

(2014) 09 BOM CK 0056

In the Bombay High Court

Case No : Writ Petition No. 6120 of 2007

Motiwala Land Agencies

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 487

Maharashtra Regional and Town Planning Act, 1966 — Section 126, 127, 26(1), 30, 31

Citation : (2014) 6 ABR 348 : (2015) 5 MhLj 64

Hon'ble Judges : Anand Vasant Nirgude, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : P.R. Patil, Advocate for the Appellant; S.D. Shelke, A.G.P. and V.D. Sonawane, Advocate for the Respondent

Judgement

A.I.S. Cheema, J.—This Petition raises for consideration question, whether the Municipal Corporation can re-include same property in Development Plan regarding which reservation of earlier Plan lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("the Act" in brief).

2. The dispute is as follows.

? In 1975 Municipal Council prepared a Development Plan which was brought into force on 1st March, 1975. Site No. 192 in the Plan was reserved for primary school and play ground. However the property was not acquired. Subsequently, the Municipal Council was converted into Municipal Corporation. The land Site No. 192 was also included in residential zone (City Survey No. 12369/104, Sheet Nos. 313, 317 and 318) situated at Baijipura, Aurangabad. On 31st December 1987, notice under Section 127 of the Act was issued to Respondent No. 2 - Municipal Corporation. However, no proceedings were taken to acquire the land within six months as it was then required under Section 127 of the Act. The Petitioner sent notice that his lands stood released from reservation and submitted lay-out plan, but by letter dated 5th February 1994, Assistant Director (Town Planning), Municipal Corporation did not approve the plain informing that

the land is reserved for primary school and play ground for children. The Petitioner then issued notice under Section 487 of the Bombay Provincial Municipal Corporations Act, 1949, with a view to file suit against Municipal Corporation. The Director of Town Planning, Maharashtra State, by letter dated 18th June 1991, addressed to subordinates, had advised that if steps are not taken for ten years to acquire a land inspite of notice under Section 127 of the Act, the same should not be again included in new Draft Plan as the said act may be treated as mala fide. On 30th March 1995, Draft Revised Plan was published by Respondent No. 2 - Municipal Corporation in which Site No. 192 was again shown as reserved for primary school and play ground for children. This time it was re-numbered as Site Nos. 206, 207 and 208. The Petitioner filed various objections to such reservation. On 6th July 1999, the Commissioner, Municipal Corporation sought guidance from Principal Secretary, Urban Development, informing that in the Development Plan of 1975, Site No. 192 having City Survey No. 12369/104 was reserved for primary school and play ground; that, the owner had given notice on 31st December 1987, under Section 127 of the Act but the land had not been acquired in six months and stood released; and that now the land had been included in reservation being Site No. 206, 207 and 208 and so it was felt that in view of the guidance of Director, Town Planning, it would be appropriate to show the land as usable for residence. The Commissioner sought guidance on this count. The Revised Plan dated 18th April 2001 however, came into effect from 1st June 1992, maintaining the reservation. The Petitioner entered into correspondence for de-reserving the concerned land but without success. Ultimately the present Petition was filed claiming that Site No. 192 belongs to the Petitioner and new Site Nos. 206, 207 and 208 (City Survey No. 12369/104, Sheet Nos. 317, 318) situated at Baijipura, Aurangabad stood released from reservation and included in residential zone under Section 127 of the Act. Declaration has been sought that the Petitioner is entitled to use the land for residential purpose.

3. The learned counsel for the Petitioner referred to above aspects from the Petition and copies of documents filed, claiming that once the Petitioner had given notice under Section 127 of the Act when the land was reserved in the Development Plan of 1975 and by deeming provision the land stood de-reserved, the Respondents - State Government and Municipal Corporation could not have again included the land in fresh development plan and the subsequent act of again including the said land in Development Plan as reserved, was mala fide act. According to him, the Respondent No. 2 was merely interested in keeping the reservation and not acquiring the land which was stuck for more than 30 years.

4. We have also heard the learned counsel for the Respondents. It has been argued that Urban Development and Public Health Department by Resolution dated 6th January 1975, had sanctioned Development Plan for the old limits of Aurangabad Municipal Council, which came into force on 1st March, 1975. In that Plan, City Survey No. 12369/104 was reserved as Site No. 192 for primary school and play ground at Baijipura. It is admitted that the Petitioner had issued

