
(1996) 11 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 1340 of 1989

Walter John Duming Alvaris

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 28-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 99 BOMLR 577

Hon'ble Judges : S.S. Nijjar, J;N.D. Vyas, J

Bench : Division Bench

Judgement

N.D. Vyas, J.—By the present writ petition under Article 226 of the Constitution of India, the petitioner has sought a declaration that the reservation in the Development Plan of the petitioner's plot for the school purpose has lapsed and has sought school purpose has lapsed and has sought necessary orders for release of the same from such reservation.

2, The petitioner is the owner of the plot of land situate at village Kolbad, Pratap Cinema Road, Near Pratap Cinema, Thane, bearing C.S. No 117-B, T. No. 8, admeasuring 768 sq.mtrs. The Development Plan of the City of Thane was sanctioned by the State Government vide Government Notification dated 3rd October 1974. The same was made applicable to the City of Thane with effect from 4th November 1974. The petitioner's said land was shown in the said plan as reserved for school purpose. For a period of 14 years, Respondent Nos. 2 and 3 did not acquire the said land reserved for the said public purpose. It is the petitioner's contention that in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act for short), necessary purchase notice was given by the petitioner being Notice dated 23rd January 1988.

The same was received by the 2nd Respondent on 27th January 1988 and that as Respondent Nos.2 and 3 despite the said notice failed to take any proceedings for acquisition, the reservation had lapsed and that the petitioner is entitled to

the permission for development of the said plot of land. It was petitioner's further contention that since Respondent Nos. 2 and 3 did not acquire the said land, the petitioner by his further letter dated 25th August 1988, addressed to the 3rd Respondent, recording the fact that for 14 year after the land in question was shown reserved for public purpose, no action was taken for acquisition of the said land and that despite his purchase notice dated 23rd January 1988, no action was taken and thus the said plot should be released from reservation and permission for development of the said plot be granted. Neither reply was sent to the petitioner nor any action was taken again for more than one year. Ultimately the petitioner received a letter from the 4th Respondent being a letter dated 11th January 1989, in fact addressed to the petitioner's Architect informing him that the plans submitted by the petitioner could not be sanctioned as the said plot was reserved for a Primary School in the sanctioned Development Plan for the City of Thane. Thus the petition has been filed the above mentioned background.

3. Mr. Lote, the learned Advocate appearing for the petitioner submitted that after the publication of the Development Plan wherein the land in question was shown as reserved for public purpose, the appropriate authority is required either by an agreement to purpose the land or take such necessary steps for acquiring the same under the Land Acquisition Act, 1894 by making application in this behalf to the State Government. It was his further submission that Section 127 of the said MRTTP Act further provided that if any land reserved for any purpose specified in the development Plan was not acquired by agreement within the years from the date on which a final development Plan comes into force or if proceedings for the acquisition of such land under MRTTP Act or under the Land Acquisition Act, 1894 are not commenced within such period, the owner or any person interested in the land was free to serve notice on the Planning 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 are commenced for its acquisition, the land shall be deemed to have lapsed. It was thus his submission that the appropriate authority not having taken any action for 14 years and even thereafter, when the notice was served by the petitioner, for a period of six months, the petitioner had become entitled to have the benefit of the provision at u/s 127 of the said Act Mr. Ghaisas, the learned Advocate appearing for Respondent Nos.2 and 3 submitted that in fact within six months of the service of the notice on 27th January 1988 steps were taken for acquisition of the said land and, therefore, there was no question of the reservation lapsing or the petitioner to be entitled to develop the land itself.

4. In order to appreciate the rival contentions, it would be advantageous to reproduce Section 127 of the said Act:

127. If any land reserved, allotted or designated for any purposes 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 service 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 the case of adjacent land under the relevant plan.

5. The Supreme Court had an occasion to deal with almost an identical question with which we are concerned, in the case of *Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants' Association and Others*, . The Supreme Court *inter alia* observed as follows:

According to the plain reading of Section 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by Section 127, is a mixed question of fact and law. It would therefore be difficult, if not well-nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice u/s 127 of the Act. The condition prerequisite for the running of time u/s 127 is the service of a valid purchase notice.

The Supreme Court *inter alia* held that a period of 6 months provided by Section 127 upon expiry of which, the reservation of the land under the Development Plan lapses is a valuable safeguard to the citizen against arbitrary and irrational executive action and that Section 127 of the Act is a fetter upon the power of eminent domain. It further observed that by enacting Section 127 the legislature has struck a balance between the competing claims of the interest of the general public as regards the right of an individual.

