
(2014) 09 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 2707 of 2012

Meena Mohanlal Chauhan

APPELLANT

Vs

Nashik Municipal Corporation

RESPONDENT

Date of Decision : 23-09-2014

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 760 : (2015) 1 ALLMR 265 : (2015) 2 MhLj 315

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

Bench : Division Bench

Advocate : R.D. Soni i/b Ram and Co, Advocate for the Appellant; M.L. Patil and V.S. Gokhale, AGP, Advocate for the Respondent

Final Decision : Allowed

Judgement

G.S. Kulkarni, J.—Rule returnable forthwith. Respondents waives service. By consent of the learned counsel for the parties and at their request taken up for Final Hearing.

2. By this Writ Petition essentially filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of mandamus against the respondents that the reservation of land bearing Survey Nos.299/3/1 (P) (in short "the land") admeasuring 6937.60 sq.meters situated at Ambad Khurd, District Nashik, is deemed to have lapsed and the petitioner is entitled to develop the said property as otherwise permissible in case of adjacent land under development plan.

Briefly the facts are:

3. The petitioner is the owner of the said plot of land having purchased the same under a registered sale deed dated 28.6.2006 from one Shri.Gangadhar Gopal More. The petitioner's name was mutated in the revenue records on 6.10.2006.

4. The Development Plan for the Nashik city was sanctioned by the State Government on 28.6.1993 and the same was brought into force on 16.11.1993. In the Development Plan the land of the petitioner was reserved for a public purpose namely a garden under Site No.33. This reservation was published in the Government Gazette on 30.9.1993. The petitioner's land continues to be reserved for the purpose of a garden. The petitioner's case is that the Planning Authority however did not initiate any action to acquire the said land for the purpose for which it was kept reserved for a period of more than 10 years from the date on which the land was brought under reservation. The erstwhile owner therefore prior to the sale of the land to the petitioner had invoked the provisions of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the M.R.T.P. Act") by issuing a purchase notice to the 1st respondent dated 10.2.2005, received by the 1st respondent on 15.2.2005. By this notice, the 1st respondent was called upon to acquire the said land within a the period of six months as stipulated under the provisions of section 127 of the M.R.T.P.Act, 1966. The notice recorded that if within the stipulated period of six months from the receipt of the notice, if no action for acquisition is initiated by the 1st respondent as required u/s 127 of the Act then the reservation shall deemed to have lapsed and that the land would be free from reservation and would be available to the petitioner for development. The 1st respondent however failed to take any steps within a period of six months from the date of receipt of the said notice to acquire the land as would be required under the provisions of section 127 of the M.R.T.P. Act, 1966. The period of six months expired on 15.8.2005. The 1st respondent however continued the reservation in respect of the petitioner's land when according to the petitioner by operation of the provisions of section 127 of the M.R.T.P. Act, 1966 the reservation stood lapsed and the land had become available to the petitioner for development as otherwise permissible to be developed as per the adjacent land under the Development Plan.

5. The petitioner therefore, approached the 1st respondent by submitting through her Architect a proposal to develop the said land. The Assistant Director of Town Planning of the 1st respondent by a letter dated 25.11.2011 addressed to the petitioner's Architect informed the petitioner that the name in the 7/12 Extract was that of the petitioner, however, the purchase notice dated 10.2.2005 u/s 127 of the M.R.T.P.Act, 1966 was issued by the erstwhile owner Mr.Gangaram More and hence a legal opinion was sought by the 1st respondent in that regard. By a further letter dated 26.11.2010 the Assistant Director called upon the petitioner to produce a copy of the registered sale deed and relevant entries in the revenue records, alongwith the measurement map prepared by the District Inspector of Land Records. The petitioner complied with the said requisitions. Despite the compliance by the petitioner no further action was taken to sanction the building plans. The Dy.Engineer of the 1st respondent however, by a communication dated 21.2.2012 informed the petitioner's Architect that in view of the D.P. Reservation for a garden in respect of the said plot petitioner's proposal for development of the land cannot be sanctioned. It is the petitioner's

