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Court : Mumbai Aurangabad

Decided On : Feb-16-2015

Judge : B.P. Dharmadhikari & a.M. Badar

Appeal No. : Writ Petition Nos. 5154 of 2008 & 503 of 2009

Appellant : Abhijit and Another

Respondent : The State of Maharashtra, through its Principal Secretary, Urban Development Department, Mantralaya and Others

Judgement :

B.P. Dharmadhikari, J.

1. Both these petitions question the acquisition of land of respective petitioners for the purpose it is earmarked in final development plan of the Municipal Council, Latur (Now Municipal Corporation and is referred accordingly). Petitioner in Writ Petition No.5154/2008 is respondent no.6 in Writ Petition No.503/2009. Petitioner in Writ Petition No. 503/2009, has contended that his land is being acquired to spare the lands of said respondent no.6 Abhijit who is the petitioner in Writ Petition No.5154/2008.

2. The matters pertain to acquisition of land for public purpose and accordingly have been heard as requested by the parties. These matters have been admitted for final hearing on 05.08.2011 and 08.08.2011 respectively and interim orders are operating against the planning authority i.e. Municipal Corporation, Latur. The fact that Municipal Council, Latur is planning authority under Section 2(19) of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as **the 1966 Act** for short) is not in dispute. It had on 29th August, 1989 vide resolution no. 3 declared its intention under Section 38 read with Section 23(1) of the 1966 Act to prepare revised draft development plan for the area within its jurisdiction and its notice was published in Maharashtra government gazette dated 7.12.1989. Municipal Council after carrying out survey of the lands within its jurisdiction in terms of Section 25, proceeded under Section 26(1) of the 1966 Act, by a notice published in gazette on 03.09.1998 invited objections and suggestions to the draft development proposals for area already within its jurisdiction as also for fresh development plan about the added new area. Municipal Council, after considering the suggestions and objections received, modified some proposals and submitted the development plan so modified to State Government for sanction on 26th June, 2000 within the period as extended by the State on 4.10.2000 for its submission. On 9.2.2001, State Government sanctioned part of said development plan. On 2.1.2002, State Government, in terms of Section 31(1) of the 1966 Act, extended time till that day for sanctioning the said development plan. Accordingly, on 2.1.2002, the State Government sanctioned the draft development plan submitted by Municipal Council, Latur under Section 31 (1) of the 1966 Act as final revised development plan of old municipal limit and extended area of Latur and fixed 18.02.2002 as the date for its coming into force.

3. Shri R.N. Dhorde, learned Senior Counsel with Shri P.S. Dighe, learned Counsel appearing on behalf of petitioner Abhijit in Writ Petition No.5154/2008 has invited attention to synopsis placed on record to urge how after notification of its decision to revise the plan, taken on 07.12.1989, the further proceeding culminating into its finalization in terms of Section 31 of the 1966 Act have not been taken within the stipulated time and, therefore, the final development plan is not valid. Contention is time taken at each stage is unreasonably long and therefore, acquisition of petitioners land for said purpose is unsustainable.

4. This contention is also raised by Shri V.J. Dixit, learned Senior Counsel with Shri V.D. Gunale, learned Counsel appearing on behalf of petitioner Chandrashekhar in Writ Petition No.503/2009. Date wise reference to various stages and developments will therefore, be made little latter in the body of this judgment.

5. The other contention of Shri Dhorde, learned Senior Counsel is, land of petitioner Abhijit, which forms part of Survey No.24 of village Kanheri came to be included within the limits of Latur Municipal Corporation in the year 1988, when its boundaries were extended as per the provisions of Section 3 of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Townships Act, 1965 on 16.08.1988. It is stated that said Survey no.24 belongs to the family of petitioner. It was admeasuring 32 Acres 16 Gunthas and was divided into two parts, i.e. Survey No.24-A, admeasuring 13 Acres, which fell to the share of father of the petitioner, while the other portion namely Survey No.24B was given to the share of one Baburao Jagannath Chaunda. Respective Parties were placed in possession of their parts. In 1981 when Abhijit was minor, there was dispute in the family as his father was trying to alienate the property. This resulted in a partition between father of petitioner and petitioner himself, as also his mother Manglabai. This partition was not registered, but, then 6 Acres of land out of 24 Acres was given to the petitioner, while 7 Acres continued with his father. The corresponding entries were made in the revenue records. Petitioner was required to file Regular Civil Suit No.130/1984, as his father was trying to interfere in his possession, and that suit was compromised between the parties. The revenue authorities also took cognizance of the said decree, vide mutation entry no. 304 dated 17.09.1985.

