  
Age: 44 yrs., Occ: Psychologist, ]  
R/o. 2603, Lodha Primero, NM Joshi ]  
Marg, Apollo Mills Compound, Mumbai- ]  
11 ]
- 4D. Suniti Manohar Namjoshi, ]  
Age: 70 yrs., Occ: Retired, ] -  
All R/o Bakh Bag, Laxminagar, Phaltan, ] **...Appellants.**  
Dist. Satara ]

**Versus**

Phaltan Nagar Parishad, Phaltan. ]  
Established under Maharashtra ]  
Municipal Act, 1966 on its behalf Chief ]  
Officer, Nagar Parishad, Phaltan Office, ]  
Phaltan, Taluka Phaltan, Dist. Satara. ] **...Respondent.**

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Mr. Vishwanath Talkute a/w Adv. Mahesh Bhosale, Adv. Shivaji Kokane and  
Adv. Sampada Patil for the Appellant.

Mr. Sarang S. Aradhya a/w Adv. Shantanu Gurav and Adv. Dnyaneshwar  
Utpat for the Respondent.

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**CORAM : M.W. CHANDWANI, J.**

**DATE : 6<sup>th</sup> May, 2026.**



**JUDGMENT:**

1. The present Appeal has been filed against the judgment dated 03.01.1994 passed by the learned II Additional District Judge, Satara, (for short, "District Judge") in Civil Miscellaneous Application No. 88 of 1991, whereby the application filed by the Appellants for determination and payment of compensation under Section 330(3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short, "Act of 1965") came to be rejected.

2. The brief facts leading to the filing of the application before the learned District Judge are as follows:

2.1 The Appellants are the owners of the land bearing Survey Nos. 653, 654, 658, and 659 situated at Mauje Phaltan, District Satara. Under the Town Planning Scheme of Phaltan City for constructing an 80-foot-wide ring road the area admeasuring 13646.46 sqr. meters was reserved in the Development Plan. That is, from the above survey numbers the area admeasuring 13646.46 sqr. meters out of the land bearing Survey Nos. 654, 658, and 659 were agreed to be handed over by one Sarojini Namjoshi-the mother of the Appellants to the Respondent (for short, "Municipal Council") free of cost vide Letter dated 30.07.1983 at Exhibit 78.



3. It is the claim of the Appellants that in consideration of handing over the said land, free of cost, the Municipal Council was required to fulfil certain conditions. However, the said terms and conditions were not complied with. Further, despite that, the Municipal Council took possession of the said land and constructed an 80-feet-wide ring road over an area admeasuring 13646.46 sqr. meters which was under the ownership of the Appellants. According to them, since the Municipal Council failed to comply with the agreed conditions, no valid contract was executed. Consequently, the Municipal Council utilized the Appellants' land without payment of the compensation. Therefore, the Appellants filed an application before the learned District Judge for determination of compensation under Section 330(3) of the Act of 1965.

4. The Municipal Council appeared and admitted that, the possession of the Appellants' land had been taken for construction of the ring road and that the said ring road has been constructed. However, the Municipal Council contended that the land was neither acquired nor intended to be acquired, as it became part of the ring road in the layout required to be demarcated by the Appellants themselves. It was further contended that the Appellants, by Letter dated 30.07.1983 at Exhibit 78, voluntarily handed over the land free of cost considering the financial constraints of the Municipal Council.



5. The Appellants have examined Appellant No. 2-Vinayak Manohar Namjoshi as witness no. 1 at Exhibit 55 and Lr. Shrirang Barge at Exhibit 60. Whereas the Respondent has examined one Sharad Deshmukh at Exhibit-73 and one more witness.

6. The learned District Judge, by impugned judgment after framing issues, held that since the Appellants had agreed to give the land free of cost, and therefore, no compensation was payable. Accordingly, the District Judge rejected the application filed by the Appellants.

7. Mr. Talkute, learned counsel for the Appellants, submitted that the Appellants owned several properties, out of which few were reserved for public purposes in the Development Plan. The Letter dated 30.07.1983 at Exhibit 78 in respect of land reserved for the ring road according to him, was conditional. The condition was that the Municipal Council should release reservation on other properties belonging to the Appellants. Since such de-reservation was not effected, the said Letter cannot be acted upon.

