
(2014) 09 BOM CK 0182
In the Bombay High Court
Case No : Writ Petition No. 8535 of 2009

Vansada Agriculturels Pvt. Ltd.

APPELLANT

Vs

Nashik Municipal Corporation

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 6

Maharashtra Regional and Town Planning Act, 1966 — Section 125, 126, 126(1), 126(2)

Citation : (2015) 2 ALLMR 31 : (2014) 6 MhLj 350

Hon'ble Judges : G.S. Kulkarni, J;Abhay Shreeniwas Oka, J

Bench : Division Bench

Advocate : R.D. Soni i/b Ram Co, Advocate for the Appellant

Final Decision : Allowed

Judgement

G.S. Kulkarni , J.—Rule returnable forthwith. Respondents waives service. By consent of the learned counsel for the parties and at their request taken up for final hearing.

2. By this Writ petition filed under Article 226 of the Constitution of India the petitioners seek a Writ of mandamus against the respondents that the reservation of land for public purpose namely for "a high school and play ground" situated at Nashik is deemed to have lapsed and that the petitioners are entitled to develop the said property otherwise permissible in case of adjacent land under the development plan.

Briefly the facts are:

3. It is the petitioner's case that they are owners of a plot of land bearing Survey No. 42/1+2/2/5 (the "said land") admeasuring 7652 sq.meters situated at Nashik.

4. The petitioners land earlier fell in the area of Nasik Road -Deolali Municipality

and was reserved for a public the purpose of a primary school in the sanctioned development plan for Nashik Road Deolali Municipality as approved by the State Government on 2.10.1972. This reservation was designated in the Development plan as reservation No. 34.

5. In the year 1981 Nashik Road Deolali Municipality was merged with Nashik Municipal Corporation (Respondent no. 1). The Development plan for Nashik city was sanctioned by the State Government on 28.6.1993 and the same brought into force on 16.11.1993. In the development plan the land of the petitioners was shown to be reserved for a public purpose to the extent of an area admeasuring 5800 sq.meters for the purpose of a High School and was designated as Reservation No. 197. It is the petitioner's case that since the year 1972 that is since the erstwhile development plan for Nashik Road Deolali Municipality and thereafter in the present development plan pertaining to 1st respondent the land is continuously kept under reservation for the said public purpose and no steps were taken to acquire the land. The petitioner therefore, issued a purchase notice dated 5.8.2005 u/s 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short the M.R.T.P. Act) to the 1st respondent calling upon the 1st respondent to acquire the land belonging to the petitioner for the public purpose for which was kept under reservation. This purchase notice was received by the 1st respondent on 6.8.2005. It is the petitioner's case that on receipt of this notice the 1st respondent ought to have acquired the said land within a period of six months as stipulated under the provisions of section 127 of M.R.T.P. Act 1966. It is stated that the notice categorically recorded that if no steps are taken for acquisition of the said land the reservation shall be deemed to have lapsed and the land would become available to the petitioners for development as per the provisions of section 127 of the M.R.T.P. Act. The petitioner enclosed 7/12 extracts along with the said purchase notice. The 1st respondent however, for a period of six months did not take any steps to commence the proceedings to acquire the land of the petitioners. The Assistant Director of Town Planning, Nasik by a letter dated 13.4.2009 addressed to the Special Land Acquisition Officer stated that as per joint measurement undertaken in respect of the petitioner's land that there is no objection for taking steps to acquire the land as per provisions of section 126(6) of the M.R.T.P. Act. It is the petitioner's case that except for this communication which came to the knowledge of the petitioners no steps for acquisition of the land were undertaken and hence reservation in respect of the same had lapsed.

6. The 1st respondent has filed an Affidavit in reply to the Writ Petition of Mr. Mahesh Narayan Tiwari Estate Manager of the 1st respondent. The 1st respondent has admitted that the petitioner's land was reserved for public purpose namely for a high school. The fact that the purchase notice u/s 127 of the M.R.T.P. Act was issued on behalf of the petitioners to the 1st respondent is not disputed. Following averments in paragraph 7 and 9 are material for the purpose of controversy in the present petition.

7. "I say that as per the 7/12 extracts annexed to the Petition the petitioners are owners of undivided area of 2652 sq.meters out of the land S.No.42/1+2/2/5 part. In view of the fact that the total area of the land is 3H22R some of which falls under residential zones and some of which falls under the designated D.P. Road. It cannot be said with certainty by the petitioners that the area of the land of which they are the owners actually falls under the said reservation for high school.

