

(2007) 08 BOM CK 0151
In the Bombay High Court
Case No : Writ Petition No. 744 of 2004

Suresh Jaiswal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 126, 127, 2(3), 20, 20(2)

Citation : (2007) 6 ALLMR 308 : (2007) 6 BomCR 229 : (2008) 1 MhLj 200

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : S.R. Barlinge, for the Appellant; Umakant K. Patil, Asst. Govt. Pleader for Respondent Nos. 1 and 2 and B.A. Darak, for the Respondent

Final Decision : Allowed

Judgement

Naresh H. Patil, J.—Learned counsel Shri Barlinge, for the petitioner seeks to delete respondents Nos. 3 and 4.

Leave granted. Necessary amendments in the cause title be made forthwith. Rule, made returnable forthwith. By consent of the parties, the matter is taken up for final hearing.

2. By this petition the petitioner prays for directions to the respondents to allow the petitioner to develop the land admeasuring 40R from Survey No. 275 situated at Kinwat, Taluka Kinwat, District Nanded and for a declaration that the reservation in respect of the subject land kept under the Maharashtra Regional and Town Planning Act, 1966 by respondent No. 3 - Municipal Council Kinwat has lapsed.

3. In short, the petitioner's contention is that he is owner of land Survey No. 275 admeasuring 1 Hectare 9 R. Out of this land about 69 R land was acquired by the Government and the possession was taken over on 26-5-1990. The petitioner possesses 40R of land out of Survey No. 275. The town planning authority

reserved the said portion of 40R in the development plan which came into force on 3-6-1976. The subject land was reserved for Telephone Exchange in the development plan. The petitioner requested the authorities to allow him to develop his land and release the said area from the reservation. The petitioner contends that number of representations were filed by the petitioner with the authorities from 1996 onwards, copies of which are annexed collectively to this petition.

4. The petitioner ultimately issued notice dated 16-2-2000 u/s 127 of the Maharashtra Regional and Town Planning Act 1966 (for short, "the Act") to all the concerned respondents. A notice was separately issued on 29-2-2000 to the Sub Divisional Engineer, Telephones, Nanded which was served on the said authority. Copies of the notices are annexed to the petition.

5. The Municipal Council vide its letter dated 30-8-2001 informed the petitioner that the proposal for development of the land could not be accepted. The contention of the petitioner is that the petitioner had given notice u/s 127 of the Act and as the planning authority failed to take appropriate steps in time the reservation shall be held to have been lapsed.

6. Respondent - State filed affidavit-in-reply through the Deputy Director of Town Planning Aurangabad Division Aurangabad. The deponent stated that the sanctioned development plan came into force with effect from 8-6-1976. The appropriate authority u/s 2(3) of the Act for acquiring and developing the land under reservation is the Post and Telegraph Department. The Municipal Council Kinwat being the planning authority declared its intention to revise the final development plan of Kinwat town u/s 23 read with Section 38 of the Act in furtherance of a resolution passed by the general body on 14-5-1990. A notice to that effect was published in the Government Gazette dated 6-9-1990. A draft revised development plan was prepared by the Municipal Council in accordance with the provisions of Section 26 of the Act which appeared in the Government Gazette dated 9-5-1996. It is contended that the petitioner's land was reserved for Parking and Library at site Nos. 13 and 14 admeasuring 0.30 H and 0.15 H respectively in the draft revised development plan published u/s 26 of the Act. The petitioner raised objections to the notice u/s 26. The deponent further contends that the petitioner's land continued to be under reservation. The draft development plan was submitted to the Government u/s 30 of the Act under letter dated 6-5-1999. The Government had accorded sanction to part of the draft revised development plan on 27-5-2002 and the remaining unsanctioned part i.e. the modifications proposed to be made by the Government of substantial nature to the draft revised development plan was published by the Government u/s 3 of the Act vide Notification dated 27-5-2002. The deponent contends that the subject land was included in the unsanctioned part i.e. "substantial nature modifications" (EP-2) published u/s 31 of the Act vide notice dated 27-5-2002. The Government had sanctioned the said part of the draft revised development plan under Resolution dated 31-10-2005 which came into

effect from 15-12-2005. In substance, the deponent contends that the petitioner's land continued to be under reservation in the revised development plan which was sanctioned though the purpose of the reservation was changed from Telephone Exchange to Parking and Library.

7. The Municipal Council - respondent No. 3 filed affidavit-in-reply and contended that the notice dated 16-2-2000 issued by the petitioner was not served on the Municipal Council. The Municipal Council has also raised issue of revised draft development plan submitted to the Government.

8. The petitioner filed additional affidavit on 8th August 2007 submitting that notice u/s 127 of the Act dated 4-1-2000 was in fact served on the Municipal Council Kinwat. Copy of the said notice was placed on record. A Purshis was filed by the petitioner by placing on record notice dated 4-1-2000 which was issued u/s 127 of the Act to the authorities mentioned in the said notice.

