

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1524 OF 2013

PETITIONER :- Balkrishna Jagannath Lad
Occupation : Business,
r/o 2429, Mahadwar,
A/P Ta. Pandharpur,
Distt. Solapur.

...VERSUS...

RESPONDENTS :- (1) Indian Postal Department,
Through Chief Post Master General,
Maharashtra Circle, Mumbai.

(2) Superintendent of Post Office,
Pandharpur Division,
Opp. S.T. Stand, Pandharpur.
Distt. Solapur.

(3) Chief Officer,
Pandharpur Municipal Council,
Pandharpur, Distt. Solapur.

(4) Sub Divisional Office, Pandharpur and
Special Land Acquisition Officer,
Pandharpur, Distt. Solapur.

(5) The District Collector,
Solapur.

(6) State of Maharashtra.

(7) B.S.N.L.
Chief General Manager,
6th Floor, B Wing, Administrative Building,
B.S.N.L. Complex, Juhu Road,
Santacruz (West), Mumbai.

Mr. A.P. Kulkarni a/w Mr. Manoj Badgujar Advocate for the Petitioner.
Mr. Kapadnis a/w Mr. P.S. Gujar Advocate for respondents 1 & 2.
Mr. U.R. Mankapure Adv. i/b Mr. S.S. Aradhye Advocate for Respondent no. 3.
Mr. N.D. Sharma Advocate for Respondent no. 7.
Mr. P.P. Kakade, A.G.P., for Respondent/State.
Ms. Naseem Patriwala i/b M/s Pravin Mehta & Methi & Co. for Respd. no. 2.

CORAM : Naresh H. Patil and S.B. Shukre, JJ.

**Judgment Reserved on : 06.08.2015.
Judgment Pronounced on : 21.08.2015**

JUDGMENT (Per S.B. Shukre, J.) :

Heard. Rule. Rule made returnable forthwith. Heard finally.

2. By this writ petition, the petitioner is seeking a direction to the respondents-authorities to treat his land as being free from the reservation following lapsing of the reservation under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as MRTP Act for short).

3. The petitioner is the owner of land bearing survey No. 103/1-2/1D/1A situated at Pandharpur, within the limits of Municipal

Council Pandharpur. This property has been reserved with effect from 3.3.1979 under reserved site No. 84 for the purpose of postal department staff quarters. The respondent no. 3 initiated the process of acquisition of the said land on 18.6.1991 and even a notification under Section 6 of the Land Acquisition Act, 1894 came to be issued. However, these proceedings could not be completed within two years and, therefore, the acquisition process resulted in its lapsing by operation of Section 11-A of the Land Acquisition Act, 1894.

4. As the respondents did not acquire the land almost for 23 years, the petitioner through his advocate issued a notice on 10.12.2002 as per the provisions of Section 127 of M.R.T.P. Act calling upon the respondents to acquire the land within six months from the receipt of the notice. The notice was duly received by the respondents-authorities. But, neither the land was acquired nor any steps for its acquisition were initiated. Therefore, it is the contention of the petitioner that by operation of law, the reservation on the subject land has come to an end and has been lapsed resulting into the land becoming a free hold property.

5. After the issuance of notice under Section 127 of M.R.T.P. Act, the subject land, under revised development plan, was reserved vide reservation no. 91 for the purpose of staff quarters of Bharat Sanchar Nigam Ltd. Notification in this regard was issued on 11.7.2002. According to the petitioner, placing of

the subject land under reservation in revised development plan, which came into effect subsequent to lapse of period of six months from the date of receipt of notice under Section 127 by the respondents-authorities would not affect the substantial right accrued in his favour as a consequence of no steps having been taken by the respondent-authorities for acquisition of the subject land within a period of six months from the date of receipt of the notice.

6. The respondent no. 3, Municipal Council, Pandharpur, and respondent no. 7, B.S.N.L., in their affidavits in reply have not disputed the ownership of the petitioner in respect of the subject land. Respondent no. 3 has also not disputed the receipt of the notice issued by the petitioner under Section 127 of the M.R.T.P. Act. However, they have disputed accrual of right to the petitioner under Section 127 of M.R.T.P. Act as, according to them, the land has been once again reserved for the purpose of B.S.N.L. staff quarters under the new revised plan.

7. We have heard learned counsel for the petitioner, learned counsel for the respective respondents and the learned A.G.P.

8. According to learned counsel for petitioner, once the right has arisen in favour of the petitioner for seeking a declaration of deemed lapsing of reservation over his land by operation of

Section 127 of M.R.T.P. Act, such right cannot be taken away even if the land is again reserved either for the same purpose or any other purpose under a revised development plan. For this submission, he places his reliance upon the case of **Suresh Laxminarayan Jaiswal v. State of Maharashtra & ors.** reported in **2007(6) Bom.C.R. 229** decided by the Division Bench of this Court.

9. According to learned counsel for respondent no. 3, Municipal Council, and learned AGP since the subject land has been reserved for another purpose under the revised development plan the benefit of Section 127 of M.R.T.P. Act cannot be given to the petitioner.

10. We would have accepted the argument of learned counsel for respondent no. 3 and learned AGP, had it been a case that no right in terms of Section 127 of M.R.T.P. Act had arisen in favour of the petitioner in the present case. The facts not in dispute are that: the petitioner is the owner of the subject land, that the notice dated 10.12.2002 issued by the petitioner in terms of Section 127 of M.R.T.P. Act was duly received by the respondent-authorities, and that within six months from the date of service of the said notice the subject land was neither acquired nor any steps for its acquisition were commenced. In the case of Suresh Laxminarayan Jaiswal, *supra*, to which one of us was a party,

following the law laid down by the Hon'ble Apex Court in the case of **Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & ors.** reported in **(2003) 2 SCC 111**, it has been held that once the reservation gets lapsed in terms of Section 127 of M.R.T.P. Act, just because a revised development plan or final revised development plan is made, the lapsed reservation would not get automatically revived. The relevant observations appearing in paragraphs 14 and 15 of the judgment rendered in the said case are reproduced as below:

“14. 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 (P) Ltd. & ors. - (2003) 2 SCC 111. 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 under section 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.

In the case of Kishor Gopalrao Bapat vs. State of Maharashtra, 2005(5) Bom.C.R. (N.B.) 682 : 2005(4) Mh.L.J. 466 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 under section 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 (Baburao Dhondiba Saloke vs. Kolhapur Municipal Corporation, Kolhapur), 2003(5) Bom.C.R. 232 (cited supra) and this Court after taking into consideration the law laid down by the Apex Court in Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & ors. - (2003) 2 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 under section 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 under section 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.

15. We, therefore, find that the notice under Section 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.”

Thus, in view of the admitted facts, it is clear that no steps for acquisition of the subject land having been taken by the respondent-authorities within six months from the date of service of notice issued under Section 127 of MRTP Act, an indefeasible right

to seek a declaration that the subject land is free from reservation under the provisions of MRTP Act has accrued in favour of the petitioner and that this right could not be taken away by the subsequent development of revised development plan providing for reservation over the subject land coming into force. The petition, therefore, deserves to be allowed.

11. Writ petition is, therefore, allowed in terms of prayer clause (a). No costs. Rule is made absolute accordingly.

(S.B.Shukre, J.)

(Naresh H. Patil, J.)

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