6. After said area became part of the Municipal area on 16.08.1988, Municipal Corporation by resolution dated 18.08.1989 and 29.08.1989 decided to prepare a draft development plan. The petitioner attempted to obtain copies of necessary documents from Municipal Corporation, but, the Municipal Corporation informed him that those documents were not available. His contention is, in draft revised development plan, reservation of Survey No. 24 only has been shown at Sr. No.28 in the name of father of petitioner, without mentioning Abhijit's part as Survey No.24A. There is no specific reference to Survey No.24A separately. The said

reservation no. 163 for Town Center was objected to by the father of petitioner, but, that objection was rejected. At Sr.No.35 in the draft development plan, name of cousin of petitioner namely Udaykumar Baburao Chaunda, was shown against Survey No.24B with similar/same reservation. Thus, in absence of reference to survey no.24A or omission of name of petitioner in revised draft development plan, petitioner Abhijit did not get opportunity to object to the proposal and hence, the reservation which has been fastened ultimately on survey 24A is, not binding upon the petitioner.

7. Shri Dhorde, learned Senior Counsel has pointed out that on 02.01.2002, the State Government has sanctioned final revised development plan under Section 31 of the 1966 Act, and in it said land survey no.24A has been shown. On 13.11.2007, the petitioner received a notice from the Municipal Corporation pointing out part of land survey nos. 23 and 24 was reserved for Town Center to the extent of 4 Hectares 27 Ares and hence, its acquisition should be settled through private negotiations. Petitioner then learnt about the reservation on survey no.24A and on 23.11.2007 he submitted reply to that letter pointing out that his land could not have been acquired. On 18.06.2008, he gave another representation pointing out the entire history. On 19.06.2008, he demanded all documents from the Municipal Corporation. Municipal Corporation sent reply to that communication on 24.06.2008 and pointed out that it was not in possession of the information sought for.

8. Shri Dhorde, learned Senior Counsel appearing on behalf of the petitioner submits that in this background, present Writ Petition came to be filed and thereafter, petitioner learnt about notification under Section 126[4] of the 1966 Act dated 07.08.2008. This notification for acquisition is bad for reasons already pressed into service above. 9. Prayer in the petition is to quash and set aside the letter dated 13.11.2007, inviting the petitioner for private negotiations, letter dated 10.06.2008 issued by the Municipal Corporation for joint measurement and notification dated 07.08.2008 under Section 126[4] of the 1966 Act.

10. Shri V.J. Dixit, learned Senior Counsel appearing on behalf of petitioner Chandrashekhar in Writ Petition No.503/2009 has adopted part of the arguments

of Shri Dhorde, learned Senior Counsel. He submits that land of Chandrashekhar bearing Survey No.23 is situated adjacent to survey no.24 of Abhijit Chaunda. Survey no.23 admeasured Gunthas. Part of survey no.23 and survey no.24 have been reserved by the Municipal Authorities for the purpose of Town Center. Some portion out of the said land survey no.23 i.e. excluding the part reserved for Town Center, has been sold out by the petitioner by laying down plots.

11. Shri Dixit, learned Senior Counsel submits that 10 years after said reservation, the planning authority initiated acquisition proceedings and Chandrashekhar learnt about it when he collected notice under Section 9[3] and 9[4] of the Land Acquisition Act. Address of petitioner was wrongly mentioned on the said notice and petitioner was required to go and collect it personally by visiting the office of the Sub Divisional officer, Latur i.e. Land Acquisition Officer, at Latur. In the said notice it is mentioned that 12,700 sq. mtrs of land from survey no.23 is proposed to be acquired. Petitioner submitted his objection on 22.10.2008 and pointed out that adjacent owner Abhijit has approached the High Court in Writ Petition No. 5154/2008 and till that Writ Petition is disposed of, his land should not be acquired. He also pointed out that land to be acquired was non-agricultural one i.e. N.A. land, with rate of Rs. 10,000/- per square feet and requested for awarding compensation at that rate.

