
(2004) 10 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 3352 of 2001

Youth League Recreation Centre and Another

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 25-10-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 20(2), 21, 6, 6(2), 6(3)
Maharashtra Regional and Town Planning (Amendment) Act, 1972 — Section 40, 40(1)
Maharashtra Regional and Town Planning Act, 1966 — Section 126, 127

Citation : (2005) 2 ALLMR 707 : (2005) 3 BomCR 353

Hon'ble Judges : Kamdar S.U., J;Daga V.C., J

Bench : Division Bench

Advocate : J.J. Chandurkar, for the Appellant;

Final Decision : Allowed

Judgement

Kamdar S.U., J.—By the present petition, a declaration is sought that the land which was reserved for children's part under the development plan stood dereserved by virtue of the provisions of Section 127 of Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as M.R.T.P. Act).

2. The petitioners are the owners in respect of land admeasuring about 21,275 sq. ft. bearing plot No. 18 situated on Nazul Sheet No. 10 within the limits of Municipal Council of Buldhana. It is the case of the petitioners that the said land was reserved for children's part in the development plan which was sanctioned on or about 24th June, 1975. The said plan according to the petitioners came into effect on 1st September, 1975. According to the petitioners, there was further minor modification to the said plan but, the reservation remained undisturbed. However, according to the respondents, the land was reserved for children's part in a final development plan which was notified on 29th January, 1983. However, it is an admitted position that the said reservation was continued in a revised development plan by a notification dated 12th November, 1990 where the land was once again notified and reserved for a children's park.

3. In view of the aforesaid, it is clear that a period of 10 years prescribed u/s 127 of the M.R.T.P. Act had expired from the date of its original reservation of the said plot of land. On 24th March, 1998 a purchase notice was issued. The said purchase notice was received by the authorities on 24th March, 1998 itself and the period of six months expired on 23rd September, 1998. It is the case of the respondent No. 1 that they forwarded a proposal for acquisition of the said land to the Collector by their letter dated 22nd September, 1998 i.e. one day prior to expiry of 6 months. However, the petitioner contends that the said proposal never reached the office of the Collector within the prescribed period of six months but, it was received by the Collector only on 5th November, 1998. Even on this aspect, there is no serious dispute by the respondents and the respondent No. 1 have filed a reply in which it has been admitted that even the said proposal dated 22nd September, 1998 was rejected by the Collector and sent back for fresh submission by the respondent No. 1 by their letter dated 5th November, 1998. Thus, in effect there were no steps taken for the purpose of acquisition of the said property within a period of six months from the date of receipt of the purchase notice. However, it is further contended by the petitioners that on 29th May, 2001 a resolution was passed by the Buldhana Municipal Council inter alia seeking to take steps to take possession of the said plot of land for children's park and thus the petitioner was required to approach this Hon'ble Court by the present writ petition. The petitioners have filed the present writ petition challenging the said resolution dated 29th May, 2001 and also seeking a declaration that the said reservation for children's part has lapsed u/s 127 of the M.R.T.P. Act, 1966.

4. Learned Counsel for the petitioner has urged before us that the reservation having lapsed, question of taking possession of the said land by the Council cannot and does not arise. The resolution is thus illegal, unlawful and is liable to be quashed and set aside. Learned Counsel for the petitioner has also contended that the period of 10 years prescribed u/s 126 and 127 of the M.R.T.P. Act, 1966 has to be counted from the date of original reservation of the property which according to him is admittedly of 1983 and the period of 10 years expired in 1993. He has therefore further contended that notice u/s 127 of the M.R.T.P. Act is validly issued. He further contends that the Council was required to take effective steps within a period of six months from the date of receipt of such notice and the Council having failed to do so, the said reservation has lapsed. On the other hand, learned Counsel for the respondents has contended that the Council had sent a proposal for acquisition to the Collector on 22nd September, 1998 that is within period of six months prescribed thereunder and therefore a reservation would not lapse u/s 127 of the M.R.T.P. Act, 1966.

The provisions of Sections 126 and 127 of the M.R.T.P. Act, 1966 reads as under :

Section 126

"When after the publication of a Draft Regional Plan, a development or any other plan or town planning scheme any land is required or reserved for any of the

public purposes, specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority or as the case may be, any appropriate authority may, except as otherwise provided in Section 113-A acquired the land.

