

(2014) 10 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 9438 of 2011

Abhay Anant Chougule

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 6

Maharashtra Regional and Town Planning Act, 1966 — Section 125, 126, 126(1), 126(2)

Citation : (2014) 6 ABR 605 : (2015) 2 ALLMR 757 : (2015) 2 BomCR 632 : (2015) 1 MhLj 733

Hon'ble Judges : G.S. Kulkarni, J; Abhay Shreeniwas Oka, J

Bench : Division Bench

Advocate : S.M. Gorwadkar i/b Nagesh Y. Chavan, Advocate for the Appellant; V.S. Gokhale, AGP and Tejpal Ingle, Advocate for the Respondent

Judgement

G.S. Kulkarni, J.—By this petition under Article 226 of the Constitution of India, the petitioner inter alia prays for a direction to the respondents that the reservation in respect of the petitioner's land bearing survey no.547 admeasuring 27.41 Ares situated at Ichalkaranji District Kolhapur (for short "the land") kept under reservation as site no.8 for a RTO office in the sanctioned development plan for Ichalkaranji city, has lapsed under the provisions of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the Act"). The petitioner also challenges the communication dated 26.8.2011 of respondent no.5 rejecting the petitioner's application for a development permission on the ground that the said land is under reservation.

In short the facts are :

2. The petitioner is the owner of the land in question. Respondent no.5 the Ichalkaranji Municipal Council is the planning authority for Ichalkaranji city. A development plan for Ichalkaranji city was sanctioned on 5.3.1999 and was into

force with effect from 7.5.1999. In this sanctioned development plan, the petitioner's land was kept under reservation at site no.8 for a RTO office. The appropriate authority qua the said reservation is respondent no.3 (R.T.O.Kolhapur Region, Kolhapur).

3. After the development plan was brought into force on 7.5.1999 neither the appropriate authority nor the planning authority had taken any steps to acquire the said land within a period of ten years for the purpose for which it was designated to be reserved.

4. The petitioner had initially issued a notice through his Advocate on 8.1.2007 to respondent nos.3 to 5 to acquire the said land for the purpose for which it was reserved or make it available to the petitioner for development. In pursuance thereto, the respondent no.3 by its letter dated 17.5.2007 had informed respondent no.4 to acquire the said land for establishment of Regional Transport Office.

5. It is the petitioner's case that the respondent no.3 by its letter dated 19.6.2010 had informed the respondent no. 5 -Ichalkaranji Municipal Council for making available suitable shops on lease in its commercial complex admeasuring about 1600 sq.feet near Thorat Chowk, Ichalkaranji city for establishment of the Regional Transport Office as permitted by the State Government. It is stated that the Municipal Council by a letter dated 17.9.2010 informed respondent no. 3 that a resolution No.173 dated 4.8.2010 has been passed approving allotment of 118 shops in the commercial complex as demanded for the establishment of the Regional Transport Office. The Petitioners state that these facts show that the authorities were no more interested to utilise the petitioner's land for the said designated purpose.

6. On this background, the petitioner issued a purchase notice dated 9.7.2010 under section 127 of the Act to the respondent no.3 -namely the acquiring body as also to Respondent no.5 the planning authority. The purchase notice was duly received by the respondent to. 3 and respondent no.5. By this purchase notice these respondents were intimated that the said land of the petitioner was kept under reservation in the development plan for a period of more than ten years and that the same were not acquired. It was stated that the petitioner intended to develop the said land, however, they were unable to do so due to the reservation. It was therefore, informed that the respondents acquire these lands within a statutory period of one year by making payment of compensation to the petitioner as per the market value failing which the reservation shall stand lapsed.

7. It is the petitioner's case that despite receipt of the purchase notice dated 9.7.2010 the respondents have not taken any steps for acquisition of the land within the statutory period of twelve months and hence the reservation of the said land had lapsed and the land had become free for development as per the provisions of section 127 of the MRTP Act. The petitioner therefore, on 19.7.2011 submitted an application to the respondent no.5 for permission to develop the

land in question for a residential purpose by submitting a lay out plan. The respondent no.5 however, by its communication dated 26.8.2011 rejected the application of the petitioner and refused development permission on the ground that the land is under reservation under the sanctioned development plan. On this background the petitioner has filed the present petition.

8. By orders dated 29.12.2011 and 20.12.2011, notice for final disposal of the present petition was issued to the parties. Accordingly, a reply -affidavit on behalf of the respondent no. 3 of Shri Sachinkumar Anant Giri, Assistant Regional Transport Officer, Kolhapur has been filed. It is stated that even before the purchase notice was issued by the petitioner on 9.7.2010, the Regional Transport Officer, Kolhapur had issued a letter to the Collector of Kolhapur for acquisition of the said land. It is stated that the said proposal is still in process and no notification is issued under the Land Acquisition Act in respect of the said land. It is urged that the writ petition therefore, be dismissed.

9. We have heard learned counsel for the parties. We have perused the paper book of the present petition as also the reply -affidavit filed on behalf of the respondent no.3.

