
(2022) 03 BOM CK 0018

In the Bombay High Court

Case No : Interim Application No.2162 Of 2020, In Review Petition (L) No. 23 Of 2020 In Writ Petition No. 1408 Of 2017

Nirmala J. Tiwari & Ors

APPELLANT

Vs

State Of Maharashtra & Ors

RESPONDENT

Date of Decision : 04-03-2022

Acts Referred:

Maharashtra Regional And Town Planning Act, 1966 — Section 126, 126(1)(a), 126(2), 126(4), 127, 127(1), 127(2)
Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act, 2013 — Section 19

Citation : (2022) 03 BOM CK 0018

Hon'ble Judges : S. J. Kathawalla, J;B. P. Colabawalla, J

Bench : Division Bench

Advocate : Girish Godbole, Drupad Patil, Dheeraj Patil, M. A. Sayed, Joel Carlos, Rupali Adhate

Final Decision : Dismissed

Judgement

B . P. Colabawalla, J

1. The above Interim Application is filed seeking condonation of delay of 30 days in filing the above Review Petition. Having heard the learned counsel for the parties, the delay is condoned, and the Interim Application is accordingly disposed of.

2. The above Review Petition is filed by the Review Petitioners (the Original Petitioners in the above Writ Petition) seeking a review of the order passed by this Court on 3rd December 2019 (hereinafter referred to as the "order under review"). By the said order, the Writ Petition was disposed of as infructuous in light of the affidavit filed by the Municipal Corporation of Greater Mumbai ["MCGM"] (Respondent No.3 to the above Writ Petition) dated 11th March 2019.

3. The Petitioners had filed the above Writ Petition seeking a declaration under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short

"the MRTTP Act") that the reservation on their land admeasuring 4207.07 sq.mtrs bearing City Survey No. 43 situated at P/South Ward, Village Goregaon, Taluka Borivali [for short, the "said land"], had lapsed. In the said Writ Petition, the MCGM filed an affidavit dated 11th March 2019 wherein it was stated that the Collector (MSD) had notified the said land for acquisition under section 126(4) of the MRTTP Act read with section 19 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, as the same was required for a public purpose. This publication was done on 23rd February 2017. Since steps for acquisition of the said land were taken by publishing a declaration under section 126(4) of the MRTTP Act within a period of twenty-four months from the date of service of the purchase notice dated 27th February 2015 [as contemplated under the amended provisions of section 127 of the MRTTP Act], we held that nothing survived in the above Writ Petition and hence disposed of the same as being infructuous.

4. In the Writ Petition, it was the case of the Petitioners that the said land belonged to the Petitioners and was reserved for a recreational ground in the Development Plan notified on 29th December 1992. Since the statutory authorities did not take any steps to acquire the said land within the time frame laid down in section 127 of the MRTTP Act (i.e. no steps were taken to acquire the said land within 10 years of the Final Development Plan coming into force), the Petitioners, through their Advocate M/s. Paras J. and Associates, served a purchase notice dated 7th July 2014 on the Commissioner of the MCGM and which was received on 10th July, 2014. The said notice was replied to by the Chief Engineer (D.P.) of the MCGM on 20th October 2014. In the said reply, it was informed to the Petitioners that for the reasons stated therein, the purchase notice dated 7th July 2014 was defective and was therefore, liable to be rejected. Since the aforesaid purchase notice was rejected by the MCGM, the Petitioners issued a fresh purchase notice on 27th February 2015 and served it on the MCGM on the same day.

5. Thereafter, on 21st July 2016, the Chief Engineer of the MCGM addressed a letter to the Petitioner and requested them to hand over possession of the said land by executing an agreement as contemplated under section 126(1)(a) of the MRTTP Act. According to the Petitioners, the said letter imposed various conditions which were unacceptable to the Petitioners. In this light, on 4th October 2016, the Petitioners replied to the above referred letter and showed their readiness to hand over the possession of the said land on an "as is where is" basis and subject to payment of monetary compensation by the MCGM.

6. According to the Petitioners, the MCGM did not take any steps for acquiring the said land. The Petitioners were not served with any notice regarding any acquisition and no hearing was scheduled for the said acquisition. The Petitioners were therefore under the genuine impression that the MCGM had not taken any steps for acquisition of the said land. It is in this light that the Petitioners addressed a notice dated 20th March 2017 to the Principal Secretary of the State

Government seeking issuance of a notification in respect of the said land under section 127(2) of the MRTP Act. Since no notification was issued under section 127(2), the above Writ Petition was filed.