8. Mr. Talkute, learned counsel for the Appellants further submitted that, there was no concluded contract between the parties. According to him, although an offer was made by the Appellants, the same was never accepted.



Thus, in the absence of acceptance, no contract came into existence. He relied upon the decision held in ***Shree Vinayak Builders and Developers, Nagpur vs. State of Maharashtra and others***<sup>1</sup>, particularly paragraphs nos. 22 and 23 as reproduced below, to contend that an agreement requires offer and acceptance to become a valid contract, and that acceptance must be absolute and unconditional.

*“22. It may be noted here that while taking recourse to the modes of acquisition under clause (a) or clause (b) of section 126(1) of the MRTP Act, there has to be a concluded contract between the parties. An agreement commences with an offer and is concluded with communication of acceptance of the offer. Thus, offer and acceptance are essential requirements of the agreement. An offer is a proposal under section 2(a) when the person making offer signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of other to such an act or abstinence. When the person to whom the proposal is made signifies his assent to the proposal, the acceptance turns into a promise, as per section 2(b). It is the every promise and every set of promises forming the consideration for each other is what would constitute an agreement under section 2(e) and an agreement enforceable by law is a contract under section 2(h) of the Contract Act.*

*23. The requirement under section 7 of the Contract Act is that the acceptance must be absolute and unconditional. Whereas, section 8 and 9 indicate that the acceptance can be express i.e. in words or by conduct. It need not be emphasized that conduct can be construed as acceptance only when the conduct discloses clear and unequivocal intention of accepting the offer. Hence, only when the facts of the case disclose that there was no reservation in signifying acceptance of the offer, it can be said to have been accepted by conduct. Whereas, if the facts disclose that the offeree had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of section 8 of the Contract Act. Section 10 of the Contract*

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<sup>1</sup> 2022 (4) Mh.L.J



*Act postulates that the agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the Contract Act.”*

9. Reliance was also placed on ***Karnataka Power Transmission Corporation Limited vs. JSW Energy Limited and ors.***<sup>2</sup>, particularly paragraph 126 as reproduced below, to submit that a contract can be said to be concluded only when parties are *ad idem* on all essential terms and conditions, and acceptance is duly communicated.

*“126. It is further true that Section 27(2) does not use the words “Power Purchase Agreement”. Section 19(4)(j) of the Act refers to “contracts concluded”. Placing the said words side-by-side with the words used in the proviso to Section 27(2), we find that they are identical. The said words viz. “contracts concluded” must bear the same meaning, both in Section 19 and in Section 27. It is true that there is no format prescribed for a PPA. The format came in 2005. Section 27(2) and Section 19(4) (j), do not expressly refer to a PPA. However, the search must continue to ascertain the purport of the words “contracts concluded”. In order that there must be a contract concluded, undoubtedly, there must be a proposal made, which must be accepted. There must be consideration for the promise. The proposal must be accepted, which must be communicated, as already explained. The acceptance must be unqualified. This is an over simplification of a complex process. We say this, as the parties can be said to have entered into a contract or a contract would be said to be concluded only when they are *ad idem* on all the essential terms of the contract. In other words, if the proposals containing the essential terms have been accepted, and the acceptance is communicated and, if the other conditions in Section 2 of the Contract Act are complied with viz. that is there is consideration and the contract is enforceable in law, within the meaning of Section 10 of the Act, it would lead to the*

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<sup>2</sup> (2023) 5 SCC 541



*creation of a concluded contract. Here, as we have noticed, the KEB, the GoK and, what is more, the first respondent, clearly contemplated that there should be a PPA.”*

10. Mr. Talkute, learned counsel for the Appellants further submitted that, in the absence of a concluded contract, the Letter dated 30.07.1983 at Exhibit 78 cannot be relied upon by the Municipal Council.