12. After submission of that objection, Chandrashekhar learnt that the Collector and Land Acquisition Officer with Municipal Corporation and Abhijit (respondent 6 in his writ petition) measured the land proposed to be acquired. He applied for map of measurement and found that the map benefited Abhijit who owned adjacent survey no.24 and he was being put to loss. He submitted a representation on 21.11.2008 and pointed out that Abhijit who owned survey no.24, was Councilor of Municipal Council, Latur and also Chairman of its Construction Committee. Area to the extent of 2800 sq. mtrs. only is proposed to be acquired from land survey no.24, as against huge area of 12,700 sq. mtrs. area from his survey no.23. Thus, with this additional ground, prayer of Chandrashekhar is to set aside the notification under Section 126[4] dated 07.08.2008 and to direct the Municipal Authorities to prepare a fresh measurement map after considering the objection taken by him on 22.10.2008.

13. Learned A.G.P. appearing for State Government, Collector and Land Acquisition Officer has relied upon the reply-affidavit to oppose the petitions. Provisions of 1966 Act as contained in Sections 21 to 31 are pressed into service to urge that from time to time State Government has extended the prescribed period and all stages have been completed in accordance with law within the stipulated time. It is stated that none of the petitioners have suffered any loss or prejudice and the lands earmarked for Town Center are still available. It is further contended that the lands have been jointly measured and are being developed strictly in accordance with the provisions of law and allegations of malafide are misconceived. These respondents seek dismissal of both the writ petitions and vacation of interim orders.

14. Respondent Municipal Corporation has strongly opposed both the petitions. The contentions of learned A.G.P. on compliance with time schedule prescribed in M.R.T.P. Act are adopted. It is further submitted that the Municipal Corporation took a conscious decision to acquire 2800 sq. meters of land from survey no.24. As an Auditorium is proposed on it, therefore, major portion of land needs be used for making parking arrangement. Therefore, to avoid traffic problem on main road, the large part on rear portion of survey no.24 has been selected for acquisition. Municipal Corporation will have been required to pay more for lands in front abutting public road, while portion situated on the back side casts lesser burden on public revenue. Thus allegations of malafides or influence of Abhijit as councilor in the process, has been denied.

15. Petitioner Chandrashekhar has also invited attention to rejoinder filed by him in November, 2014 to urge that the petitioner had constructed shop blocks long back in the year 1982, and paid taxes upon it. Though taxes were accepted, Municipal Corporation did not regularize said construction. It is further stated that the Municipal Corporation has decided to construct an Auditorium on open land belonging to Industrial Training Institute and accordingly on 22.05.2013, resolved to make provision for funds. It inaugurated the construction work of Auditorium along with the program of road development on 26.08.2014. As the Municipal Corporation got alternate land, there is no need to acquire survey nos. 23 and 24, hence, notification issued under Section 126[4] of the 1966 Act deserves to be

quashed and set aside. We note here that the Municipal Corporation has not filed any reply affidavit after this rejoinder.

16. Chapter III of 1966 Act begins with Section 21 and the final development is published in terms of Section 31 thereof. Section 21 obliges the Municipal Corporation to carry on survey and prepare the existing land use map, as also a draft development plan for the area within its jurisdiction, not later than three years of commencement of 1966 Act. Such draft development plan is to be submitted to the State Government for sanction i.e. sanction under Section 31. Sub-section [3] of Section 21 enables the State Government to extend this period of three years from time to time by order in writing and for adequate reasons to be specified in such order. Section 22 is about contents of development plan. Section 22A is on the subject of modification of a substantial nature. Section 23 is about declaration or notification to prepare development plan, before carrying out survey and preparing an existing land use map of the area as provided in Section 21. The Municipal Corporation by resolution has to make a declaration of its intention to prepare a development plan and has to dispatch its copy with copy of the plan to State Government. Copy of that plan is to be kept open for inspection of public. Section 24 mandates that the Municipal Corporation shall appointed a person possessing prescribed qualification to be Town Planning Officer for carrying out survey of the area of the planning authority and preparing an existing land use map and for formulating proposals for development. As per Section 25, within 6 months of such declaration, the Municipal Corporation has to prepare a development plan. This period of 6 months can be extended by the State Government from time to time. Municipal Corporation or the Town Planning Officer has to carry out survey of lands within its jurisdiction, and prepare an existing land use map indicating the existing use of land therein. In 2014, a proviso has been added to this Section 25, which stipulates that the period so extended shall not in any case exceed one year in aggregate.

