

(2023) 08 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 10307 Of 2021

Sumanbai

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 10-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 142, 226
Maharashtra Regional And Town Planning Act, 1966 — Section 126, 126(2), 126(4),
127, 127(1), 127(2)
Land Acquisition Act, 1894 — Section 6
Monopolies And Restrictive Trade Practices Act, 1969 — Section 38, 49, 49(7)

Citation : (2023) 08 BOM CK 0032

Hon'ble Judges : Ravindra V. Ghuge, J; Y. G. Khobragade, J

Bench : Division Bench

Advocate : A. N. Nagargoje, P. K. Lakhotiya, V. S. Bedre

Judgement

Y. G. Khobragade, J

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally.

2. By the present petition under Article 226 of the Constitution of India, the Petitioner, who is owner of the land bearing Gut No.179 (Hissa No.1+9B/A) old Survey No.759 situated at Sangamner, District Ahmednagar, towards Southern side of Kolhar-Ghoti State Highway and reserved in the final Development Plan of Sangamner Dist. Ahmednagar, prays for declaration about lapsing of reservation in view of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, referred to as 'the MRTTP Act').

3. Mr. A. N. Nagargoje, the learned counsel appearing for petitioner submits that, the Petitioner is the owner of land bearing Gut No.179 (Hissa No.1+9B/A) old Survey No.759 situated at Sangamner, District Ahmednagar, towards Southern side of Kolhar-Ghoti State Highway. On 06.04.2005, the Respondent No.3 Development Authority published a notice and reserved land of the petitioner at

Sr. No.85 for Public Health Center. Though the development plan of the Respondent No.3 Municipal Council has been sanctioned prior to 2005 and land of the petitioner has been reserved, the Respondent No.3 has not taken steps for acquisition of the reserved land contemplated under Section 126 of the M.R.T.P. Act. Therefore, on 12.11.2018, the Petitioner issued notice under Section 127 of the M.R.T.P. Act and called upon Respondent no. 3 to declare the land free from reservation.

4. The Petitioner further prayed for permission to develop the land. However, in spite of lapse of 24 months from the date of service of notice, Respondent No.3 failed to acquire the land. On the contrary, on 17.01.2019, the Respondent No. 3 Development Authority issued a notice and directed the petitioner to enter into a private negotiation by offering Transfer of Development Rights (T.D.R.). The Petitioner refused to accept T. D. R.. Thereafter, on 29. 05.2019, the Respondent No.3 issued a notice and called upon the Petitioner to remain present at the spot for measurement of land Gut Nos. 179 and 182 through the Dy., Superintendent of Land Record. And though land of the petitioner was duly measured, however, on

6. 12.2019, respondent No.3 issued the impugned communication nullifying notice u/s 127 of the M.R.T.P. Act on ground that the petitioner did not attach the map and 7/12 extract of the land, which is illegal, bad in law, hence, prayed for quashing the impugned communication dated 06.12.2019.

5. In support of this submission, the learned Counsel appearing for the Petitioner relied on the following cases:

(i) Order dated 02.01.2023 passed by this Court W.P. No.11370/2021 (Chandrakalabai W/o Mahadev Madne and others Vs. The State of Maharashtra and others);

(ii) Madanlal Zumberlal Nahar and Others Vs. Chief Officer and others – 2022 SCC OnLine Bom 2970;

(iii) Prafulla C. Dave and others Vs. Municipal Commissioner and others - (2015) 11 SCC 90;

(iv) Chhabildas Vs. State of Maharashtra and others - (2018) 2 SCC 784.

6. Per contra, the Respondent No.3 Municipal Council filed affidavit-in-reply and strongly resisted the prayer of the Petitioner for lapsing of reservation in respect of the land on the ground that the notice dated 12.11.2018 was not accompanied with title documents like 7/12 extract, revenue map as well as no title-deed were attached with the notice. Therefore, in absence of title documents, the notice under Section 127 of the M.R.T.P. Act is vitiated.

7. Mr. V. S. Bedre, the learned counsel for Respondent No.3 canvassed that after service of notice dated 12.11.2018, the proposal for acquisition of the reserved land was placed before the general body of Respondent No.3. On 20.12.2018,

the General Body passed a Resolution No.13 and decided to acquire petitioner's land by private negotiation. Accordingly, a notice dated 17.01.2019 was issued and the Petitioner was called for private negotiation on 23.01.2019. Accordingly joint meeting was held, but the Petitioner did not clarify the extent of area reserved. Therefore, it was decided to measure the Petitioner's land. Accordingly, on 28-02-2019, measurement Fees of Rs. 1,35,000/- was deposited with the Dy. Superintendent of Land Record. On 24-06-2019, a joint measurement was carried, however, the Revenue map of the reserved land was not made available. Therefore, no further action for reservation of the land was taken. Therefore, said reservation does not lapse. Hence, prayed for dismissal of the petition.

