
(2007) 11 BOM CK 0071
In the Bombay High Court
Case No : Writ Petition No. 6106 of 2006

Jairam Kancharlawar

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 127, 38, 49, 49(7)

Citation : (2008) 2 ALLMR 113 : (2008) 3 BomCR 905 : (2008) 2 MhLj 300

Hon'ble Judges : R.M. Borde, J;Nareash H. Patil, J

Bench : Division Bench

Advocate : V.J. Dixit and S.G. Mundhe, holding for N.R. Katneshwarkar, for the Appellant; B.A. Darak and S.P. Daund, A.G.P. for respondent Nos. 2 to 6, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—Heard Mr. S.G. Mundhe, learned Counsel holding for Mr. N. R. Katneshwarkar, advocate for the petitioner, Mr. B. A. Darak, learned Counsel for respondent No. 1 and Mr. S.P. Daund, learned A.G.P. for respondents No. 2 to 6.

Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner, in this petition, claims that the reservation, allotment or designation made by the planning authority in respect of land S. No. 253 situate at Kinwat, belonging to the petitioner, is deemed to have been lapsed by operation of provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, referred to as "MRTP Act"). The petitioner also contends that in spite of issuing notice u/s 49(7) of the MRTP Act, land of the petitioner has not yet been acquired and as such the said land becomes available to the petitioner for the purpose of development in accordance with the rules and regulations as in the case of adjacent land.

3. The petitioner claims that he is owner of S. No. 253 situate at Kinwat. It is contended that an area to the extent of 85 acres has already been taken in

possession by the Municipal Council on 12-6-1998 itself without initiating proceedings as required under the Land Acquisition Act. So far as other part of said land survey number is concerned, an area to the extent of 1 hectare 42 acres is earmarked for water supply scheme, being Reservation Site No. 38, whereas an area to the extent of 1 hectare 35 acres has been earmarked for Cultural Centre and Library, being Reservation Site No. 39 and an area to the extent of 1 hectare has been earmarked for vegetable market and shopping complex, being Reservation Site No. 40. It is contended that though the development plan was sanctioned in the year 1976 itself, no steps for acquisition of the land were taken. The petitioner, as such, issued notice as contemplated u/s 127 of the MRTTP Act on 24-3-1999. In spite of issuing notice, steps for acquisition were not taken by the planning authority. The petitioner, therefore, again transmitted a notice on 30-7-2002, as contemplated u/s 49(7) of the Act to the Chief Secretary, Urban Development Department, Mantralaya, Mumbai, requesting the concerned authority to purchase the land of the petitioner, otherwise release the same from reservation prescribed under the relevant plan. The notice was received by the Chief Secretary and after considering the same, notice was confirmed on 22-1-2003 in respect of Reservation Site Nos. 36, 38, 39 and 40.

4. It is the case of the petitioner that the planning authority thereafter forwarded a proposal for acquisition of the land. It appears that the Land Acquisition Officer determined the tentative valuation of the property and issued communication to the planning authority on 28-9-2004 to deposit an amount to the tune of Rs. 1,45,00,000/-, being 2/3rd amount of compensation in respect of acquired land. The Municipal Council has expressed its inability to deposit the amount with the Land Acquisition Officer and as such the land could not be acquired. The petitioner again waited for a year and was expecting that steps would be taken by the acquiring body for completing the land acquisition proceedings. The petitioner again issued a notice on 21-3-2005 as contemplated u/s 49(7) of the MRTTP Act and requested the planning authority and State Government to pay compensation or to release the property. It is contended in the notice that the petitioner on earlier occasion issued notice as contemplated u/s 127 of the MRTTP Act on 24-3-1999, however, no steps were taken for acquiring the property within the stipulated period of six months and as such, the subject lands are deemed to have been deleted from the acquisition. In spite of lapsing of such reservation, the petitioner issued another notice u/s 49 of the MRTTP Act requesting the planning authority as well as the State Government to purchase the property. However, in spite of confirmation of said notice, no concrete steps in respect of acquisition of subject property were taken and no award has yet been passed. The petitioner, therefore, by issuing notice on 21-3-2005, communicated the State Government as well as the planning authority that the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have been lapsed and the land shall be deemed to have been released from reservation, designation, etc. and same shall be

deemed to have become available to the petitioner for the purpose of development. In spite of issuing notice as aforesaid, no further steps are taken. As such, the petitioner has approached this Court with a request to declare that the reservation of petitioner's land, being Reservation Sites No. 36, 38, 39 and 40 shall be deemed to have been lapsed.