17. Section 26 of 1966 Act is about preparation and publication of notice of draft development plan. This notice is to be published not later than two years from the date of notice published under Section 23. Notice has to mention the place where copy of draft development plan shall be available for inspection of public.

Municipal Corporation has to invite objections and suggestions within a period of 30 days from the date of notice in official gazette. This period has now been amended to 60 days. State Government has been given power to extend the period for preparation and publication of notice of draft development plan by an order in writing and for reasons to be recorded. The extension cannot be of more than 12 months in aggregate in case of Municipal Corporation and 6 months in aggregate in any other case. Section 27, obliges the Municipal Corporation to have due regard to the proposals made in any draft regional plan or any final regional plan, while preparing the draft development plan. Section 28 is about objections to draft development plan. Section 28 [1] enables the planning authority to modify, change the plan after considering the objections received. The planning authority or the Town planning officer has to forward all objections and suggestions received by it to the planning committee. Said committee has to consider the objection and suggestions, make such enquiry as it finds necessary, give reasonable opportunity of being heard to any person within a period of two months from the date of its appointment or then within such extended period as the planning authority may specify. Under subsection [4] of section 28, not later than two months after the receipt of the report of the planning committee, the planning authority or the Town planning officer has to consider the report including the objections and suggestions and make list of such modifications or changes, and thereafter carry it in the draft development plan. Thereafter the list of modification or changes made in the draft development plan is to be published in official gazette and also in not less than two local newspapers. Section 29 dealt with modifications made after preparing and publishing notice of draft development plan. Said section has been deleted on 05.04.2011.

18. Section 30 is about submission of draft development plan. The Municipal Corporation or the Town Planning Officer has to submit the draft development plan along with the list of modification or changes made in the draft development plan under subsection [4] of Section 28 to the State Government for its sanction within a period of six months from the date of publication of notice in the official gazette regarding its preparation under Section 26. Proviso to section 30 enables the State Government to extend from time to time this period of 6 months by such further period not exceeding 12 months, in case of Municipal Corporation and 6 months in

any other case. State Government can do so by an order in writing and for adequate reasons.

19. Section 31 is the power of State Government to accord sanction to draft development plan. As per subsection [1], not later than 6 months from the date of receipt of such plan from the planning authority, State Government can after consultation with the Director of Town Planning by notification in official gazette sanction the draft development plan for whole area or separately for any part thereof, either without or with such modification, as it considers necessary. It may also return the draft development plan to the Municipal Corporation, or then refuse to accord sanction and direct the Municipal Corporation to prepare a fresh development plan. Proviso permits the State Government to extend from time to time by notification in official gazette, the period for sanctioning draft development plan. Amendment added on 18.03.2014 allows such an extension of period not exceeding 12 months in case of Municipal Corporation and 6 months in any other case. Under Section 31[6], a development plan which has come into force is called as final development plan and it is binding on the planning authority i.e. in present case the Municipal Corporation, Latur.

20. Section 31[2] enables the State Government to appoint an officer as prescribed and direct him to hear any person in respect of modifications proposed to be made by the State Government to the plan submitted by the planning authority under Section 30. Such person has to submit his report within one year from the date of publication of notice under second proviso of subsection

[1] of Section 31. Such objections and suggestions and report submitted under section 31[2] are to be considered by the State Government while according sanction to the draft development plan. State Legislature has also added a proviso to sub-section [3] which lays down that time limit provided under sub-section [1] and sub-section [2] does not apply for according sanction to the modification published under sub-section [1], but, then the government has to take final decision regarding such modifications within one year from the date of receipt of the report under sub-section [2] of Section 31.