11. It was further submitted by the learned Counsel for the Appellants that, the right to property, though no longer a fundamental right, remains a constitutional and statutory right, and no person can be deprived of their property without authority of law. The decision in the case of *Vidya Devi vs. State of Himachal Pradesh & Ors*<sup>3</sup>, *Sukumar Arvind Kale Patil and ors vs. The Union of India and ors*<sup>4</sup>, *Sukh Dutt Ratra and another vs. State of Himachal and others*<sup>5</sup>, *Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others*<sup>6</sup> and *D. B. Basnett (Dead) vs. Collector, East District, Gangtok, Sikkim and anr*<sup>7</sup> have been relied by the Appellants. The common thread running from these authorities is that, nobody can be deprived of his property without due process or authority of law. The state has a higher responsibility in demonstrating it has acted within compass of

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3 (2020) 2 SCC 569

4 Order dated 28.03.2025 in Writ Petition No. 6228 of 2022 (Bombay High Court)

5 (2022) 7 SCC 508

6 (2013) 1 SCC 353

7 (2020) 4 SCC 572



legality. It is legal obligation of authority to complete acquisition proceedings and to make payment of requisite compensation expeditiously. The right to property is constitutional and human right. Reliance was placed on *Kalyani vs. Sulthan Bathery Municipality & Ors<sup>8</sup>*, wherein it was held that in the absence of acquisition or voluntary transfer, the burden lies upon the authority to prove voluntary surrender.

12. It is also contended that, under Section 126 of the Maharashtra Regional and Town Planning Act, 1966, land can be acquired either by agreement or by following statutory acquisition proceedings. In the present case, neither course was adopted and no compensation was paid.

13. In sum and substance, the Appellants contend that the Municipal Council could not have taken possession of the land without entering into a valid agreement or acquiring it in accordance with the relevant law. Further, that the learned District Judge erred in holding that construction of the ring road and resultant increase in value of the Appellants' land constituted consideration.

14. The Appellants, therefore seek setting aside of the impugned judgment and a direction to the Municipal Council to initiate acquisition proceedings

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8 (2022) 15 SCC 803



and pay compensation in accordance with law.

15. Per contra, Mr. Aradhye, learned counsel for the Municipal Council, submitted that the Appellants had voluntarily surrendered the land reserved for the ring road vide Letter dated 30.07.1983 at Exhibit 78. Acting upon the said Letter, the Municipal Council constructed the ring road. Therefore, the Appellants cannot now resile from their earlier position. He further submitted that the request for de-reservation of other lands was independent and not a condition precedent.

16. It is also contended by the Municipal Council that the application under Section 330(3) of the Act of 1965 was barred by limitation as it was not filed within the prescribed period after issuance of notice. Further, the Appellants voluntarily surrendered the land, and the Municipal Council acted upon it, and therefore the present Appeal lacks merit.

17. Reliance was also placed on judgment dated 07.07.2017 of the Division Bench of this Court at Aurangabad in Writ Petition No. 6332 of 2016, ***Shri Suresh Khandsari Sugar Mills, Kannad vs. State of Maharashtra and others***, particularly paragraph 30 as reproduced below:

*“30. Thus, the Petitioners were aware of their legal rights and that they could have compelled and prevailed upon the State to*



*take recourse to law. If the Municipal Council does not take recourse to law, then, the Petitioners could have claimed that their lands be released from reservation or dereserved. However, they are aware that it is not the entire property or the whole survey number which is acquired allegedly or taken over, but only portion of the same. It is only through that portion that the road runs. The Petitioners knew that the moment such road is proposed, constructed and developed, all the plot owners would derive the benefits and make capital of the same. That they took by presenting the layout. The layout contemplated use of this road and another internal road. This enhanced the value of the property and it was put to beneficial use. Hence, aware of the potential and future gains, the Petitioners not only volunteered to handover the land, but they willingly gave up the claim for compensation. It is only when a politically convenient atmosphere was there, that the Petitioners thought of reviving the claim which was already given up. It is that attempt and which is made from 1992, but given up, which resulted in the resolution of the Municipal Council. Even that resolution did not serve their commercial interests. We do not think that writ jurisdiction is meant for such parties aware as they are from their first step that they have lost the right, title and interest in the land. Therefore, they devised a better scheme and obtained full returns after giving up the claim for compensation at market rate way back in 1990.”*

18. I have heard the respective counsels. I have gone through the deposition documents and the impugned judgment.

19. Evidently, apart from the land reserved in the Development Plan for construction of the ring road, other reservations existed on the Appellants' land. The possession of the land reserved for the ring road was taken prior to filing of the application and that the ring road was constructed by the Municipal Council.



20. Undisputedly, Sarojini Namjoshi-the mother of the Appellants addressed the Letter dated 30.07.1983 at Exhibit 78 to the Municipal Council stating that the land reserved for the ring road was being given free of cost. The controversy lies in the Appellants' contention that such surrender was conditional upon de-reservation of some lands and purchase of the other lands which were under reservation.

