

(1992) 03 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 1507 of 1989

Satyanarayan Jiwanlal Bapeche and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-03-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Maharashtra Regional and Town Planning Act, 1966 — Section 126(2)

Citation : (1994) 2 BomCR 590

Hon'ble Judges : K. Sukumaran, J;G.D. Patil, J

Bench : Division Bench

Advocate : B.S. Deshpande, R.L. Khapre and V.G. Wankhede, for the Appellant; Sinha, A.G.P., for respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Patil, J.—The challenge in this writ petition is to the acquisition of the petitioners' land for the public purpose i.e. for construction of a Bus Stand, depot, staff quarters and allied establishments at Ahmadpur (Nandura) for Maharashtra State Road Transport Corporation and, therefore, a prayer for quashing the Notification issued u/s 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the Act) and u/s 6 of the Land Acquisition Act, 1894, as also the notices issued to the petitioners u/s 9 of the Land Acquisition Act in Land Acquisition Case No. Ahamadpur/9/87-88. The petitioner No. 2 has however, filed a pursis Stamp No. 27067/91 seeking withdrawal of the petition at his instance. It is allowed. His name shall stand deleted from the array of the petitioners.

2. The recitals in the petition and those in the submissions filed on behalf of the respondents and the Intervenor and the documents annexed thereto, reveal the following position :

1. The Municipal Council Nandura had prepared the development plan for Nandur town and it was sanctioned by the Government on 16-2-1974.

2. The Municipal Council prepared a revised draft plan in exercise of power u/s 38 of the Act and as required by section 26 and it came to be published on 15-3-1984 in the local Newspaper " Yuva Milan" and in Government Gazette on 29-3-1984.

3. The objections were received including those of some of the petitioners. They were considered by the Municipal Council and after effecting minor changes, the draft development plan was submitted on 27-1-1987 to the Director, Town Planning, Maharashtra State for sanction as envisaged by the provisions of section 31 of the Act.

4. The Director, Town Planning extended the period by a Notification of the Maharashtra Government Gazette dated 4-5-1985 upto 31st December 1988 for sanctioning the draft development plan and thereafter sanctioned the draft development plan by Notification No. D.P. Nandura (R) 11-87/TPV-6/8697, published in the Maharashtra Government Gazette dated 4th May 1989, also fixing therein the 1st April, 1989 to be the date on which the final development plan would come into force.

5. In the draft development plan as also in the final development plan the petitioner's land has been shown as reserved for the public purpose of construction of bus stand, depot, staff quarters and allied establishments for M.S.R.T.C.

6. The Notification u/s 4 of the Land Acquisition Act was published on 17-3-1989 and thereafter Notification u/s 126(4) of the Act read with section 6 of the Land Acquisition Act dated 9-3-1989 was published in the newspaper "Matrubhumi" on 6-5-1989 and in the Maharashtra Government Gazette on 11-5-1989.

7. The petitioners were served with the notices u/s 9(2) of the Land Acquisition Act in Land Acquisition Case No. 9/87-88 for settling their claims in the matter of compensation.

3. The learned Counsel for the petitioner canvassed two points before us, one related to the absence of opportunity in terms of section 28 and the another on the aspect of belated declaration u/s 126 of the Act read with section 6 of the Land Acquisition Act.

4. In so far as the first aspect is concerned, it has no substance. The return on behalf of the intervenor and the documents annexed thereto clearly reveals that the objections raised by some of the petitioners to the draft development plan have been considered by the Municipal Council and it is only thereafter, after making suitable changes in the draft development plan, the same was submitted to the Director on 27th January 1987 for sanction u/s 31 of the Act. Nothing in particular was pointed out to us as to why and how the consideration of the objections in the manner as has been done by the Municipal Council was vitiated. The objections, it has to be held therefore, were properly dealt with and there is no violation of the provisions of section 28 of the Act.

5. The main grievance of the petitioners is on second count. The petitioners contend that the Notification u/s 126 of the Act read with section 6 of the Land Acquisition Act is required to be issued within 3 years from the date of publication of the draft revised plan which was published on 15-3-1984 in the local newspaper and in the Government Gazette on 29-3-1984. The Notification issued u/s 126(4) of the Act read with section 6 of the Land Acquisition Act having been issued and published in the Maharashtra Government Gazette on 11-5-1989 and in the local newspaper on 6-5-1989, in the circumstances, is therefore, illegal being contrary to the provisions of section 126 of the Act.