purchase notice under Section 127 of the Act to Aurangabad Municipal Corporation vide notice dated 31st December, 1987. However, it is claimed that as per the property card annexed, at the time of serving notice, the Petitioner was owner only of land admeasuring 5734.60 Sq. Meters and thus the notice had to be treated as only for land admeasuring 5734.60 Sq. Meters. It has been submitted for Respondents that Draft Revised Development Plan for old limits of Aurangabad Municipal Corporation was published under Section 26(1) of the Act on 30th March, 1995 by the Corporation. In this Plan, the land is re-designated as Site No. 206 for primary school and Site No. 207 for play ground. In spite of objections of the Petitioner, the Corporation had kept the reservation intact and the Draft Development Plan was submitted to the Government for sanction under Section 30 of the Act. The Revised Development Plan was sanctioned by Respondent No. 1 under Section 31 of the Act on 18th April, 2001 and it came into force on 1st June, 2002. Affidavit filed for Respondent No. 1 mentions that the reservation was necessary for planning point of view and the request of the Petitioner was not accepted in public interest and the Petitioner was informed by letter dated 22nd September, 2006 that the reservation on C.T.S. No. 12369/104 is required for planning point of view and lay-out submitted by the Petitioner could not be accepted. From the side of the Respondents it is not disputed that the Petitioner had issued notice under Section 127 of the Act for C.T.S. No. 12369/104 for land admeasuring 5734.60 Sq. Meters and steps for acquisition had not been taken.

5. It is claimed by Petitioner in affidavit - in -rejoinder and it has been argued for the Petitioner that Section 127 of the Act does not contemplate ownership of the concerned land and what is mentioned is that the notice can be given by "interested person". It is claimed that the Petitioner is owner of complete Site Nos. 206, 207 and 208. The Petitioner claimed that earlier he was owner of the part of these Sites but that he had already entered into oral agreement of sale for the remaining area with the previous owners of the City Survey No. 12369 (formerly Survey Nos. 5, 6 and 13) admeasuring 23 acres. For Petitioner, it has been argued that the Petitioner entered into agreement of sale prior to 1987 with the earlier owner Hiralal Chatru Gawali and his brother Gokul Chatru Gawali. The Petitioner claimed that he has purchased the property by registered sale deed and so he was "interested person" in the concerned Sites and so he was entitled to issue notice under Section 127 of the Act. Petitioner claims that it had taken over possession in 1987 and sale deeds were executed from time to time and last sale deed was executed in July, 1988. Petitioner is relying on the affidavit of Hiralal Chatru Gawali. According to the Petitioner, such defence of the Respondents is technical and not sustainable in law. According to Petitioner, even the letter dated 6th July 1999 sent to Chief Secretary, mentioned that reservation in Site Nos. 206, 207 and 208 needs to be cancelled.

6. Section 127 of the Act, reads as under:

"127. Lapsing of reservation. -(1) 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 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, alongwith 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 if within twelve month 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.

(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."

7. The present requirement to acquire land within twelve months is an amendment of 2009. Earlier, at the time when notice in present matter was issued, the period was of six months. It is not in dispute that within six months of the notice issued by the Petitioner, the land relevant under the notice was not acquired. Sub-section (2) of Section 127 of the Act has been added in 2009 and is not relevant to the present matter of 2007.

8. Learned counsel for the Petitioner relied on the cases of (i) Jairam Kancharlawar Vs. Municipal Council and Others, , (ii) Satish Bhole Vs. State of Maharashtra and The Jalgaon Municipal Corporation, and (iii) the Judgment of Hon"ble Supreme Court in the matter of Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others, , in support of the argument that reservation of land of private land owners in regional plans/ development plans prepared under the Act will be deemed to have lapsed when reserved lands are not acquired within ten years of reservation, and no steps are commenced for acquisition within six months of service of notice under Section 127 of the Act.

? Looking to these Judgments and the submissions made before us, the law appears to be quite clear. In view of this, when the Petitioner gave notice dated 31st December, 1987 (Exhibit A) under Section 127 of the Act, and the land as was then owned by the Petitioner was not acquired within six months by the Respondent No. 2, the said land of the Petitioner shall have to be deemed to have been released from reservation.

9. At the time of arguments, learned counsel for the Petitioner did not dispute that when notice under Section 127 of the Act was issued, the Petitioner was owner of land admeasuring 5734.60 Sq. Meters from C.T.S. No. 12369/104, for

which notice was issued. It is however, claimed that the Petitioner had entered into oral agreements with other persons who were owners in other part of the land from C.T.S. No. 12369/104. Learned counsel for the Petitioner vehemently argued that the other persons must be treated as co-owners of the land and if the Petitioner had given notice under Section 127 of the Act, the notice should be applied for other parts of the land also, as the Petitioner must be treated as "person interested". Reliance is placed on the case of C.V. Shah and A.V. Bhat, Now known as Shah Promoters and Developers Vs. The State of Maharashtra and Others, , where in Para 17 of the Judgment it has been observed that notice can take several forms and notice under Section 127 of the Act will meet sufficient compliance if notice describes the land in sufficient clarity and requires the Planning Authority or the Development Authority or the Appropriate Authority, as the case may be, to acquire or compulsorily purchase the land so reserved, allotted or designated in the development plan. Thus, according to the learned counsel, even if the notice dated 31st December, 1987 did not specify in so many details, it should be held that the Petitioner was interested in the whole land and the lapsing of reservation should be held for the complete land.

