

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.3360 OF 2014

Balraj Digambar Jadhav ...Petitioner
vs.
The State of Maharashtra
and others ...Respondents

Mr.G.S.Godbole i/b Mr.Drupad Patil for the
Petitioner
Ms M.P.Thakur, AGP for the respondent Nos.1 and 2
Mr.A.M.Adagule for respondent No.3

CORAM : A.S.OKA, &
V.L.ACHLIYA, JJ.
DATE : OCTOBER 16, 2015

P.C.:

1 The submissions of the learned counsel for the petitioner were heard yesterday. We have also heard the learned counsel for the respondent No.3.

2 This petition concerns the land bearing CTS No.886, Hissa No.1B admeasuring 8802 sq meters situated at A Ward within the limits of the Kolhapur Municipal Corporation. Out of the said land, an area of 6627 sq meters was reserved for the purpose of garden in the Development Plan for the city of Kolhapur which was sanctioned on 18th December 1999 under the provisions of the Maharashtra Regional and Town Planning Act,1966 (for short 'the MRTTP Act'). An area of 1770 was reserved for Development Plan road. In this petition, we are concerned with the area of 6627 sq meters which was reserved for garden

as well as the area of 1170 sq meters which was reserved for Development Plan Road. The petitioner is the purchaser of the said land under the sale deed dated 3rd September 2011.

3 The petitioner has relied upon a notice dated 14th September 2010 issued by his predecessors-in-title under section 127 (1) of the MRTP Act. On 21st September 2010, the Assistant Director of Town Planning, Kolhapur issued a letter dated 21st September 2010 and called upon the predecessors-in-title of the petitioner to submit certain documents. On 28th December 2010 the predecessors-in-title of the petitioner submitted the documents.

4 The case made out by the petitioner is that under a misconception that the reservation was in force, he submitted a proposal to the Municipal Corporation showing his willingness to transfer the reserved land in lieu of grant of Transferable Development Rights in respect of the reserved land. It is pointed out in the petition that by a letter dated 29th January 2014, the petitioner has withdrawn the said proposal for grant of Transferable Development Rights (for short 'TDR'). Prayer made in this petition is that due to failure on the part of the Planning Authority i.e the Kolhapur Municipal Corporation (respondent No.3) to take steps for acquisition of the reserved land within the stipulated time, the reservation has lapsed in view of sub-section (1) of section 127 of the MRTP Act. It is pointed out that even assuming that the date

of notice under sub-section (1) of section 127 is taken as 28th December 2010, within a period of 12 months from the said date admittedly, no steps have been taken.

5 There is a reply filed by Shri Dhananjay Khot on behalf of the Planning Authority. It is pointed out in the reply that the proposal submitted by the petitioner on 13th October 2011 for grant of TDR in lieu of the surrender of the said reserved land was processed. Reliance is placed on the letter of intent issued by the Planning Authority on 15th April 2014 for grant of TDR based on the 1st Stage Scrutiny Report dated 9th December 2013.

6 The submission of the learned counsel for the petitioner is that the reservation lapses under section 127 (1) of the MRTP Act by operation of law once there is a failure on the part of the State Government to issue a declaration either under sub-section (2) or sub-section (4) of section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894. He submitted that the application for grant of TDR was made by the petitioner on 13th October 2011 after the expiry of a period of twelve months as contemplated by sub-section 1 of section 127. He pointed out that it is true that one of the modes of acquiring a land reserved in the Development Plan is in accordance with clause (b) of sub-section (1) of section 127 of the MRTP Act by granting to the land owner Floor Space Index or TDR against the area of the land reserved which is