6. Sub-section (2) of section 126 of the Act empowers the Government to make a declaration that a land included in the draft Regional Development plan or any other plan is needed for any public purpose. The proviso to sub-section (2) however, lays down that no such declaration shall be made after expiry of 3 years from the date of publication of the draft development plan or any other plan. The date of publication of the draft development plan being 14-3-1984 in the local newspaper and 29-3-1984 in the Government Gazette, if the petitioners' contention is accepted the publication of the declaration u/s 126 of the Act had to be made on or before 14-3-1987 and at the most on or before 28-3-1987. The impugned notification u/s 126 of the Act, however, has been published on 6-5-1989 in Daily Matrubhumi and on 11-5-1989 in the Maharashtra Government Gazette. The petitioner's, therefore, contend that this Notification at Annexure I to the petition is, liable to be quashed and consequently the notice issued u/s 9 is also liable to be quashed.

7. We do not agree with the contentions raised by the petitioners. The proviso to sub-section (2) of section 126 of the Act relied upon by the petitioners provides that no declaration shall be made after expiry of 3 years from the date of publication of the draft Regional Development plan, Development plan or any other plan. The provisions are clear indicating that the declaration u/s 126(2) of the Act can be made within the period of 3 years from the date of publication of the draft Regional Development plan, Development plan or any other plan which necessarily postulates the time limit to be computed in a given case even from the final Development Plan or any other plan which need not be a draft plan. The proviso cannot be construed to mean that a time limit of 3 years begins to run only from the draft Regional Development plan or the draft Development plan or any other plan which is merely a draft plan. Reading the provisions of the proviso in such a manner would be contrary to the specific terminology used in the proviso. In our view, therefore, it is permissible to the State Government to publish a Notification u/s 126(2) of the Act read with section 6 of the Land Acquisition Act for acquiring the land reserved for the the public purpose in final Development Plan or any other plan which need not be a draft plan within 3 years from the date of publication of such final Development plan or any other plan which need not be a draft plan. As alluded above, in the instant matter, the final development plan has been published on 4th May, 1989 in the Maharashtra Government Gazette and the Notification under challenge issued u/s 126(2) of

the Act read with section 6 of the Land Acquisition Act has been issued and published on 6-5-1989 in Daily "Matrubhumi" and on 11-5-1989 in the Maharashtra Government Gazette. The Notification u/s 126 of the Act, thus is apparently issued within a period of 3 years from the date of publication of the final Development Plan. There is thus no substance in the ground raised by the petitioners for invalidating the Notification u/s 126 of the Act.

8. Counsel for the petitioners, however, urged before us that respondents have relied upon the provisions of section 126(4) of the Act and the Notification under challenge also has been issued in exercise of the powers u/s 126(4) of the Act and as such admitted that the the issuance of Notification u/s 126 of the Act was beyond the period prescribed in the proviso to sub-section (2) of section 126(4) of the Act. Counsel for the petitioners, therefore further submits that the question as to whether the power of the State Government to make fresh declaration as per provisions of section 126(4) of the Act is restricted only in respect of a draft Regional plan, a Development or any other plan, which was published before 17-2-1971 being the date on which the Amending Act, Maharashtra 21 of 1971 was brought into force, has already been referred to the larger Bench for decision and as such the instant matter is also liable to be referred, inasmuch as the question of interpretation of the provisions of section 126(4) of the Act is involved in the instant matter. In the instant matter the Development Plan, draft and final, have been issued and published after the coming into force of the Amending Act, Maharashtra 21 of 1971 and as such, we do not accept the contention. The decision reported in 1989 M.L.J. 819, Sant Joginder Singh Kishinsingh & others v. State of Maharashtra & others, deciding the aforesaid question, which has been referred to the larger Bench, is not one dealing with a question as to whether the Notification u/s 126(2) of the Act can be issued by the State Government within 3 years from the final development plan or from any other plan. In the instant matter, however, final Development Plan has already been published and it is only thereafter that these proceedings for acquisition of land in exercise of the powers u/s 126(2) of the Act read with section 6 of the Land Acquisition Act have been initiated by the Government. It is no doubt true that the Notification impugned is purported to have been issued u/s 126(4) of the Act. In our view, however, the exercise is referable to the powers u/s 126(2) itself without resorting to the provisions of section 126(4) of the Act. We treat the impugned Notification accordingly. We, therefore, are not inclined to accede to the request of the petitioners" Counsel in the matter of referring the instant matter also to the Larger Bench, or to keep it pending awaiting the decision of the Larger Bench.

9. In the view we have taken the petition has to be dismissed. It is accordingly dismissed. In the facts and circumstances of the case there will be no order as to costs.