9. I say that as per the suggestions of the ADTP a fresh measurement of the land was taken on 13.05.2010 and fresh map is prepared. Thereafter the SLA Officer called on the Corporation to deposit an amount of Rs. 1,14,60,600/- towards 50% cost of acquisition. I say that thereafter proposal was submitted before the Standing Committee for approval and the approval was given on 29.07.2010. I say that thereafter on 01.11.2010 the file was put before the Commissioner who accorded his sanction on 02.2.2012. Thereafter bill is submitted to accounts department to issue cheque for the said amount. I say that shortly the cheque will be issued."

Further in para 11 of the reply affidavit the 1st respondent has admitted that the Special Land Acquisition Officer had not taken any steps to issue a declaration u/s 6 of the Land Acquisition Act. It is however alleged that there is a collusion between the petitioners and office of the Special Land Acquisition Officer. It is therefore, contended that the 1st respondent had taken steps for acquisition of the land and hence the petitioners are not entitled for reliefs as prayed for in the Writ petition.

7. A further affidavit dated 26.4.2010 of Mr. Satish D.Khadke Estate Manager and Deputy Commissioner (Tax Octroi) of the 1st respondent has been filed setting out the various steps taken on behalf of the 1st respondent for acquisition of the petitioner's land after receipt of the notice u/s 127 of the M.R.T.P. Act a reference has been made to the correspondence as entered into between the Estate Manager and Special Land Acquisition Officer between the period 2.9.2005 to 31.3.2010 to state that various steps were taken towards acquisition of the of the petitioner's land. It is stated that however in view of the technical objections which were raised from time to time either from the Office of the Special Land Acquisition and the office of the Assistant Director of Town Planning the revised the measurement map was not prepared by the Planning authority. It is therefore submitted that the 1st respondent has taken all the steps which could be taken for acquisition and hence it should be held that reservation in respect of the petitioner's land had not lapsed. This affidavit however is completely silent of any notification u/s 6 of the Land Acquisition Act, being issued within the stipulated period of six months as contemplated u/s 127 of the M.R.T.P. Act after receipt of the purchase notice issued by the petitioners. within which time the notice issued by the petitioners.

8. On behalf of the 4th respondent (State Government) affidavit in reply of Mr. Ramchandra Bapurao Pawar Deputy Collector (Land Acquisition No. 2) Nashik is

filed, in which it is stated that in pursuance of the purchase notice dated 5.8.2005 issued on behalf of the petitioners a Notification u/s 126 of the M.R.T.P. Act, 1966 read with section 6 of Land Acquisition Act was not issued.

9. On behalf of the petitioners, an affidavit -in -rejoinder has been filed denying the allegations as made on behalf of the 1st respondent in the reply affidavits. It is stated that in fact after receipt of the purchase notice the 1st respondent had submitted a belated proposal for acquiring the said land. It is submitted that 1st respondent has taken an untenable defence to avoid the effect of lapsing of reservation. It is stated that the affidavit filed on behalf of the 1st respondent clearly indicates that the Assistant Director of Town Planning had completed the measurement of the land as late as on 13.5.2010 i.e. after 5 years after issuance of the purchase notice and that admittedly the acquisition proposal was thereafter submitted to the Standing Committee by the 1st respondent on 29.7.2010 and forwarded for acquisition to the 4th respondent on 7.2.2012. It is submitted that this demonstrates that sanction for acquisition was given by the Corporation after a period of almost 7 years from the date of issuance of the purchase notice. It is therefore submitted that the allegations as made on behalf of the 1st respondent apart from being unsubstantiated are wholly baseless. It is submitted that on facts as placed on record on behalf of the 1st respondent, the Petition deserves to succeed.

10. We have heard Mr. Soni learned counsel for the petitioner, Mr. Patil for Respondent nos. 1 and 2 and Mr. Gokhale learned AGP for the Respondent nos. 3 and 4. With the assistance of the learned counsel for the parties, we have perused the paper Book of the Writ Petition and reply affidavits filed by the respondents.

11. On behalf of the petitioners, it is urged that there is no dispute on the fact that the land of the petitioners is subjected to reservation for a period of 10 years, firstly in the erstwhile sanctioned development plan for Nashik Road Deolali Municipality from the year 1972 and thereafter since 1993 after commencement of the development plan of respondent no. 1. It is further submitted that none of the respondents have disputed the issuance of a purchase notice by the petitioners dated 5.8.2005 issued u/s 127 of the M.R.T.P. Act and the receipt of the same. It is submitted that as no action was taken within a period of six months by the 1st respondent to acquire the land after receipt of the purchase notice and hence by operation of the provisions of section 127 of the M.R.T.P. Act, 1966, the reservation in respect of the petitioner's land had lapsed and the land had become available to the petitioner to be developed as per the provisions of section 127 of the M.R.T.P. Act, 1966. It is submitted that the provisions of section 127 of the M.R.T.P. Act, 1966 which were set into motion by issuance of the purchase notice dated 5.8.2005 had taken its own course and that by operation of law the reservation is deemed to have lapsed on account of inaction of the respondents to commence acquisition proceedings by issuance of a section 6 Notification under the Land Acquisition Act. The petitioner

rely on the decision of the Supreme Court in case of Girnar Traders Vs. State of Maharashtra and Others, .