7. After filing of the above Writ Petition, the Petitioners got certain further documents and filed an additional affidavit dated 23rd August 2017. By this affidavit, the Petitioners inter alia brought on record the purchase notice dated 7th July 2014 and the reply thereto dated 20th October 2014 (referred to earlier). Thereafter, the MCGM submitted its affidavit in reply to the above Writ Petition and along with the said reply produced on record a copy of the notification dated 23rd February 2017 under which the said land of the Petitioners was notified to be acquired. Since steps to acquire the said land of the Petitioners were taken within twenty-four months from the date of service of the purchase notice dated 27th February 2015, we held, by the order under review, that the above Writ Petition was rendered infructuous and disposed of the same. We held this based on the amended provisions of section 127 of the MRTP Act.

8. In this factual background, Mr. Godbole, the learned Counsel appearing on behalf of the Petitioners, submitted that a review of the order passed by this Court on 3rd December 2019 is sought because the order under review fails to consider that the notification published on 23rd February 2017 (being a step towards acquisition), was years after the reservation on the said land had lapsed under section 127 of the MRTP Act. In this regard, Mr. Godbole submitted that a purchase notice dated 7th July 2014 was served on the MCGM on 10th July 2014. Since the MCGM replied to the aforesaid notice on 20th October 2014 and sought additional information, in response thereto, a further notice dated 27th February 2015 was issued. Mr. Godbole submitted that this further notice dated 27th February 2015 was not a new or a fresh notice under section 127 of the MRTP Act but was in continuation of the notice dated 7th July 2014 and served on the MCGM on 10th July 2014. If this be the case, under section 127 of the MRTP Act (as it stood then), steps for acquiring the said land ought to have been taken within a period of twelve months from the date of service of the purchase notice dated 7th July 2014, failing which the reservation on the said land automatically lapsed. In other words, steps for acquiring the said land ought to have been taken on or before 9th July 2015, failing which, the reservation on the said land automatically lapsed as per the provisions of section 127 of the MRTP Act, was the submission. Mr. Godbole submitted that admittedly, no steps for acquisition were taken by the statutory authorities on or before 9th July 2015. Therefore, the reservation on the said land automatically lapsed as mandated by section 127 of the MRTP Act. Mr. Godbole submitted that this aspect has not been considered by the Court whilst disposing of the above Writ Petition and hence, the present Review Petition is filed.

9. The next argument canvassed by Mr. Godbole was that even if the purchase notice dated 7th July 2014 (and which was served on 10th July 2014) was defective, and the notice dated 27th February 2015 is treated as the only valid

purchase notice, even then, steps for acquiring the said land ought to have been taken by the authorities within a period of twelve months from the date of service of the said purchase notice as mandated by section 127, failing which the reservation on the said land automatically lapsed. In other words, steps for acquiring the said land ought to have been taken on or before 27th February 2016, failing which, the reservation on the said land automatically lapsed as per the provisions of section 127 of the MRTTP Act.

10. The aforesaid argument of Mr. Godbole is predicated on the basis that even though section 127 of the MRTTP Act was amended on 29th August 2015 under which the period for taking steps for acquisition was increased from twelve months to twenty-four months, the same would not apply to the facts of the present case as the purchase notice dated 27th February 2015 was issued and served on the MCGM prior to the aforesaid amendment. He submitted that the right of the Petitioners requiring the authorities to act within twelve months vested in the Petitioners on the date when the purchase notice dated 27th February 2015 was served on the MCGM. Mr. Godbole submitted that the amendment did not seek to take away this vested right of the Petitioners requiring the authorities to take steps towards acquisition within twelve months from the date of service of the purchase notice dated 27th February 2015. For all the aforesaid reasons, Mr. Godbole submitted that the order dated 3rd December 2019 be reviewed and the above Writ Petition be restored to file.

11. On the other hand, Mr. Carlos, the learned Counsel appearing on behalf of the MCGM, submitted that there was no merit in the above Review Petition and the same ought to be dismissed. Mr. Carlos submitted that through the above Review Petition, all that the Petitioners seek to do, is to re-agitate and re-argue the case on merits. Mr. Carlos pointed out that the aforesaid order has been passed because it was the Petitioners' own case that since no steps were taken for acquiring the said land till 26th February 2017, the reservation in respect of the said land had lapsed. When the MCGM filed its affidavit and brought on record the fact that steps for acquiring the said land were taken by a notification dated 23rd February 2017, this Court proceeded to pass the order under review. He, therefore, submitted that there was no merit in the above Review Petition and the same ought to be dismissed with costs.