8. Having regard to the rival submissions of both sides, we have gone through the record. It is not in dispute that, on

6. 04.2005, the Respondent No.3 published a notification and showed reservation of Petitioner's land bearing Gut No.179 (hissa No.1 + 9B/A) old Survey No.759 situated at Sangamner, admeasuring 0.250 H. R. vide reservation No.48 for Public Health Center under the development plan. It is an admitted fact that, the Respondent No.3 failed to acquire the land even after lapse of 10 years contemplated under Section 126 of the M.R.T.P. Act. On 12.11.2018 the Petitioner issued a notice under Section 127 of the M.R.T.P. Act and called upon the Respondent No.3 to free the Petitioner's land from reservation due to failure to acquire the land within a period of ten (10) years. It is a matter of record that on 17.01.2019 the Respondent No.3 issued a communication and offered transfer of development right (T.D.R.) to the Petitioner, which he refused. No doubt the Respondent No.3 passed a resolution No.233 dated 20.12.2018 and decided to acquire the land by private negotiation. Accordingly, on 29.05.2019, joint measurement of land was carried through the competent authority after depositing require fees. But the Respondent No.3 fail to get measurement map. On 06.11.2019, the Respondent No.3 issued impugned communication nullifying the Petitioner's notice under Section 127 of the M.R.T.P. Act on the ground that the Petitioner did not enclose 7/12 extract and revenue records.

9. Needless to say that, since the Respondent no. 3 Development authority acted upon the notice under Section 127 of the M.R.T.P. Act by offering the T.D.R., and subsequently carried joint measurement, hence, it clear that the Respondent No.3 identified the land and acted on notice dated 12.11.2018. Therefore, once the Respondent No.3 acted upon the notice under Section 127 of the M.R.T.P. Act, Respondent No.3 cannot say that the Petitioner did not enclose the copy of 7/12 extract and revenue copy to identify the Petitioner's reserved land.

10. In the case of M/s. Gupta Loom Industries Vs. State of Maharashtra - (2016) 1 AIR 170, the coordinate Bench of this Court in para Nos. 14 to 17, has observed as under:-

"14. It is true that the notice under Sub-section (1) of Section 127 has to be construed strictly as non-compliance with the notice has a drastic consequence of

lapse of reservation. Therefore, the mandatory requirement of law is that strict compliance must be made of while issuing a notice under Sub-section (1) of Section 127. In the facts of the case, we find that specifically on the basis of the said notice dated 7th October, 2010, the General Body of the Municipal Corporation passed a resolution for initiating acquisition proceedings. The proposal for the acquisition specifically refers to the said notice. Hence, even the said Corporation has acted upon the said notice dated 7 October 2010 by treating it as a notice under section 127.

15. It is well settled that if certain requirements or conditions are provided by a statute for the benefit of a person, the said requirements or conditions though mandatory, may be waived by the said person if no public interest is involved. In the facts of the case, the Municipal Corporation acted upon the said notice by passing a resolution to initiate acquisition proceedings which shows that the alleged defects in the notice were waived by the said Corporation for whose benefit certain requirements are provided in Section 127.

16. Therefore, it is not possible to find any infirmity in the notice. The notice is legal and valid.

17. It is not in dispute that within a period of 12 months from the date of service of the notice dated 7th October 2010 and even as of today, a declaration either under Sub –section (2) or Sub-Section (4) of Section 126 of the M.R.T.P. Act read with Section 6 of the Land Acquisition Act, 1894 has not been issued. It is not issued till today though the Municipal Corporation has deposited a substantial amount with the Special Land Acquisition Officer towards compensation. As a result of the failure to publish the declaration as aforesaid, the reservation under the sanctioned Development Plan stands lapsed.”

11. So far as in para No.10 in Writ Petition No.11370/2022 (Chandrakalabai Mahadev Madne and others Vs. The State of Maharashtra), this Court has observed thus:-

“10. So far as the offer to accept TDR in lieu of monetary compensation, except the bald statement made across the bar, there is nothing to demonstrate that the respondents Nos. 3 and 4 having taken steps first to resolve to offer TDR to the petitioners. Besides, in view of the Full Bench decision of this Court in case of Shree Vinayak Builders and Developers Vs. State of Maharashtra and Ors. (Writ Petition No.2231 of 2019, Nagpur Bench), even such a decision cannot be foisted upon the petitioners.”

12. In the case of Madanlal Zumberlal Nahar and Others Vs. Chief Officer and Others (Writ Petition No.2260 of 2010, Aurangabad Bench) 2022 SCC OnLine Bom 2970, wherein it has been held that in the event of notice under Section 127 of the M.R.T.P. Act, being served by the owner of the reserved land on the appropriate authority after revised plan comes into effect, the time of ten years prescribed under Section 127 of the M.R.T.P. Act, should be counted from the date of revised development plan under Section 38 of the M.R.T.P. Act.