surrendered free of cost. He submitted that the acquisition by the said mode is complete only when such TDR or Floor Space Index (for short 'FSI') is actually granted against the surrender of a reserved land. He pointed out that no such FSI or TDR was granted. He submitted that the estoppel or waiver cannot be invoked by the Municipal Corporation. He relied upon the decision of the Apex Court in the case of M/s.Motilal Padampat Sugar Mills Co. (P) Ltd. vs. State of Uttar Pradesh and others¹. Lastly, he relied upon the decision of the Apex Court in the case of Provash Chandra Dalui and another vs. Biswanath Banerjee and another². He submitted that the waiver can be only with the knowledge. He submitted that a plea of relinquishment of right accrued under sub section (1) of section 127 or plea of waiver of such right is not available to the Planning Authority in view of the well settled law. He invited our attention to the documents annexed to the additional affidavit and in particular the documents on page Nos.80 to 82. He submitted that the said communications issued by the Commissioner of the Kolhapur Municipal Corporation show that as the compliance was not made with the requisitions stated therein, the proposal for grant of TDR submitted by the petitioner was treated as filed. He submitted that the petitioner was not aware about the service of notice under section 127 (1) of the MRTP Act, and therefore, the application for grant of TDR was made by not recording that it was without prejudice to the

1 1979 2 SCC 409

2 1989 Suppl. 1 SCC 487

rights and contentions of the petitioner. He urged that the legal effect of sub-section (1) of section 127 must follow in the present case and the said land stands released from reservation on expiry of statutory period of 12 months. Moreover, he pointed out that the Letter of Intent dated 15th April 2014 was issued during the pendency of the petition, and therefore, it is of no legal effect. Moreover on 29th January 2004, the petitioner had withdrawn his application for grant of TDR, and hence, the Letter of Intent could not have been issued.

7 We have given careful consideration to the submissions. The predecessors-in-title of the petitioner had issued a notice dated 12th September 2009 under sub-section (1) of section 127 of the MRTP Act. The documents showing their title in respect of the reserved land were submitted by them on 28th December 2010. It is true that if the declaration contemplated by either sub-section (2) or sub-section (4) of section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 was not made within 12 months from the date of service of a notice under section 127, the reservation lapses automatically. In the present case, the documents showing title were not submitted along with the notice dated 14th September 2010. The same were submitted on 28th December 2010. A notice under sub-section (1) of section 127 is valid provided the documents showing title of the person issuing the notice are submitted along with the notice. Therefore, in the present case, the date of

notice will have to be taken as 28th December 2010.

8 It is not in dispute that the petitioner applied for grant of TDR in respect of the reserved land on 13th October 2011. A copy of the application along with annexures have been annexed to the additional affidavit. Page 87 of the additional affidavit is the application for issuing Development Right Certificate. The Application reads thus:

"I intend to surrender the under mentioned land bearing Plot Nos. 886/1B of A ward situated at Tapovan Road in the sector reserved for the public purpose of Garden and 12 m/ 15m road as per the provision of Development Plan in accordance with the provisions of D.C.Regulations, for grant of Development Right Certificate under D.C.Regulations 1996 for the city of Kolhapur.

I/We forward herewith the following:

- 1 Site Plan (As per D.P.)
- 2 Detailed Survey plan
- 3 Copy of the approved layout/sub-division, if land forms part of layout etc."

9 Thus, on 13th October 2011, the petitioner offered to surrender the reserved land in lieu of grant of DRC.

10 It will be necessary to make a reference to sub-section (1) of section 126 of the MRTTP Act which reads thus:

126. Acquisition of land required for public purposes specified in plans

(1) 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 113A] [acquire 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 in 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 sections 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]"

11 For acquiring the land reserved in a Development Plan, three modes of acquisition are available. The second mode is by granting FSI or TDR against the area of land surrendered in lieu of compensation amount. In terms of clause (b) of sub-section (1) of section 126, the petitioner offered to surrender the reserved land.

12 It will be interesting to note the recitals in the sale deed dated 3rd September 2011 under which

the petitioner acquired the reserved land. The sale deed was executed 11 months after the predecessors-in-title of the petitioner issued the notice under section 127 (1). The sale deed was executed before the expiry of 12 months from the date of the notice dated 14th September 2010. Price of Rs.1,71,00,000/- was fixed. An installment of Rs.44,00,000/- was payable on expiry of the period of six months from the date on which TDR was granted. The last instalment of Rs.71,00,000/- was payable on expiry of the period of 18 months from the date on which the TDR was granted. In fact, clause (3) of the sale deed records that the post dated cheques were issued which were to be encashed only after the grant of TDR. Clause (5) of the sale deed refers to the fact that the original owners have no objection if the reserved land is surrendered in lieu of grant of TDR.