(a) by agreement by paying an amount agreed to or

(b) in lieu of any such amount by granting the land-owner or the lessee, subject however to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority as the case may be for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894;

and the land (together with the amenity if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Land Acquisition Act, 1894 as the case may be shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority or as the case may be any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified or (if the State Government) (except in cases falling u/s 49 (and except as provided in Section 113-A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette in the manner provided in Section 6 of the Land Acquisition Act, 1894 in respect of the said land the declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section.

(Provided that subject to the provisions of Sub-section (4) no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Scheme as the case may be. (3) On publication of a declaration under the said Section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,-

(i) Where the land is to be acquired for the purposes of a new town, the market

value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) Where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the care as an undeveloped area; and

(iii) In any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area of areas for comprehensive development whichever is earlier or as the case may be, the date of publication of the draft town planning scheme;

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972;

Provided further that for the purpose of Clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under Sub-section (1) of Section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second amendment) Act, 1972 shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to Sub-section (2) and Sub-section (3) if a declaration is not made within the period referred to in Sub-section (2) or having been made the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993 the State Government may take a fresh declaration for acquiring the land under the Land Acquisition Act, 1894 in the manner provided by Sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the marked value at the date of declaration in the Official Gazette made for acquiring the land afresh.

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 the case of adjacent land under the relevant plan."

5. The issue pertaining to the computation of a 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, in which 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 purpose 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."

6. In view of the aforesaid binding decision of the Apex Court, we are of the opinion that in so far as reservation of land for children's park is concerned, that a period of 10 years park is concerned, that a period of 10 years has to be computed from the admitted date of reservation i.e. 29-1-1983 and therefore period of 10 years has expired much prior to issuance of notice u/s 127 of the M.R.T.P. Act, 1966. In so far as computation of further period of 6 months is concerned, we are unable to appreciate the arguments of learned Counsel for the respondents that the said letter dated 22nd September, 1998 complies the requirements of taking steps within the said stipulated period of 6 months. Admittedly, the proposal for acquisition was not received by the Collector before expiry of six months i.e. on 23rd September, 1998. The said proposal was received by the Collector only on 5th November, 1998 which is beyond the prescribed period. Not only that but the said proposal was also not in accordance with the requirements of the provisions and therefore the Collector rejected the same with a direction to file a fresh proposal. These facts are admitted by the

respondents in para 4 of their affidavit in reply in which it has been inter alia stated as under :

"The respondent submits that the notice u/s 127 of the Maharashtra Regional Town Planning Act was received by this respondent and the Town Planner, Buldhana directed the respondent to take steps for taking over the said land. A copy of the letter dated 23-4-1998 issued by the Town Planner, Buldhana is annexed herewith as Annexure R to this reply. The respondent submits that accordingly the proposal for acquisition of this land was forwarded to the Collector, Buldhana by letter dated 22-9-1998. The Collector returned the proposal by his letter dated 5-11-1998 for fresh submission since in his opinion there was certain corrections required to be made in the proposal. The respondent therefore submits that this respondent therefore submits that this respondent had taken steps for acquisition of the land within a period of six months from the date of receipt of the notice u/s 127 of the Maharashtra Regional and Town Planning Act, 1966. Hence, the provisions of Section 127 for lapsing of the reservation will not apply."

7. In the light of aforesaid, it is clear that the 1st respondent having failed to take any steps within six months as contemplated u/s 127 of the M.R.T.P. Act, 1966 the respondent is not in law entitled to continue the reservation on the said land for the public purpose of children's park.

8. In the aforesaid circumstances, we are of the opinion that the reservation in respect of the said land stood lapsed by virtue of the provisions of Section 127 of the M.R.T.P. Act, 1966 and consequently the issuance of resolution dated 29th May, 2001 is also illegal and without authority of law and therefore the same is liable to be quashed and set aside.

9. In the aforesaid circumstances, we make the petition absolute in terms of Prayer Clause (a) and the amended prayers (aa) and (aaa). However, there shall be no order as to costs.