10. Reliance was placed also on the unreported Judgment in the matter of Prabhaben Harshadray Desai and others vs. State Government and others, Special Civil Application No. 3784 of 2008, Judgment dated 27th June/30th June/1st July, 2008 of High Court of Gujarat at Ahmedabad. In that Judgment the Petitioners were co-owners of land bearing Survey No. 3848, Tika No. 86, situated at Navsari Town and one of the co-owner had given notice under Section 127 and right was being enforced by other co-owners. Para 30 of the Judgment dealt with this question and it is observed that, in that matter admittedly notice dated 18-9-1995 had been given by Amrutlal Maganlal Desai who was co-owner of the lands and the Petitioners were also co-owners and could therefore be said to be interested in it. It was observed that the effect of reservation is upon the land and not upon the owner or person interested in the land.

11. We have gone through these submissions but we find that the Petitioner is unable to establish from record that when notice dated 31st December 1987 was issued, he was owner of complete C.T.S. No. 12369/104. He has not been able to show that at the time concerned, he was owner of land admeasuring more than 5734.60 Sq. Meters, which then reflected in the property register card. Only because in one City Survey there are multiple owners, it does not make these multiple owners co-owners. The Petitioner has, in affidavit -in - rejoinder, in vague manner claimed that there were oral agreements of sale for the remaining areas from the said City Survey Number with previous owners. He claimed that he had entered into agreement of sale prior to 1987 with previous owners, Hiralal Gawali and Gokul Gawali. But there is no material in support regarding any such agreement of sale. Even the affidavit filed by Hiralal Gawali vaguely mentions that there was agreement of sale and that the last sale deed was executed in July, 1988. No Sale-Deeds to show existing legal interest of Petitioner in other parts of the C.T.S. Number at the relevant times are brought

on record. If really the Petitioner had entered into agreement of sale, the notice dated 31st December, 1987 does not refer to any such fact. The notice merely refers to the City Survey Number and Site concerned and mentions that property registration card along with map was being enclosed and claims that the property had not been acquired in ten years and so this was noticed under Section 127 of the Act.

12. Section 127 of the Act requires that 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". This clearly requires demonstrating existing title or legally recognizable interest supported by documents. Subsequently acquired interest in adjoining parts will not relate back to date of Notice under Section 127 of the Act. In the present matter, it cannot be said that the Petitioner sent the notice along with the documents showing his title or interest in the land beyond what was reflected in the property registration card at the time concerned, in favour of the Petitioner. There is substance in the argument of the Respondents that at the relevant time the Petitioner was owner, as per the property card, only of land admeasuring 5734.60 Sq. Meters and reservation only to that extent must be said to have lapsed.

13. Learned counsel for the Petitioner relied on the case of (i) Kishor Gopalrao Bapat and Others Vs. State of Maharashtra and Another, and (ii) Kishor Wadotkar (Dr.) Vs. Director of Town Planning and Others, , in support of submission that once reservation lapsed in view of provisions of Section 127 of the Act, the Planning Authority cannot again include the same land and re-reserve the same.

? Looking to the Judgments relied on by the Petitioner and the submissions made before us, we have no doubts that when the Petitioner had given notice on 31st December 1987, under Section 127 of the Act for his property and as per the deeming provision the reservation lapsed, the land could not have been shown as re-reserved in subsequent plan. The Respondents wrongly ignored the advise of the Director, Town Planning, issued in letter dated 18th June 1991, that if in view of Section 127 of the Act reservation has lapsed, again including the same land in reservation in subsequent plan would indicate mala fides. In the present matter, the Petitioner was constantly trying and still the Respondent No. 2 - Municipal Corporation neither acquired the land nor treated the same as released from reservation and kept the Petitioner stuck. In spite of accepting that the land will have to be treated as released from reservation, Respondent No. 2 still did not clear the lay out plans submitted by the Petitioner and again included the land of Petitioner in the Draft Revised Plan dated 30th March 1995 as well as the Revised Plan brought into effect from 1st June 2002. Such acts of the Respondent No. 2 must be treated as mala fide.

14. For reasons mentioned above, the Writ Petition deserves to be allowed with the following order:

ORDER

(A) Land of the Petitioner to the extent of 5734.60 Sq. Meters as per property register card for which notice dated 31st December 1987 was issued, from City Survey No. 12369/104 in Site No. 192 of the Development Plan of 1975 stands released from the reservation and the said land shall not be treated as reserved even in the Revised Plan brought into force on 1st June, 2002.

(B) Each of the Respondents shall pay costs of Rs. 20,000/- (Rupees Twenty Thousand) to the Petitioner.

? Rule made absolute on the terms indicated above.