21. The scheme above shows that at various stages though time limit has been prescribed, the legislature has also left scope for its extension. The maximum period for which such extension may be granted, is also prescribed with emphasis by using the words like in aggregate or not later than or shall not exceed or not exceeding. But when legislature has made provision for extension at various stages and also State can return the draft plan or refuse it, that does not mean that such planning authority is exempt from adhering to Section 21 to Section 31 of 1966 Act. The extensions are possible from time to time. Here, none of the extensions granted are challenged in any writ petition and hence, the question whether exercise of said power by the State Government in present matter is valid, legal or otherwise, is not required to be gone into and also not possible. None of the legal provisions can be interpreted in mode and manner conducive to defeat the purpose of or scheme of 1966 Act. It is therefore, obvious that when extension beyond a particular period is not allowed, at the most the existing land use map prepared under section 23 may not be of any assistance and may not be used as a base to formulate development proposals. But for discarding the existing land use map so prepared, change in circumstances is must. If there is no such change and everything continues to be the same, preparation of a new existing land use map will be an empty formality and waste of public money as also time. The person like petitioners, intending to capitalize on the point of the expiry of time limit, must plead and prove the prejudice caused to him. The later construction work or other development activity etc. which is in conflict with user recorded in said existing land use map or renders impossible its use as a foundation to sustain the draft development proposals being processed for finalization, may constitute material relevant to examine such prejudice. However, though the time limits prescribed by various sections and noted by us supra, has been pressed into service by petitioners, they have not pointed out any such subsequent event or the resulting prejudice, if the time limits are breached. In fact, there is no such effort by them. There is no express provision in the 1966 Act any where which states or stipulates that after expiry of said period, as legislation does not envisage any further extension, the Municipal Council/Corporation must undertake exercise of preparing of existing land use map or draft development plan afresh, in each case. Even if such a consequence is presumed, the petitioners have not pointed out that

in the interregnum, any development or similar activity has been carried out in the vicinity of or on their survey numbers itself as per law and it has resulted in substantially affecting the existing land use or proposed development, in so far as their survey numbers are concerned. On the contrary, none of the petitioners, before us, have pleaded anything about any construction activity or other development after declaration by the planning authority in terms of Section 23[2] of the 1966 Act.

22. Section 23[1] declaration has been made by the Municipal Corporation, Latur on 29.08.1989. As per section 25 it was necessary for it to complete the survey and to prepare a development plan not later than 6 months from 07.12.1989 when declaration under Section 23[1] was published in Maharashtra Government Gazette. This existing land use map has been submitted by the Municipal Corporation on 18.12.1992. State Government is competent to extend the period and on 03.04.1993 it granted extension for carrying out survey and for preparing map, up to the said date i.e. 18.12.1992. Ceiling of one year on such extension has been imposed for the first time on 18.03.2014 by amending Section 25. Section 26 required the Municipal Corporation to prepare and publish a notice of draft development plan within two years from 07.12.1989. This period expired on 07.12.1991. Order dated 17.06.1994 came to be issued by the Director of Town Planning and that period was extended from 07.06.1993 to 06.12.1993. State Government then issued notification on 10.12.1997 and extended the period from 07.12.1993 to 06.12.1995. Notification was then issued on 19.01.1999 extending the period for preparation of draft development plan and for publishing notice under section 26[1] up to 03.09.1998. Municipal Corporation has published notice in government gazette on 03.09.1998. The ceiling of one year in aggregate has been added to Section 26[1] for the first time on 18.03.2014.

23. Planning Committee under section 28[3] was appointed on 22.01.1999 and it had to submit its report within two months. This period of two months stipulated therein is allowed to be extended by amendment on 18.03.2014. This Committee has submitted its report on 20.10.1999. As per section 30[1], Municipal Corporation had to submit draft development plan along with list of modifications or changes to State Government within a further period of 12 months. This period

has been brought down by 6 months on 05.04.2011. Thus in present facts, compliance with Section 30[1] should have been within 12 months from 03.09.1998 and Municipal Corporation Latur submitted the same on 26.06.2000. But it is within the period as extended by the State on 4.10.2000 for its submission. State Government has issued notification on 02.01.2002 and sanctioned draft development plan as final revised development plan and fixed date 18.02.2002 to be the date for its coming into force. The time limit of 12 months or 6 months added in first proviso to section 31 noted by us supra, is on 18.03.2014. In said proviso, as it originally stood at all relevant times and up to 05.04.2011, there was no ceiling on extending time limit in aggregate and State Government could have extended the period for sanctioning the draft development plan by such further period as it choose. The words not exceeding 6 months in aggregate have been substituted on 05.04.2011.