13. The issue involved in the present petition is crystallized in the matter of *Girnar Traders Vs. State of Maharashtra*, (2007) 7 SCC 555, the Constitution Bench of the Hon'ble Supreme Court while dealing with the implicit applicability of the Land Acquisition Act to the acquisition proceedings under the 1966 Act, examined the scope of the provisions of Section 126 and 127 of the 1966 Act and held as under:-

"31. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the M.R.T.P. Act or under the L.A. Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming de-reservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word "aforesaid" in the collocation of the words "no steps as aforesaid are commenced for its acquisition" obviously refers to the steps contemplated by Section 126 of the M.R.T.P. Act.

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.

54. When we conjointly read Sections 126 and 127 of the M.R.T.P. 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...

56. The underlying principle envisaged in Section 127 of the M.R.T.P. 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 step taken under the section within the time stipulated should be towards acquisition of land..."

14. In the case of Prafulla C. Dave and others Vs. Municipal Commissioner and others – (2015) 11 SCC 90 , in which the Supreme Court was considering a case, whether purchase notice issued by the appellants under Section 127 of the said Act, was premature, as it was issued before completion of period of 10 years from the date of the revised development plan. The Supreme Court, considering the provisions of section 21 i.e. final development plan and in view of the facts of the case that notice under section 127 of the Act was issued by the appellants only two years after final revision of plan under section 38 of the Act had come into operation, held that the notice issued by the appellants therein, under Section 127 of the said Act was premature.

15. In the case of Chhabildas Vs. State of Maharashtra and others – (2018) 2 SCC 784, in para 30, has observed thus:-

"30. In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed since the date of the purchase notice issued under Section 49. Considering the fact that there has been no stay at any stage by any court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26-9-2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed. We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed i.e. that after 10 years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. With these observations, the appeal is disposed of."

16. In the case of Madanlal Zumberlal Nahar and Others Vs. Chief Officer, Municipal Council, Beed and Others 2023(2) Mh.L.J. 618, wherein it has been held that in absence of valid notice under Section 127 of the M.R.T.P. Act, 1966, it does not lapse automatically without valid notice.

17. In the case of Chhabildas Vs. State of Maharashtra and others 2018(4) Mh.L.J. (S.C.) 550 = (2018) 2 SCC 784, the Supreme Court, relying on Girnar Traders, observed thus:

"23. It is, thus, clear that the scheme of sections 126 and 127 would leave nobody in doubt, for the reason that if a period of 10 years has elapsed from the date of publication of the plan in question, and no steps for acquiring the land

have been taken, then once a purchase notice is served under section 127, steps to acquire the land must follow within a period of one year from the date of service of such notice, or else the land acquisition proceedings would lapse.

24. On a conspectus of the above authorities, the following position in law emerges:

(1) In all section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must take an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc., shall be deemed to have lapsed.

(2) If within the period specified in section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under section 6 of the Land Acquisition Act as set out under section 126(4), wherein the market value shall be the market value of the land as on the date of the section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

(3) If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by section 49, the drill of section 126(4) and section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in section 49(7)".

18. Since the Respondent No.3 was served with the notice under Section 127 of the M.R.T.P. Act on 12.11.2018 and in spite of measurement of the land of the Petitioner, Respondent No.3 failed to acquire the land within a period of 24 months from service of notice.

There is nothing on record to demonstrate that the Respondent No.3 Development authority had taken any effective steps for acquisition of the land except stating that the development authority intended to develop the land. Therefore, the consequences would follow as laid down in catena of the judgments as referred above, in respect of lapsing of reservation.

19. In view of above discussion and considering the facts of the present case as well as on considering the case law cited supra, this Petition is allowed and we proceed to pass the following order:

::ORDER::

a] It is hereby declared that, the reservation of the Petitioner's land ad-measuring 0.250 Hectare out of Gut No.179 (Hissa No.1 + 9B/A) old Survey

No.759 situated at Sangamner, District Ahmednagar, for Public Health Center vide Serial No.85, stands lapsed.

b] The Respondent No.3 Municipal Council is directed to submit proposal to the Respondent No.1 within a period of sixty days from today about releasing the land from reservation.

Thereafter, Respondent No.1 shall issue a Notification under Section 127(2) of the M.R.T.P. Act within a period of 45 days.

c] It is made clear that the Respondent No.3 – Municipal Council would be at liberty to initiate fresh proceeding for acquisition in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in view of the order passed by the Hon'ble Apex Court on 27.02.2023 in Special Leave Petition (Civil) Diary No.39782/2022, Municipal Corporation, Jalgaon, Through its Commissioner and another Vs. Satish Soma Bhole and Ors..

20. Rule is made absolute in the above terms.