10. On behalf of the petitioner, it is urged that the land of the petitioner is admittedly kept under reservation with effect from 7.5.1999 when the development plan was brought into force for a period of more than ten years. It is submitted that the respondents had not taken any steps for acquisition of the land for the public purpose for which it was reserved. It is therefore submitted that the petitioner was justified in issuing the purchase notice dated 9.7.2010 under section 127 of the MRTP Act calling upon the respondents to acquire the land. It is submitted that even after the receipt of the purchase notice no steps were initiated for acquisition of the land and hence the reservation is deemed to have lapsed by operation of provisions of section 127 of the Act. It is submitted that the impugned communication dated 26.8.2011 by which the respondent no.5 has rejected the petitioner's application for development of the land is patently illegal in as much as as the land of the petitioner was not acquired within a period of one year from the receipt of the purchase notice, and hence the reservation having lapsed the land had become free for development. Learned counsel for the petitioner has relied upon the judgment in the case of Girnar Traders Vs. State of Maharashtra and Others, .

11. On behalf of the respondents, the learned AGP has opposed the petition on the contentions as raised in the affidavit in reply.

12. Having examined the facts of the present case, it is not in dispute that the land in question of the ownership of the petitioner was kept under reservation for the purpose of Regional Transport Office. The development plan for the city of Ichalkaranji was brought into force on 7.5.1999 from which date the said reservation continued. The period of ten years from the development plan coming into force expired in May, 2009. If the land under reservation is not

acquired by the appropriate authority within a period of ten years from coming into force of the development plan, in that that event, section 127 confers a right on the owner of the land or a person interested in the land to issue a purchase notice to the appropriate authority to acquire the land within a prescribed period of one year. In this context, it is necessary to examine the provisions of section 127 of the MRTP Act as amended.

Section 127:

(1) " If any land reserved, allotted or designated for any purpose specified for any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or, if a declaration under sub -section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve Notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be ,the Appropriate Authority to that effect, and it within twelve months from the date of the service of such notice the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development or otherwise, permissible in the case of adjacent land under the relevant plan.

(2)On lapsing of reservation, allocation or designation of any land under sub -section (1) the Government shall notify the same by an order published in the Official Gazette."

A plain reading of the aforesaid provision makes it clear that when any land is reserved, allotted or designated for any public purpose specified in the Development Plan and if it is not acquired by agreement within ten years from the date on which the final regional plan or final development plan comes into force, or if proceedings for acquisition of such land under the MRTP Act or under the Land Acquisition Act are not commenced, the owner or any person interested in the land, may serve a notice to the Planning Authority calling upon the Planning Authority to acquire such land within a period of twelve months from the date of service of such notice and if the land is not acquired or no steps are commenced for its acquisition the reservation designation of such land shall be deemed to have lapsed and the land thereupon shall be deemed to be released from reservation. The land thereafter shall become available to the owner for the purpose of development as otherwise permissible under the relevant plan.

13. The petitioner in accordance with the provisions of section 127 had issued a purchase notice dated 9.7.2010. The same was received by the respondent nos.3 and 5 on the same day. However, the respondents for a period of one year from the receipt of the purchase notice did not take any steps to acquire the petitioner's land in question. It is well settled that the proceeding for acquiring

the land for the purpose of section 127 can be said to have commenced only when a Notification under section 6 of the Land Acquisition Act is issued. No such Notification was issued by the respondents after receipt of the purchase notice. The obvious consequence therefore was that the reservation of the petitioner's land had lapsed by operation of section 127 of the MRTP Act.

14. The petitioners are justified in relying on the decision of the Supreme Court in the case of *Girnar Traders vs. State of Maharashtra* (supra). The Supreme Court in considering the provisions of section 127 of the M.R.T.P Act, 1966 has held that "the steps for acquisition" as contemplated under section 127 of the M.R.T.P . Act, 1966 would be issuance of a declaration under section 6 of the Land Acquisition Act. The Supreme Court has observed as under :

54. "When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in *Municipal Corpn. of Greater Bombay* case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub - section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation."

55. "Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was

obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same."

56." The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the government to acquire the land which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. " It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub -section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act."

15. In a recent decision of the Supreme Court in the case of Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others, the Supreme Court had observed as under :

42. We are further of the view that the majority in Girnar Traders (2) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act

has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/ other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

16. In the present case, admittedly a section 6 Notification under the Land Acquisition Act was not issued and hence adverting to the principles of law laid down by the Supreme Court in the aforesaid decisions it would be required to be held that reservation of the land in question had lapsed by operation of section 127 of the M.R.T.P. Act, 1966.

17. In the light of the aforesaid observations, the inevitable conclusion is that the reservation of the petitioner's land in question has lapsed and the land has become available to the petitioner to be developed as otherwise permissible, as in the case of the adjacent land under the Development Plan. Writ Petition therefore deserves to be allowed and is accordingly allowed in terms of prayer clause (a). The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of section 127(2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today.

Writ Petition stands allowed in terms of prayer clause (b). No order as to costs.