12. We have heard the learned Counsel for the parties and have perused the papers and proceedings in the above Review Petition. The first argument canvassed by Mr. Godbole is that this Court has failed to consider that the purchase notice issued to the MCGM under the provisions of section 127 of the MRTTP Act is dated 7th July 2014 and not 27th February 2015. The notice dated 27th February 2015 was not a fresh notice under section 127 but only a continuation of the purchase notice dated 7th July 2014. If this be the case, then under the provisions of section 127, steps for acquisition of the said land ought to have been taken by the MCGM on or before 9th July 2015. Since this was admittedly not done, the reservation on the said land had lapsed, was the

submission of Mr. Godbole. We find absolutely no merit in this argument. Firstly, it was never the case of the Petitioners that the notice dated 7th July 2014 was a valid purchase notice. In fact, when the aforesaid notice was served on the Commissioner of the MCGM, the MCGM rejected that notice vide its letter dated 20th October 2014 for the reasons more particularly set out therein. The rejection of the purchase notice dated 7th July 2014 has never been challenged. In fact, the same was accepted by the Petitioners as can be seen from the fresh purchase notice dated 27th February 2015 that was issued by the Petitioners to the MCGM. This notice categorically states that "This is my 2nd such notice as the earlier one was not as per your satisfaction". It is thereafter goes on to state:

"Hence, I am hereby furnishing a fresh purchase notice u/s 127 of the MRTP Act 1966 to the office concerned i.e. to the following departments as follows:

1] The Hon. Corporation/Planning Authority.

2] The Hon. Secretary Urban Development Department, Government of Maharashtra, New Administrative Bldg. Mantralaya.

&

3] The Hon. Chief Engineer [Development Plan] Municipal Head Office, 5th Floor, Annex Bldg. Fort, Mumbai-400001."

(emphasis supplied)

13. Thereafter, in the notice dated 27th February 2015, again it is stated that "Purchase Notice issued afresh u/s 127 of the MRTP Act 1966 by myself Mr. Vishal Jayprakash Tiwari, Joint Owner & landlord of the abovementioned properties". It is, therefore, totally incorrect on the part of Mr. Godbole to submit that the notice dated 27th February 2015 was not a fresh purchase notice under section 127 of the MRTP Act but was only a continuation of the purchase notice dated 7th July 2014.

14. This apart, the other documents on record also clearly show that even according to the Petitioners the purchase notice dated 27th February 2015 was a fresh purchase notice and not a continuation of the purchase notice dated 7th July 2014. The Petitioners in their letter dated 4th October 2016 addressed to the Chief Engineer (Development Plan), have categorically stated as under:

"7. According to me you have no right to impose the conditions while acquiring the said land by invoking the provisions of Sections 126 and 127 of the said Act. Furthermore, the conditions are not at all justified or reasonable. Even otherwise, the owners are not at all under any obligation to comply with those conditions. Therefore the present reply is submitted without prejudice to all rights and contentions of the owners available under the provisions of Section 127 of M.R. & T. P. Act, 1966. We are offering to sell the land AS IN WHERE IS basis for sum of Rs. 300 Crores (Three Hundred Crores) and we clarify that this offer is given without prejudice to the Contentions raised in Notice dated 27th February, 2015

issued under Section 127 of M.R. & T. P. Act. Immediately after completion of statutory period as contemplated by the said provisions, viz on or after 27/02/2017, the Reservation will lapse the owners will be entitled to take recourse to all remedies under the Law including filing of Application to state Averment for issuing Notification Under Section 127(2) of the said Act and if such a request is not acceded to then to file a Writ Petition which please Note This Reply should not be and must not be construed as waiver of Notice under Section 127 of M.R. & T.P. Act, 1966.”

(emphasis supplied)

15. Thereafter, even in the letter dated 20th March 2017 addressed by the Petitioners to the Secretary, Urban Development Department, State of Maharashtra, the Petitioners have stated that they had served the notice dated 27th February 2015 under section 127 of the MRTP Act and that immediately after the expiry of the statutory period as contemplated by section 127 (which expired on or after 27th February, 2017), the reservation had lapsed. The relevant portion of this letter reads as under:

“4. Under these circumstances, after waiting for almost 30 years, No.1 of us, for himself and as authorized by No.2 to 5 of us, had served a Notice dated 27.2.2015 u/s 127 of the said Act on behalf of all owners viz, Nirmala J. Tiwari, Vinod J. Tiwari, Vishal J. Tiwari, Rohan J. Tiwari and Siddharth S. Tiwari thereby requesting you to take appropriate steps as contemplated by the said provisions. It is clear from your reply that till date no steps have been taken in that regard. On the contrary, you have requested us to surrender the land subject to certain conditions. Copy of the said notice dated 27.2.2015 is hereto annexed and marked as Annexure “A”.