24. These undisputed dates on record and also given by the petitioners only in a separate chart do not show any omission to act within a stipulated period, or support the conclusion that due to alleged lapses, the entire action culminating into finalization of the development plan on 02.01.2002 needs to be set at knot. In the light of the arguments advanced, we do not find anything wrong with the notifications issued under section 31[1] of the 1966 Act, granting sanction to the draft development plan by the Municipal Corporation, Latur and finalizing it. Infact there is no prayer in any of the petitions before us to set aside said sanction accorded by the State Government under Section 31 of 1966 Act.

25. In so far as the grievance of petitioner Abhijit in relation to absence of survey no. 24A is concerned, division of 24A between himself and his father Chandrakant is stated to be on account of a decree of Civil Court. That decree in Civil Suit No. 130/1984 is annexed with Writ Petition as Exhibit-B. It shows that the suit was filed on 12.03.1984 and it is compromised/ decided immediately on the very same day. Abhijit got southern 6 Acres of land bearing survey no. 24A along with well situated therein. However, it was not given any separate survey number indicating subdivision of survey no. 24A.

26. The suit mentioned by Chandrashekhar vide R.C.S.No.31/1989 was for injunction. Petitioner Chandrashekhar is defendant in that suit. Prayer was to restrain him from interfering in peaceful possession of his wife and two minor children over survey no.23 admeasuring 12 Acres. Suit was filed on 04.01.1989 and has been disposed of due to compromise on 11.1.1989.

27. However, the fact that land survey nos. 23 and 24, both were mentioned in all gazette notifications and public notices issued by the Municipal Corporation and State Government under various sections supra, is not in dispute. Father of Abhijit had also raised an objection to earmarking of survey no.24 for Auditorium and Town Center. That objection was considered and rejected. Petitioner Abhijit has only urged that as there was no separate mention of 24A, he could not raise objection. However, survey no. 24A belonged to family of Abhijit represented by his father. What other objection Abhijit could have raised is not explained by him anywhere. The Municipal Corporation had undertaken preparation of an existing land use map. Petitioner Abhijit or petitioner Chandrashekhar have not pointed out any fault in so far as that process is concerned. Thus, existing use of their land was rightly looked into by the Municipal Corporation and reflected in that map. The development proposal was to be finalized by the Municipal Corporation. Maps placed on record show the location of survey no.23 as also 24. They are abutting major public roads on front side. Thus except for their desire that survey no.23 or survey no.24 should not be used for Auditorium or Town Center, there is no specific reason for not upholding the policy decision of the planning authority. The map shows that on northern side of survey nos. 23 and 24 there is a ring road proceeding from Latur to Nanded and on that part of survey nos. 23 and 24, Town Center is to be developed. Other part of survey no.24 is situated on a wider road which connects LaturNanded ring road. In fact, survey no.24 is spread on either side of this road. Municipal Corporation has pointed that it intended to construct an Auditorium on said part and therefore, wanted larger rear portion of the plot to facilitate its use for parking purposes. This need and consideration cannot be said to be erroneous or perverse. Municipal Council has pointed out that it has deposited requisite amount of Rs. 2,94,30,000/- with the State Government towards compensation payable to the claimants. We therefore, do not find any substance in contention that only because of position of Abhijit as a Councilor of

Latur municipal corporation/council, lesser part of his land is being acquired.

28. The rejoinder filed by Chandrashekhar i.e. petitioner in writ petition no.503/2009, now needs consideration. Along with that rejoinder, he has filed resolution of Special General Body meeting of Municipal Corporation dated 22.05.2013. That resolution shows that the State Government has made available land of Latur Industrial Training Institute for construction of a Drama Theater. It is to be developed as a joint project by the said Institute and the Municipal Corporation. The Municipal Corporation therefore, resolved to raise necessary funds. Whether this theater to be developed as a joint venture is substitute of an Auditorium or Town Center for which survey nos. 23 and 24 are earmarked is not very clear. But, if the Municipal Corporation has already got alternate land, it is free to find out whether it still needs survey nos. 23 and 24. Petitioners have not pointed out that public purpose for which their lands are being acquired, no longer survives. Moreover, that decision squarely rests with the Municipal Corporation only.

29. As such, looking to the prayers made in the present petitions, we do not find any case made out warranting interference. Both the petitions are dismissed. Rule discharged. However, there shall be no order as to costs.

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