5. The State Government has filed an affidavit, which is sworn by Assistant Director of Town Planning, Nanded, controverting the claim of the petitioner. It is contended that in view of final development plan, which was sanctioned on 6-5-1976, the land was earmarked for different purposes, whereas the development plan has undergone revision and the same is sanctioned finally on 27-5-2002. There is some change in respect of the purpose for which the land is earmarked in the revised plan. It is, therefore, contended that as the revised plan has come into force from 28-7-2002, the notice issued u/s 127 of the MRTP Act, by the petitioner, is of no consequence. So far as purchase notice u/s 49 of the MRTP Act is concerned, it is contended that after the said notice was confirmed by the appropriate authority, a proposal for acquisition of the subject land has been forwarded within stipulated period of one year and as such there is no question of lapsing of reservation.

6. The Municipal Council has also filed an affidavit-in-reply and has raised similar defence as adopted by the State. It is further stated by the planning authority that considering the financial crunch, the planning authority is not in a position to raise funds to the tune of Rs. 1,45,00,000/-, which is a tentative valuation determined by the Land Acquisition Officer towards 2/3rd amount of compensation. It is contended by the planning authority that a request has been made to the State Government for extending financial help and the property would be acquired after the State Government extends financial assistance.

7. An additional affidavit has been placed on record by the planning authority as well as by the petitioner and it is stated that in spite of revision in the development plan in the year 2002, the property, which is sought to be reserved and which was earmarked for development purpose in the earlier plan, remains one and the same. It is further stated that only the purpose in respect of reservation of site has undergone change as per the revised development plan, however, property remains the same.

8. It is borne out from the record that notice, as contemplated u/s 127 of the Act, was issued by the petitioner on 24-3-1999. There is no dispute in respect of receipt of said notice by the planning authority. Admittedly, request for acquisition of the property has been made by the planning authority on submission of land acquisition proposal with the Collector on 2nd March, 2000. Considering the dates on which proposal for acquisition has been transmitted, it is more than clear that the said proposal has been submitted after the period stipulated u/s 127 of the MRTP Act. Therefore, the contention that the reservation, designation or allotment in respect of subject property in the relevant development plan shall be deemed to have been lapsed by operation of

law, has to be accepted, as admittedly the proceedings were not initiated within statutory period. It is appropriate to refer to the provisions of Section 127 of the MRTTP Act, which reads as under:

127. Lapsing of Reservations. - If any land reserved, allotted or designated for any purpose specified in 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 proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six 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 as otherwise, permissible in the case of adjacent land under the relevant plan.

9. It is tried to be contended on behalf of the planning authority that in the earlier development plan, the purpose for which the land was earmarked was different and as per the revised development plan, the property has been earmarked for a distinct purpose. It is tried to be canvassed that as the revised development plan has been operationalised in the year 2002, the act of issuance of notice u/s 127 of the MRTTP Act, by the petitioner, on the planning authority is of no consequence.

The said argument cannot be accepted for the reason that the property which was earmarked in the earlier development plan, which was finalised in the year 1976 and which has undergone revision in the year 2002, remains one and the same. It would be apt to refer to the decision in the case of Kishor Gopalrao Bapat and Others Vs. State of Maharashtra and Another, , wherein, in para 11, it has been observed that:

11. The question, which falls for our consideration in the present petition is whether the Planning Authority exercising power u/s 38 of the MRTTP Act, which deals with revision of development plan, can take away the rights accrued to the owner of the land on account of lapsing of reservation in view of contingencies mentioned in Section 127 of the MRTTP Act. Similar factual and legal situation arose in the case of Shri Baburao Dhondiba Solakhe (cited supra) and this Court after taking into consideration the law laid down by the Apex Court in Bhavnagar University v. Palitana Sugar Mills (P) Ltd. and Ors. 2003(1) SCC 111 in paragraph (17) observed thus:

The legal position as regards MRTTP Act on the basis of aforesaid observations made by the Apex Court in Bhavnagar University emerges that by imposition of a statutory obligation u/s 38 on the part of the State or the appropriate authority

to revise the development plan the rights of the owners accrued in terms of Section 127 are not taken away. Section 38 of the MRTP Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested u/s 127 is taken away. In other words, Section 38 does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made would not automatically result in revival of reservation that had lapsed. If the reservation of the petitioner's land for the purposes of garden had lapsed and as we found in fact has lapsed on 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation.

10. In this view of the matter, it will have to be held that as the planning authority has failed to initiate proceedings in respect of acquisition within the stipulated period of six months from the date of receipt of notice u/s 127 of the MRTP Act, served by the petitioner on the planning authority, the reservation, allotment or designation shall be deemed to have been lapsed and the land shall be deemed to have been released from such reservation, allotment or designation and shall become available to the land owner for the purposes of development as otherwise permissible in the case of adjacent land under the relevant plan.

11. The another aspect, which is also worth consideration, is that the petitioner has issued purchase notice u/s 49 of the MRTP Act on the State Government as well as on the planning authority on 30-7-2002. The said notice was confirmed by the State Government and the proposal for acquisition of the property was forwarded to the Land Acquisition Officer within the stipulated period of one year. The Land Acquisition Officer has arrived at tentative valuation of the property, which is to the tune of Rs. 1,45,00,000/- and directed the planning authority to deposit the aforesaid amount with the Land Acquisition Officer. A communication to that effect was sent by the Land Acquisition Officer on 28-9-2004. However, in spite of issuance of such communication directing the planning authority to deposit the tentative value of the land, the planning authority has specifically expressed its inability to deposit the said amount because of its poor financial condition. The planning authority could not collect the required amount for making deposit of the same with the Land Acquisition Officer either on its own or could not persuade the State Government to release financial assistance, although the proposal was transmitted to the Land Acquisition Officer on 2nd March, 2000. Petitioner has, therefore, again issued notice u/s 49(7) of the MRTP Act, intimating the planning authority that as the land has not been acquired within the stipulated period, the reservation shall be deemed to have been lapsed. Although the petitioner cannot place reliance on the provisions of Section 49(7) of the MRTP Act for the purpose of deriving an inference that the reservation shall be deemed to have been lapsed on account of failure of finalisation of land acquisition proceedings for number of years, however, it is a

relevant fact to be taken into consideration for rendering decision in the matter.

12. During the course of argument, the learned Counsel for the planning authority has in clear terms stated that the planning authority is not in a position to collect requisite funds and cannot purchase the property on its own because of financial crunch. It is also made clear that neither the State Government is responding positively nor there is any other scheme for arranging financial resources. In this view of the matter, it is clear that the planning authority is not in a position to purchase the property so also the State Government is also not coming forward with any proposal for helping the planning authority in the matter of purchase of the subject land.

13. Taking into consideration the totality of the circumstances, we are of the view that the planning authority has failed to purchase the property within the stipulated period prescribed u/s 127 of the Act after receipt of notice sent by the petitioner which was served on the planning authority. On account of failure to comply with the mandatory requirement of Section 127 i.e. initiating land acquisition proceedings within six months after issuance of notice as contemplated u/s 127 of the MRTP Act, the reservation, allotment or designation in respect of the subject property shall be deemed to have been lapsed and the subject property is available to the land owner for the purposes of development under the relevant plan, as in the case of adjacent land owner.

14. In the result, Petition succeeds. It is hereby declared that the reservation, allotment or designation prescribed in respect of the subject property i.e. land S. No. 253, situated at Kinwat, shall be deemed to have been lapsed and the said property shall stand released from such reservation, allotment or designation and shall become available to the owner for the purposes of development as otherwise permissible in the case of adjacent land under the relevant plan.

Rule is made absolute accordingly. No costs.