case that the Government of Maharashtra has issued a circular dated 21.3.2005 whereby the Planning Authorities are informed that when the proposal for acquisition of land u/s 127 of the M.R.T.P. Act, 1966 is referred to the Standing Committee of the Municipal Corporation for its sanction, the Standing Committee of the Municipal Corporation shall give its sanction within a period of five months from presenting the proposal. It was stated that for this purpose the proposal was required to be placed before the Standing Committee within a period of 15 days from the date of receipt of purchase notice. It was clarified that if the Standing Committee does not give its sanction within the stipulated period, the Government has empowered the Commissioner to forward the proposal for acquisition by exercising powers u/s 162(1) and (2) of the M.R.T.P. Act, 1966. It is the petitioner's case that despite this clear Circular issued by the Government of Maharashtra, the Commissioner had failed to exercise his powers and take steps to acquire the land in question. It is therefore, the petitioner's case that the reservation pertaining to the petitioner's land had indisputedly lapsed and hence the 1st respondent was under a legal obligation to permit the petitioner to develop the land in question as per provisions of section 127 of the MRTP Act, 1966. The petitioner being aggrieved by this inaction on the part of the 1st respondent has filed this petition.

6. The 1st respondent has filed an affidavit in reply of Mr.Bhaskar Udhavrao More Estate Manager of the 1st respondent wherein the 1st respondent does not dispute the fact that the land of the petitioner was reserved for a public purpose namely for a garden since 1993 which is more than ten years. The issuance of the purchase notice dated 10.2.2005 u/s 127 of the M.R.T.P.Act, 1966 by the erstwhile owner is also not disputed. It is also not disputed that the petitioner has purchased the land in question under a Registered Agreement dated 20.6.2006. The 1st respondent however, has opposed this petition on the ground that the purchase notice issued by the erstwhile owner would not enure to the benefit of the petitioner and hence the land would continue to be subjected to reservation. It is thereafter, contended that the purchase notice was issued on or about 10.2.2005 and that the present Writ Petition was filed in the month of March 2012 and hence there is an inordinate delay on the part of the petitioner in preferring the present Writ Petition and hence it should be dismissed on the ground of laches. Further it is the case of the Ist respondent that the petitioner had purchased the land being fully aware that the same was under acquisition and being a speculative transaction the petitioner is not entitled to any relief.

7. On behalf of 3rd respondent and 4th respondent (State Government) Mr.Manohar Yeshwant Bhargave Assistant Director of Town Planning has filed a reply. It is submitted that the Government is not aware of the action taken by the 1st respondent in pursuance of the purchase notice served by the petitioner u/s 127 of the M.R.T.P.Act and that this fact may be ascertained from the 1st respondent. It is stated that if the acquisition proposal was submitted by the 1st respondent, then the stage of acquisition may be ascertained from the 2nd respondent. It is then contended that as per the provisions of section 127 of the

M.R.T.P. Act, 1966 it was necessary to initiate land acquisition process within a period of six months from the date of service of the notice. It is stated that section 127 was amended from 29.9.2009 and under the amended provisions it was mandatory to declare the section 126(4) Notification within a period of one year from receipt of the purchase notice. In short the affidavit in reply filed on behalf of the 3rd and 4th Respondent is of complete unawareness about any steps which would be required to be initiated for acquisition of the said land.

8. We have heard Mr.Soni learned counsel for the petitioner, Mr.Patil for 1st and 2nd Respondent and Mr.Gokhale learned AGP for the 3rd and 4th Respondent. With the assistance of the learned counsel for the parties, we have perused the paper Book of the Writ Petition and reply affidavits filed by the respondents.

9. On behalf of the petitioner, it is urged that admittedly the land of the petitioner is subjected to reservation for a period of 10 years beginning from the year 1993. It is further submitted that none of the respondents had disputed the issuance of the purchase notice dated 10.2.2005 and the receipt of the same. It is submitted that as no action was taken within a period of six months by the 1st respondent to acquire the land after receipt of the purchase notice by operation of the provisions of section 127 of the M.R.T.P.Act, 1966, the reservation had lapsed and the land had become available to the petitioner to be developed as per the provisions of section 127 of the M.R.T.P. Act, 1966. It is submitted that the contention as raised on behalf of the 1st respondent that the purchase notice issued by the erstwhile owner would not enure to the benefit of the petitioner is patently misconceived. It is submitted that the rights which were accrued to the erstwhile owner were available to the petitioner and hence the petitioner cannot be denied the legal benefit which had accrued to the erstwhile owner. It is submitted that the provisions of section 127 of the M.R.T.P.Act, 1966 which were set into motion by issuance of the purchase notice dated 10.2.2005 had taken its course and that by operation of law the reservation is deemed to have lapsed on account of inaction being taken by the respondents to commence acquisition proceedings by issuance of a section 6 Notification under the Land Acquisition Act. The petitioner rely on the decision of the Supreme Court in case of Girnar Traders Vs. State of Maharashtra and Others,

10. Learned counsel on behalf of the 1st respondent however, supported the reservation on the basis of the plea as raised in the affidavit-in-reply. Similarly, the learned AGP has reiterated his submissions as contained in the reply as filed on behalf of the 3rd and 4th Respondent.