21. Appellant No. 2 in his deposition at Exhibit 55 reiterated the contends of the Application. It is stated by Appellant No. 2 that meeting was held with the Municipal Council Administrator. In that meeting it was decided that we should give some land free of costs to Council and in its return Municipal Council will withdraw from some of our land and will pay its compensation of some of our reserved land. It was also decided to shift reservation from some of our land to our some other land. In that meeting rate of compensation was decided Rs. 5/- per square feet for some lands. The testimony of Appellant No. 2 further indicates that he was not personally present during the discussions with the Municipal Council. Further, Sarojini Namjoshi-the mother of the Appellants, who allegedly participated in the discussions, was not examined.



22. Record reveals that Sarojini Namjoshi-the mother of the Appellants has given five independent letters to the Respondent. The Letter dated 30.07.1983 in respect of land reserved for the ring road below Exhibit 78 is given by Sarojini Namjoshi-the mother of the Appellants wherein she expressed willingness to give the land reserved for the 80-feet-wide ring road free of cost does not indicate condition of any sort. Other letters merely show the readiness of Sarojini Namjoshi-the mother of the Appellants to give some other lands reserved for some other purpose on the compensation at the rate of Rs. 5/- per square feet. All the letters are independent letters.

23. There is nothing on record to suggest that the offer to give land for the ring road was conditional upon acquisition of other land @ rate of Rs. 5/- per sqr. meters or de-reservation of other lands. The subsequent resolution of the Bharati Trust which followed letter dated 30.07.1983 at Exhibit 78 also does not reflect any such condition. The whole contention is that this has been told orally to the Administrator of the Respondent in meeting. There is no direct evidence in this regard. The Appellants' evidence in this regard is hearsay evidence. Whereas against this there is direct evidence of the Administrator in this regard, who deposed that Sarojini Namjoshi-the mother of the Appellants was presented with an offered vide Letter dated 30.07.1983 at Exhibit 78 to take the land reserved for the ring road. The Bharati Trust's



resolution followed by the said Letter also mentioned that the land is given to the Respondent free of cost. Therefore, no perversity is seen in the observation made by the learned District Judge.

24. Thus, there is sufficient evidence that, Sarojini Namjoshi-the mother of the Appellants voluntarily surrendered the land reserved for the ring road letter dated 30.07.1983 Exhibit 48. Therefore, the observation in case of *Vidya Devi vs. State of Himachal Pradesh & Ors* (supra), *Sukumar Arvind Kale Patil and ors vs. The Union of India and ors* (supra), *Sukh Dutt Ratra and another vs. State of Himachal and others* (supra), *Tukaram Kana Joshi and others vs. Maharashtra Industrial Development Corporation and others* (supra) and *D. B. Basnett (Dead) vs. Collector, East District, Gangtok, Sikkim and anr* (supra) as well as *Kalyani vs. Sulthan Bathery Municipality & Ors* (supra) will not help the Appellants.

25. The contention that there was no concluded contract due to lack of formal acceptance is also without merit since the offer made by Sarojini Namjoshi-the mother of the Appellants has been accepted by the Respondent by the act of taking possession of the said land and constructing the ring road on it. Thus, the proposal is accepted by the Respondent by its act. There is nothing on record to suggest that offer to provide the land reserved for the



ring road free of cost was ever withdrawn by Sarojini Namjoshi-the mother of the Appellants or the Appellants themselves much less before taking possession of the land reserved for the ring road.

26. The conduct of the Municipal Council in taking possession and constructing the ring road clearly amounts to acceptance of the offer by the conduct. Therefore, there is a concluded contract. Thus, the offer made by the Appellants stood accepted therefore the decision in case of *Shree Vinayak Builders and Developers* (supra) and *Karnataka Power Transmission Corporation Limited* (supra) will not help the Appellants.

27. In view of the above, the learned II Additional District Judge, Satara, has rightly appreciated the evidence and correctly concluded that the land was voluntarily surrendered free of cost by the Appellants. No interference is warranted in the impugned judgment.

28. Accordingly, the Appeal is devoid of merit and is dismissed.

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[ M.W. CHANDWANI, J. ]