13 Thus, when the petitioner purchased the entire land admeasuring 8802 sq meters including the reserved land, it was decided to surrender the reserved land in lieu of grant of TDR. Another interesting aspect is that the application for grant of TDR was made by the petitioner on 13th October 2011 immediately after the execution of the sale deed.

14 Thus, the petitioner who is the successor of the original owners who had issued notice under subsection (1) of section 127 made an application for surrender of the land in lieu of grant of TDR in

accordance with clause (b) of sub-section (1) section 126. In view of the said application, it was not at all necessary for the Municipal Corporation to initiate acquisition proceedings on the basis of the notice under section 127 (1) of the MRTP Act.

15 Another submission which was canvassed is based on the documents at page 80, 81 and 82. These are the communications issued on 29th October 2011, 15th November 2011 and 24th February 2012. The said communications issued by the Commissioner of the Kolhapur Municipal Corporation to the petitioner record procedural deficiencies in the proposal for grant of TDR by pointing out that certain documents were not produced. The said communications are in the printed formats which record that if compliance was not made within 7 days, the application will be treated as disposed of. What is most material is the application dated 4th July 2012 made by the petitioner to the Commissioner of the Kolhapur Municipal Corporation in which he has reiterated his request for grant of TDR. Therefore, even the petitioner proceeded on the footing that the application for grant of TDR was pending even as on 4th July 2012. Moreover, the petitioner himself made an application on 29th January 2014 for withdrawal of the earlier application of 13th October 2011 for grant of TDR. Thus, even going by the conduct of the petitioner, the application dated 13th October 2011 made by him was pending till 29th January 2014.

16 Thus, the scenario which emerges is that the petitioner purchased the land knowing fully well that it was under a reservation. The sale deed was executed after service of notice under section 127 of the MRTP Act issued by the vendors of the petitioner. The Sale Deed itself discloses that the petitioner was to apply for grant of TDR in respect of the reserved land, and therefore, he was to pay the consideration amount in the two instalments after the grant of TDR certificates.

17 By making the application on 13th October 2011, the petitioner represented to the Kolhapur Municipal Corporation that the reserved land need not be acquired and in fact, he wants to surrender it in terms of clause (b) of sub-section 1 of section 126 in lieu of grant of TDR. In fact the documents produced by the municipal Corporation and the documents produced along with the additional affidavit of the petitioner show that the request for grant of TDR was processed which was in principle approved on 9th December 2013 as indicated by letter dated 15th April 2014.

18 As held earlier, the date of notice under section 127 (1) will have to be treated as 28th December 2010. Before the expiry of statutory period of 12 months from the date of notice under section 127(1) issued by his vendors, the petitioner who became the owner applied to the Municipal Corporation for taking recourse to clause (b) of sub-section (1) of section 126 of the MRTP Act. The

letter dated 4th July 2012 submitted by the petitioner shows that till that date, he was pursuing his demand for grant of TDR against the surrender of the reserved land. Therefore, even after the expiry of 12 months from the date of the notice under section 127 (1), the petitioner represented before the Municipal Corporation that he was willing to surrender the reserved land against the TDR. That is how the proposal for TDR was processed.

19 Now the petitioner wants to take undue advantage of the fact that no steps were taken by the Municipal Corporation for the compulsory acquisition within stipulated period. Perhaps, it was due to the application made by the petitioner for grant of TDR against the surrender of the reserved land that the Kolhapur Municipal Corporation did not make an application for the compulsory acquisition of the said reserved land. But for the request made by the petitioner, the Corporation could have ensured that the acquisition proceedings are initiated within the stipulated period of 12 months from the date of service of notice under section 127(1).

20 The petitioner has invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The exercise of the said jurisdiction is always discretionary. If the jurisdiction of this Court is allowed to be invoked by the petitioner, that will amount to allowing the

petitioner to take undue advantage of his own representation made to the Kolhapur Municipal Corporation of accepting surrender of the reserved land against grant of TDR.

21 In the circumstances, the petitioner is disentitled to claim any relief in writ jurisdiction under Article 226 of Constitution of India. Accordingly, we reject the petition.

(V.L.ACHLIYA,J.)

(A.S.OKA,J.)