12. Learned counsel on behalf of the respondent no. 1 however, supported the reservation on the basis of the plea as raised in the affidavit-in-reply. Similarly, the learned AGP has reiterated his submissions as contained in the reply as filed on behalf of respondent nos. 3 and 4.

13. On considering the factual position on record it appears to be an admitted position that the petitioner is the owner of the land in question. That purchase notice u/s 127 of the M.R.T.P. Act, 1966 was served by the petitioners on the 1st Respondent on 5.8.2005. After the purchase notice was received by the 1st respondent on 6.8.2005 further action u/s 127 of the M.R.T.P. Act, 1966 was required to be taken by the 1st respondent. It would be beneficial to refer to the provisions of section 127 of the M.R.T.P. Act as it then stood when the purchase notice dated 5.8.2005 was issued by the petitioner. The provision reads thus:

Section 127: Lapsing of reservations:

"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 (for 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 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 the case of adjacent land under the relevant plan."

A plain reading of the aforesaid provision makes it clear that when any land is reserved, allotted or designated for any public purpose specified in the Development Plan and if it is not acquired by agreement within ten years from the date on which the final regional plan or final development plan comes into force, or if proceedings for acquisition of such land under the MRTP Act or under the Land Acquisition Act are not commenced, the owner or any person interested in the land, may serve a notice to the Planning Authority calling upon the Planning Authority to acquire such land within a period of six months from the date of service of such notice and if the land is not acquired or no steps are commenced for its acquisition the reservation designation of such land shall be deemed to have lapsed and the land thereupon shall be deemed to be released from reservation on such designated land shall become available to the owner for the purpose of development as otherwise permissible under the relevant plan.

14. The facts in the present case clearly demonstrate that the plot in question was kept under reservation for the purpose of a high school from the commencement of the Development Plan for the city of Nashik which was brought into effect on 16.11.1993. Admittedly, for a period of ten years from the commencement of the Development Plan, the Ist respondent did not take any steps to acquire the land for the purpose for which it was kept under reservation. There is no dispute that the petitioners had issued a purchase notice dated 10.2.2005 and the same was received by the Ist respondent. The Ist respondent within a period of six months from the receipt of the purchase notice was required to acquire the land or take steps for commencement of the acquisition of the land in question. It is well settled that the proceeding for acquiring the land for the purpose of section 127 can be said to have commenced only when a Notification u/s 6 of the Land Acquisition Act is issued. However, no such steps were taken to commence the acquisition proceedings. It is therefore, clear that by plain application of the provisions of section 127 the reservation of the petitioner's land is deemed to have lapsed and the land had become available to the petitioners for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.

15. The petitioners are justified in relying on the decision of the Supreme Court in the case of *Girnar Traders vs. State of Maharashtra* (supra). The Supreme Court in considering the provisions of sections 127 of the M.R.T.P. Act, 1966 has held that "the steps for acquisition" as contemplated u/s 127 of the M.R.T.P. Act, 1966 would be issuance of a declaration u/s 6 of the Land Acquisition Act. The Supreme Court has observed as under :

54. "When we conjointly read Sections 126 and 127 of the MRTP 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. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in *Municipal Corpn. of Greater Bombay* case⁴. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan u/s 126(2) read with Section 6 of the LA Act , wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made u/s 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted u/s 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a

situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation."

55. "Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same."

56. "The underlying principle envisaged in Section 127 of the MRTTP 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 steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTTP Act by merely moving an application requesting the government to acquire the land which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration u/s 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land u/s 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration u/s 6 of the LA Act."

16. In a recent decision of the Supreme Court in the case of Shrirampur

Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others, the Supreme Court had observed as under :

" 42. We are further of the view that the majority in Girnar Traders (2) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration u/s 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/ other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice u/s 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

17. In the present case, admittedly a section 6 Notification was not issued and hence adverting to the principles of law laid down by the Supreme Court in the aforesaid decisions it would be required to be held that reservation of the land in question had lapsed by operation of section 127 of the M.R.T.P. Act, 1966.

18. In the light of the aforesaid observations, the inevitable conclusion is that the reservation of the petitioner's land in question has lapsed and the land has become available to the petitioner to be developed as otherwise permissible, as in the case of the adjacent land under the Development Plan. Writ Petition therefore deserves to be allowed and is accordingly allowed in terms of prayer clause (a). The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of section 127(2) of the MRTP Act which shall be done as

expeditiously as possible and preferably within a period of six months from today.
Writ Petition stands allowed in the above said terms. No order as to costs.