9. Respondent No. 3 - Municipal Council also filed additional affidavit and stated that notice dated 4-1-2000 u/s 127 of the Act issued by the petitioner was served on the Municipal Council and there is no dispute about that. The Municipal Council contended that further proceedings are not initiated by the competent authority to complete the acquisition of the subject property nor payment of compensation was made to the owner of the subject property. In view of the stand adopted by the Municipal Council it is now clear that the notice was served on the planning authority i.e. respondent Municipal Council dated 4-1-2000 u/s 127 of the Act. The Municipal Council did not initiate acquisition proceedings within six months from the receipt of the notice served by the petitioner. The question is what is the consequence of the failure of initiation of the acquisition proceedings by the Municipal Council and whether the plea raised by the Municipal Council and the State Government that the subject land is already reserved under the revised development plan for the purpose of Parking and Library would disentitle the petitioner to seek relief u/s 127 of the Act. The provisions of Section 127 of the Act read as under:

127. 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 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 or 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 (O the case of adjacent land under the relevant plan.

10. The contention raised by the contesting respondents is that the subject land was reserved on 3-7-1976 in the development plan for the Telephone Exchange. Under Sections 126 and 127 of the Act the owner of the land is entitled to issue notice u/s 127 if the subject land was not acquired by agreement within 10 years from the date on which a final regional plan, or final development plan comes into force or if proceedings for the acquisition of such land under the Act or under the Land Acquisition Act, 1894 are not commenced within such period. In the present case we find that in spite of service of notice u/s 127 on 4-1-2000 and 16-2-2000 on the planning authority, the planning authority did not take any steps within six months from the date of service of such notice for acquisition of the land the consequence would be that the reservation, allotment or designation shall be deemed to have lapsed and the land shall be deemed to be released from such reservation, allotment or designation. The land thereafter shall become available to the owner for the purpose of its development.

11. In view of the pronouncement of the view by the Apex Court in the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, and by the Bombay High Court in Kishor Gopalrao Bapat and Others Vs. State of Maharashtra and Another, , we can safely conclude that continuance of the reservation of the subject land in the revised development plan after expiry of 10 years from the initial reservation of the land in the development plan would not entitle the respondents to say that the subject land continued to be under the reservation disentitling the petitioner to resort to the provisions of Section 127 of the Act. In the facts of the case in the revised development plan the public purpose of the subject land was also changed from Telephone Exchange to Parking and Library even then the respondents would not be entitled to plead that the reservation of the subject land would continue in view of the change of the purpose and the revision of the development plan.

12. The issue regarding computation of period of ten years and whether earlier period of reservation which was prior to the revised development plan coming into effect should be taken into consideration or not has now been finally settled by the Apex Court in the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, . The Apex Court has held as under:

The question however, is as to whether only because the provision of Section 20 has been referred to therein; would it mean that thereby the legislature contemplated that the time of ten years specified by the legislature for the purposes of acquisition of the land would get automatically extended? The answer to the said question must be rendered in the negative. Following the principle of interpretation that all words must be given their full effect, we must also give full effect to the words "so far as may be" applied to such revision.

37. The said words indicate the intention of the legislature to the effect that by providing revision of final development plan from time to time and at least once in ten years, only the procedure or preparation thereof as provided therein is required to be followed. Such procedural requirements must be followed so far as

it is reasonably possible. Section 21 of the Act in our opinion does not and cannot mean that the substantial right conferred upon the owner of the land or the person interested therein shall be taken away. It is not and cannot be the intention of the legislature that what is given by one hand should be taken away by the other.

38. Section 21 does not envisage that despite the fact that in terms of Sub-section (2) of Section 20, the designation of land shall lapse, the same only because a draft revised plan is made, would automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or take away the right acquired by a land owner u/s 22 of getting the land defreezed. In the event the submission of the learned Solicitor-General is accepted the same would completely render the provisions of Section 20(2) otiose and redundant.

13. In the case of Kishor Gopalrao Bapat and Others Vs. State of Maharashtra and Another, it was observed in paragraph 11.

11. The question, which falls for our consideration in the present petition is whether the Planning Authority exercising power u/s 38 of the MRTP Act, which deals with revision of development plan, can take away the rights accrued to the owner of the land on account of lapsing of reservation in view of contingencies mentioned in Section 127 of the MRTP Act. Similar factual and legal situation arose in the case of Shri Baburao Dhondiba Solakhe (cited supra) and this Court after taking into consideration the law laid down by the Apex Court in Bhavnagar University v. Palitana Sugar Mills (P) Ltd. and Ors. 2003(1) SCC 111, in paragraph (17) observed thus:

The legal position as regards MRTP Act on the basis of aforesaid observations made by the Apex Court in Bhavnagar University emerges that by imposition of a statutory obligation u/s 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of Section 127 are not taken away. Section 38 of the MRTP Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested u/s 127 is taken away. In other words, Section 38 does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made would not automatically result in revival of reservation that had lapsed. If the reservation of the petitioner's land for the purposes of garden had lapsed, and as we found in fact has lapsed on 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation.

14. We therefore, find that the notice u/s 127 of the Act was perfectly served on the respondents. As the respondent - Municipal Council who could have initiated appropriate proceedings for acquisition of the land failed to take effective steps after receipt of the notice issued by the petitioner within the prescribed period of

six months, the reservation of the subject land under the initial notification issued on 3-6-1976 would lapse and the land would be deemed to have been released from the reservation and the same would be available to the owner for its development.

15. We, therefore, hold and declare that the reservation of the subject land in the development plan of Municipal Council Kinwat has lapsed and the said land is released from the reservation. The land would be available to the petitioner, owner of the subject land, for its development.

We, therefore, allow the petition. Rule is made absolute in the above terms. No costs.