5. The said notice was duly served on Municipal Corporation. In reply to said notice, the Corporation had addressed a letter dated 21st July, 2016 calling upon us to surrender the land. Copy of the said letter dated 21.7.2016 is hereto annexed and marked as Annexure “B”. We duly replied said letter vide reply dated 4.10.2016 and requested Municipal Corporation to purchase the land on as is where is basis without imposing any conditions. However, inspite of said reply, the Municipal Corporation has not taken any steps. Copy of said Reply dated 4.10.2016 is annexed hereto and marked as Annexure “C”.

6. Immediately after completion of statutory period as contemplated by Section 127 viz, on or before after 27. 2.2017, the Reservation has lapsed and we the owners have become entitled to use the land for other purpose and also entitled to take recourse to all remedies under the Law including filing of Application to State Government for issuing Notification Under Section 127(2) of the said Act.”

(emphasis supplied)

16. Apart from these letters, even in the further affidavit filed by the Petitioners in the Writ Petition (dated 23rd August 2017), the Petitioners have stated that

from the documents annexed to the said affidavit, it was crystal clear that the MCGM had treated the date of the purchase notice as 27th February 2015 (wrongly mentioned as 27th February 2005). Thereafter, it was further stated that since no steps were taken for acquiring the said land till 26th February 2017, as per the provisions of section 127 of the MRTP Act, the reservation in respect of the said land had lapsed. Paragraph 10 of the said affidavit dated 23rd August 2017 reads thus:

"10. I say that from the documents annexed to the present Affidavit it is crystal clear that the Municipal Corporation has treated the date of purchase notice as 27th February, 2005. The Purchase Notice is considered as a notice relating to the entire land under the reservation i.e. 4207.7 sq. metres. Since no steps are taken for acquiring the said land till 26th February 2017, as per the provisions of Section 127 of M.R. & T.P. Act, the reservation in respect of the said land admeasures 4207.7 sq. metres bearing CTS No. 43(part) of village Goregaon has lapsed. Therefore, it is just and necessary to allow the Writ Petition in terms of prayer clauses (a) and (b)."

(emphasis supplied)

17. From all these documents, it is crystal clear that the Petitioners themselves gave a complete go by to the purchase notice dated 7 th July 2014 and proceeded on the basis that the purchase notice given to the MCGM was dated 27th February 2015. In fact, the contention canvassed now before us that the notice dated 27th February 2015 is only a continuation of the purchase notice 7th July 2014, does not even find place in the pleadings in the above Writ Petition and no such argument was even canvassed before us when the above Writ Petition was disposed of. It is for this very reason and considering what was stated in the additional affidavit dated 23rd August 2017 filed on behalf of the Petitioners and the affidavit in reply of the MCGM dated 11th March 2019, that we recorded that the Writ Petition has become infructuous because admittedly steps have been taken for acquisition of the said land of the Petitioners before 26th February 2017. We, therefore, find that the first argument canvassed by Mr. Godbole to persuade us to review the order dated 3rd December 2019 holds absolutely no merit.

18. The second argument canvassed by Mr. Godbole was that even assuming that the date of the purchase notice is 27th February 2015, then also the reservation lapsed on 27th February 2016, as no action was taken to acquire the said land of the Petitioners within twelve months from 27th February 2015. We find this argument also to be wholly unmeritorious. Section 127 as it stood prior to its amendment on 29th August 2015 reads as under:

SECTION 127 PRIOR TO AMENDMENT ON

29.08.2015

"127. Lapsing of reservations.— (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 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.

(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.”

(emphasis supplied)

19. Thereafter, on 29th August 2015, section 127 was amended, and the period of twelve months mentioned in section 127 (1) was increased to a period of twenty-four months. Post the amendment (on 29th August 2015), section 127 reads thus:

SECTION 127 AFTER AMENDMENT ON 29.08.2015

“127. Lapsing of reservations.— [(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 twenty-four 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.

(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.”