11. On considering the facts as placed on record it appears to be an admitted position that the petitioner is the owner of the land in question. That a purchase notice u/s 127 of the M.R.T.P.Act, 1966 was served by the erstwhile owner Shri.Gangaram Gopala More on 10.2.2005 and the same was received by the 1st respondent and that further action u/s 127 of the M.R.T.P.Act, 1966 was required to be taken by the 1st respondent. It would be beneficial to refer to the provisions of section 127 of the M.R.T.P.Act as it stood when the purchase notice

dated 10.2.2005 was issued by the petitioner.

Section 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 (for 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 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."

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 six 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 on such designated land shall become available to the owner for the purpose of development as otherwise permissible under the relevant plan. 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 u/s 6 of the Land Acquisition Act is issued.

12. The facts in the present case clearly demonstrate that the plot in question was kept under reservation for the purpose of a garden from the commencement of the Development Plan for the city of Nashik which was brought into effect on 16.11.1993. Admittedly, for a period of ten years from the commencement of the Development Plan, the Ist respondent did not take any steps to acquire the land for the purpose for which it was kept under reservation. That admittedly the erstwhile owner had issued a purchase notice dated 10.2.2005 and the same was received by the Ist respondent. The Ist respondent within a period of six months from the receipt of the purchase notice was required to acquire the land or take steps for commencement of the acquisition of the land in question. However, no such steps were taken to commence the acquisition proceedings. It is therefore,

clear that by plain application of the provisions of section 127 the reservation of the petitioner's land is deemed to have lapsed and the land had become available to the petitioners for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.

13. The contention as raised on behalf of the 1st respondent that the purchase notice in question was served by the erstwhile owner and the same would not enure to the benefit of the petitioner is misconceived. Section 127 contemplates a purchase notice to be served by the owner or any person interested in land. The 1st respondent has not disputed that when the purchase notice was served, Mr. Gangaram Gopala More, was the owner of the land or a person interested in the land. In fact, the 1st respondent entered into a correspondence with the petitioner and sought further details pertaining to the land including the Sale deed as entered between the erstwhile owners and the petitioner, which is clear from letters dated 26.11.2010 and 25.11.2010. The 1st respondent had not rejected the purchase notice issued by the erstwhile owner Mr. Gangaram Gopala More. However, only when the petitioner presented plans for development of the land, the 1st respondent issued the impugned communication dated 21.2.2012 informing that the reservation continues and hence the development permission cannot be granted. Taking into consideration this factual position, there is no substance in the contentions as raised on behalf of the 1st respondent that the purchase notice issued by Mr. Gangaram Gopala More would not enure to the benefit of the petitioner. In any case, this contention as raised on behalf of the 1st respondent has no legal basis when considered in the context of the clear language of the provisions of section 127 of the M.R.T.P. 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 sections 127 of the M.R.T.P Act, 1966 has held that "the steps for acquisition" as contemplated u/s 127 of the M.R.T.P. Act, 1966 would be issuance of a declaration u/s 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 u/s 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 u/s 127 as regards

lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted u/s 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 u/s 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 u/s 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 u/s 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 u/s 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 u/s 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 was not issued. Hence advertent 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. The next issue as raised on behalf of the 1st respondent is in regard to the delay on the part of the petitioners in approaching this Court. The 1st respondent

contends that the purchase notice was issued in February 2005 and the petitioner had filed the present petition in March 2012 and therefore the petition is required to be dismissed on the ground of inordinate delay. This contention of the 1st respondent deserves to be rejected for the reason that the 1st respondent does not deny that it had entered into correspondence with the petitioner in regard to the purchase notice by addressing letters dated 25.11.2010 and 26.11.2010 requesting for further particulars. The petitioner complied with the requirements as demanded by the 1st respondent. Admittedly the 1st respondent did not take any steps for acquisition of the said land. The petitioners therefore on 18.10.2010 had submitted building plans to the 1st respondent with an intention to develop the said land on the assumption that the reservation had lapsed. The 1st respondent however, on 21.2.2012 rejected the said proposal of the petitioner on the ground that the land was reserved for garden. The petitioner immediately within one month from the rejection on 12.3.2012 filed the present Writ Petition. These facts clearly indicate that contention of the 1st respondent that there is a delay on the part of the petitioner in approaching this Court is ex-facie untenable.

18. 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 the above said terms. No order as to costs.