6. Keeping in mind the above observation, let us see whether in the facts of the case, the purchase notice received by Respondent Nos. 2 and 3 on 27th January 1988 was acted upon as contended by Mr. Ghaisas. The affidavit which is filed *inter alia* states that the notice dated 23rd January 1988 was received by the 3rd Respondent on 27th January 1988 and, therefore, the period of six months as contemplated by the provisions of Section 127 of the said Act commenced from that date and would have expired on 27th July 1988. However, before the expiry of the said six months, i.e. on 21st July 1988, the 3rd Respondent "sent the papers to the Collector, Thane for acquisition of the petitioner's land. The said letter of 21st July 1988 sent by the 3rd Respondent was received by the Collector, Thane, on 22nd July 1988." In fact a copy of the said letter has been annexed to the said affidavit. Thus it is the stand taken on affidavit that it was abundantly clear that within six months from the date of notice i.e. 27th July

1988, the Respondent had "started taking steps" for acquisition of the said land. A perusal of the copy of the letter dated 21st July 1988 discloses the following: It says that for the purposes of primary school it is necessary to acquire land in the Thane town and that necessary resolution has already been passed for the said acquisition. In fact this letter is signed by the Commissioner of the Thane Municipal Corporation and addressed to the Collector. Significantly in the affidavit in reply, referred to hereinabove, there is no reference whatsoever to any resolution of Thane Municipal Corporation having been passed demonstrating that the Corporation has resolved to acquire the said land in response to the said notice received on 27th January 1988. Seeing the reference of some resolution in the said letter dated 21st July 1988, addressed by the Thane Municipal Corporation to the Collector, was inquired with Mr. Ghaisas as to what this resolution was and to produce the same in order to verify whether what was stated in the said letter of 21st July 1988 was correct or not. This was because in the affidavit there was no mention of any such resolution. The matter was adjourned time and again Mr. Ghaisas, at least 4 to 5 times, during which despite efforts made by Mr. Ghaisas, no such resolution was forthcoming. In fact by our order dated 15th October 1996, we further directed Mr. Ghaisas to produce original Minute Book showing the resolution pertaining to the petitioner's land in question. We had made it very clear as is evident from the said order that no further time would be given. Yet no two more occasions being persuaded by Mr. Ghaisas to do so, we again adjourned the matter. Ultimately on 24th October 1996, Mr. Ghaisas produced a copy of the resolution being Resolution No. 95 dated 16th June 1989 which was in Marathi. An English translation thereof was handed over to us. We may mention here that the resolution produced before us did not even say that it was true copy and Mr. Ghaisas was unable to throw any light on the subject. All that he was to tell us was that despite efforts made by him, this was best he could do. The resolution as mentioned above is dated 16th June 1989. The purchase notice was admittedly received on 27th January 1988. Thus the resolution in question has been passed after an 11/2 years much after six months period provided for in law in Section 127 of the said Act. Moreover, the resolution does not refer to any specific land in question much less the land of the petitioner. It is so general in term that it is difficult to find out as to what decision was taken qua the land of the petitioner. All it says is that in respect of cases in which notices u/s 127 of the said Act have been received, they should be stayed and decisions in those cases should be subsequently taken. Logically as the purchase notice u/s 127 of the said Act was given in respect of the petitioner's land, the petitioner's case would fall under this group. However, no further light could be thrown on the subject as to what was the meaning of this. The second part of the decision relates to reserved land in respect of which no notice u/s 127 of the said Act had been received by the Corporation. Surely the petitioner's land could not have fallen under the said category. If the meaning of the earlier part of the resolution is that the decision whether to proceed further for acquisition or not is stayed and was to be subsequently taken, where was the question of coming to the conclusion that the land of the petitioner was to be

acquired. Surprisingly, the letter annexed to the affidavit being after dated 21th July 1988 speaks of resolution passed by the Thane Municipal Corporation. If there was such resolution where is it? We are shocked that records of a public body are kept in such a tardy manner. The resolution which is produced does not even say that it is a true copy of any resolution. The original Minute Book despite directions given by this Court was not produced. The so called action which is taken by the said letter dated 21st July 1988 although speaks of some resolution, no such resolution is forthcoming. In these circumstances, it is impossible for us to come to the conclusion that a decision much less any steps to acquire the petitioner's land was ever taken. In the absence of any such material, it is impossible for us to come to the conclusion in favour of the Thane Municipal Corporation.

7. In these circumstances, we are of the opinion that the petitioner's land in respect of which reservation was provided for in the Development Plan has lapsed. The petitioner is, therefore, entitled to develop the land, of course in accordance with law, as he wished. The permission which was sought for by him has been wrongly rejected by the 4th Respondent, relying on the reservation which in our opinion had already lapsed. In these circumstances, the petition must succeed. Rule is made absolute. The petitioner is free to apply again to the Thane Municipal Corporation for development of his plot and the said application to be dealt with by the Thane Municipal Corporation in accordance with law releasing the reservation as having lapsed. Petition thus disposed of with no order as to costs.