
(2014) 12 BOM CK 0209
In the Bombay High Court
Case No : W.P. No. 3543 of 2001

Kolte Patil Developers Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Constitution of India, 1950 — Article 300-A
Land Acquisition Act, 1894 — Section 16, 4, 5-A, 6
Maharashtra Regional and Town Planning Act, 1966 — Section 125, 126, 126(1), 126(1)(c)

Citation : (2015) 1 ALLMR 832 : (2015) 1 BomCR 536 : (2015) 1 MhLj 497 : (2015) 2 RCR(Civil) 858

Hon'ble Judges : N.H. Patil, J; B.P. Colabawalla, J; A.A. Sayed, J

Bench : Full Bench

Advocate : M.C. Korde, Senior Advocate and S.D. Mogre, Advocates for the Appellant; A.B. Vagyan, Government Pleader and V.N. Sagare, A.P.P, Advocates for the Respondent

Judgement

N.H. Patil, J.—The petitioner sought for direction for declaration that the land described in Exh. B to the petition stands released from the reservation for a primary school under the Development Plan 1987 for Pune city by virtue of section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act" for short). The petitioner further prayed for direction to the respondents to complete the acquisition proceedings and to declare award by taking possession of the subject land under section 16 of the Land Acquisition Act, 1894. The petitioner contended that on 5th January, 1987 a final development plan was published. The petitioner has development rights of plot No. 188 of Sangamwadi in Pune. The said plot was shown reserved for primary school in the said final development plan. On 10th February, 1988, respondent No. 2-Corporation moved an application requiring the Government of Maharashtra to acquire the land for the purposes of the primary school as per the reservation made in the final development plan published on 5th January, 1987. The petitioner claims to have made several representations reminding the authorities to take necessary steps.

The petitioner issued notice on 21st August, 2000 purportedly under section 127 of the MRTTP Act requiring the respondents to take appropriate action under section 127 of the said Act. The notice was served on the respondents as no steps were taken consequent thereto. The petitioner filed writ petition seeking aforementioned declaration of lapsing of reservation.

2. During the course of hearing before the Division Bench of this Court (Coram: V.G. Palshikar and Ranjana Desai, JJ.) it was submitted on behalf of the petitioner that even assuming without admitting that making an application under section 126(1)(c) of the MRTTP Act is a step in proceeding as contemplated by section 127 of the MRTTP Act, if the land acquisition proceedings are not completed within a reasonable time, the provisions of section 127 would operate. For want of taking appropriate steps within reasonable time after making an application under section 126(1)(c) of the MRTTP Act the land shall be declared to be dereserved.

3. It was submitted on behalf of the Corporation that making of application under section 126(1)(c) is a step in the proceeding. The authority contemplated under section 127 is a planning authority or an appropriate authority and the State Government is not such authority. It was, therefore, submitted that where the application under section 126(1)(c) was made and no action was taken on the said application, the reservation of land will be deemed to have lapsed.

4. On behalf of the petitioner and the respondents number of judgments were cited which, according to the learned Division Bench, expressed divergent views. In para-13 of the order of reference the Division Bench has observed as under:

"13. In our opinion therefore there is apparent conflict of views taken by this court. One view is that application under section 126(1)(c) of the Act is a step for acquisition as contemplated under section 127 of the Act and the other view is making of such an application is not a step for acquisition as contemplated by the Act."

5. On this reference following issues are framed for consideration of the Full Bench, which read as under:

"1. Whether making of an application under section 126(1)(c) of the Act is a step in acquisition as contemplated by section 127?

2. Whether the proceedings for acquisition of land as contemplated by section 127 of the Act are liable to be completed in reasonable time after the notice under that section is issued or can be stalled indefinitely after the application is made under section 126(1)(c) of the Act?

3. Whether the definition of "appropriate authority" occurring in section 2 of the Act includes the State Government as the appropriate authority and therefore action by the planning authority or the appropriate authority must include the acquiring authority."

6. The learned senior counsel appearing for the petitioner submitted that the question raised in Issue No. 1 of reference is no more *res Integra* in view of the pronouncements of the Apex Court in *Girnar Traders Vs. State of Maharashtra and Others*, and in *Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others*, . Learned counsel further submitted that in view of the said judgments, no further hearing is required on Issue No. 1. Learned counsel submitted that consequently Issue No. 2 need not be dealt with as the same would be covered in view of the decision being rendered by the Apex Court on Issue No. 1. In the submission of learned counsel, the Division Bench could now consider the facts of the case in the light of the judgments of the Apex Court cited *supra*. Therefore, both Issue Nos. 1 and 2 need not be independently dealt with.

7. The learned counsel appearing for respondent No. 2-Corporation did not have any quarrel with the proposition inasmuch as Issue Nos. 1 and 2 are concerned. But as regards Issue No. 3, learned counsel submitted that it is required to be considered whether appropriate authority under section 2 of the MRTTP Act includes the State Government and whether the planning authority or appropriate authority would include the acquiring authority. Learned counsel referred to section 2 which refers to definition clauses under the MRTTP Act, section 2(3) defines "appropriate authority"; section 2(15) defines "local authority"; whereas section 2(19) defines "planning authority". In other words, learned counsel submitted that the application for lapsing of reservation is required to be made to the State Government considering the provisions of the MRTTP Act and the provisions concerning definitions provided under section 2 of the said Act.

8. We have considered the submissions advanced and perused the judgments cited *supra* and the relevant provisions of the MRTTP Act and Land Acquisition Act. We are in agreement with the submissions of learned senior counsel appearing for the petitioner that question framed in issue No. 1 has been dealt with and considered by the Apex Court in the case of *Girnar Traders (supra)*. In the said judgment, while dealing with interpretation of section 126(1)(c) and section 127 of the MRTTP Act, the Apex Court in paras-57 and 58 observed as under:

"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 MRTTP 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 steps 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.

58. The MRTP Act does not contain any reference to section 4 or section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of section 4 of the LA Act and the inquiry contemplated under section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of section 126 read with section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of section 126 of the MRTP Act. Thus, unless and until section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced."

9. The Apex Court in the case of Shrirampur Municipal Council (supra) observed in paras-42, 43 and 46 as under:

"42. We are further of the view that the majority in Girnar Traders Vs. State of Maharashtra and Others, 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 300-A of the Constitution.

46. As a sequel to the above discussion, we hold that the majority judgment in *Girnar Traders Vs. State of Maharashtra and Others*, lays down correct law and does not require reconsideration by a larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are accordingly dismissed."

10. While dealing with interpretation of section 126(1)(c) and section 127, the Apex Court observed that the steps towards acquisition would really commence when the State Government takes active steps for acquisition of land leading to publication of declaration under section 6 of the Land Acquisition Act. Any other interpretation of the scheme would make the provisions only unworkable.

11. While dealing with the same issue, the Apex Court in *Girnar Traders* (supra) held that making of an application to the State Government for acquisition of land would not be a step for acquisition of land under reservation. Sub-section (2) of section 126 of the MRTP Act leaves it open to the State Government either to permit acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. It was reiterated that the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes notification under section 6 of the Land Acquisition Act. In the light of said view as expressed above by the Apex Court, Issue Nos. 1 and 2 are answered accordingly.

12. The Issue No. 3 could be considered and dealt with by the Division Bench in the light of the facts of the case and aforementioned judgments of the Apex Court (cited supra). The reference is answered accordingly. The papers be placed before the Division Bench.