(emphasis supplied)

20. Mr. Godbole's argument proceeds on the basis that since the Petitioners' purchase notice was dated 27th February 2015 (i.e. prior to the date of the amendment), the authorities were bound to take steps to acquire the said land of the Petitioners within the period of twelve months and not the period of twenty-four months. In other words, Mr. Godbole submitted that the Petitioners had a vested right in requiring the authorities to take steps for acquisition of the said land of the Petitioners within twelve months from the service of the purchase notice dated 27th February 2015. This argument proceeds on the basis that since the purchase notice was served on the MCGM prior to the amendment of section 127, the authorities could not apply the amended provisions of section 127 (under which the time frame for taking steps for acquisition was increased from twelve months to twenty-four months) to the acquisition of the said land belonging to the Petitioners. We are afraid that this argument proceeds on a fallacy. Merely by giving a purchase notice to the Planning Authority/Appropriate Authority as the case may be, no right is vested in the Petitioners. The right would have vested upon the expiry of twelve months from the service of the purchase notice had the statute not been amended on 29th August 2015. Thus, on the date of the amendment i.e. 29th August 2015, there was no vested right in favour of the Petitioners. Hence, the amended provisions of section 127 would apply to the facts of the Petitioners' case and the period within which steps for acquiring the said land of the Petitioners would be governed by section 127 as amended on 29th August 2015. We are not giving any detailed reasoning for coming to this conclusion because this issue has already been considered by a Full Bench of this Court in the case of Vishwas Bajirao Patil Vs. State of Maharashtra & Ors. [2019 SCC OnLine Bom 1770]. We were mindful of this decision of the Full Bench (decided on 3rd September 2019) when we passed the order under review dated 3rd December 2019. The relevant portion of the Full Bench decision reads thus:

"Pradeep Nandrajog, C.J.:— The present reference is on account of the order dated 4th August, 2017 passed by a Division Bench of this Court and the question for consideration is found in paragraph 15 of the said order. The said question reads as under:—

"Whether the provision of sub-section (1) of section 127 of the Maharashtra Regional and Town Planning Act, 1966 as amended, which enlarges the period of 12 months to 24 months for a Planning / Development / Appropriate Authority to take effective steps for acquisition of the reserved land would apply to a notice under subsection (1) of section 127 served on the concerned Authority before the amended provisions came into force? "

21. In the decision reported as 1962 (1) SCR 565, Jivabhai Purshottam v. Chagan Karson the Court was concerned with the impact of the amendment to

section 34 of the Bombay Tenancy and Agricultural Lands Act, 1948. Sub-section (2-A) was inserted and it came into force on 12th January, 1953. Prior thereto Jivabhai had issued a notice to the tenant on 31st December, 1951 terminating the tenancy and as per the requirement of sub-section (1) of section 34 the notice had to be given at least one year for the tenancy to be determined. But, the noticee gave a longer period and determined the tenancy with effect from 31st March, 1953. The amending Act put conditions upon the right of the landlord to terminate the tenancy and thus, Jivabhai's argument was that a vested right had accrued in his favour when he determined the tenancy on 31st December, 1951 and therefore, the amendment made on 12th January, 1953 could not take away his vested right.

22. The Court held that mere giving of the notice was not the last step contemplated by law. The last date contemplated by law was the date from which the tenancy would be determined and in said case it was 31st March, 1953. Thus, by the time the amendment Act was introduced no right had vested for the reason the landlord was held to be having a vested right when the period of notice had expired and the tenancy had determined.

23. The traditional vested rights Doctrine is based on the principle i.e. State has the power to prescribe the Rules of conduct for transaction or occurrences that take place on its own territory. Once the last event of the transaction or occurrence takes place on the territory of the State the parties to it acquire vested right under Law of that jurisdiction.

24. A future interest is vested if it meets the requirement of there being no condition precedent to the interest.

25. Before formally answering the reference in the instant case, as noted above the development plan was notified on 18-12-1999. Ten years expired on 17-12-2009. Notice under section 127 was issued on 17-11-2014 and twelve months would come to an end on 16-11-2015, but before that the amendment was made on 29-8-2015 replacing the words 'twelve months' by 'twenty-four months'.

26. We thus answer the reference by holding that the amendment is prospective but no right is vested in the person having proprietary interest in the land upon serving the notice. The right would have vested upon expiry of one year of the notice had the statute not been amended on 29th August, 2015, and thus as on the date of the amendment i.e. 29th August, 2015 there was no vested right in favour of the noticee. The rights of the noticee would be governed by the statute as amended on 29th August, 2015."

(emphasis supplied)

21. Considering that the second argument canvassed by Mr. Godbole is squarely covered by the Full Bench decision of this Court, we find that even this argument holds absolutely no substance.

22. In view of the foregoing discussion, we find no merit in the above Review Petition. It is accordingly dismissed. However, there shall be no order as to costs.

23. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.