

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDCITION

WRIT PETITION NO.2314 OF 2013

Shri. Bhagchand M.Lodha. ..Petitioner.

vs.

State of Maharashtra and ors. ..Respondent.

Mr. P.N.Joshi for the Petitioner.

Mr.Shriniwas Patwardhan for Respondent No.2.

Smt. M.P. Thakur, AGP. for Respondent Nos. 1 and 3.

CORAM : A.S.OKA AND
A.P. BHANGALE, JJ.

DATE : 30TH MARCH, 2015

PC:

Heard learned counsel appearing for the petitioner,
Learned A.G.P. For the 1st and 3rd respondents and the learned
counsel appearing for the 2nd respondent.

2) The dispute relates to the plot of land bearing Survey
No.32/4 admeasuring 3500 sq. meters (for short “the said land”) at
Malegaon Camp within the limits of Malegaon Municipal
Corporation (2nd respondent).

3) The said land was reserved for a vegetable market in the sanctioned development plan of Malegaon which is sanctioned in accordance with Section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The development plan was sanctioned on 15 September 2006 which came into force on 1 November 2006. A notice under sub Section (1) of Section 49 of the MRTP Act was served by the petitioner on 18 August 2008.

4) The said notice was confirmed by the State Government in accordance with Sub Section (4) of Section 49 of the MRTP Act and a communication to that effect was issued by a letter dated 20 January 2009. By the said communication, the State Government directed the 2nd respondent to acquire the said land. The contention of the learned counsel appearing for the petitioner is that steps for acquisition of the said land were not taken by the 2nd respondent -Municipal Corporation within the time stipulated by sub section 7 of section 49 of the MRTP Act. He pointed out that the affidavit of Shri Sayed Shakil Ahmed Mohd. Yusuf filed on behalf of the second respondent- Municipal Corporation shows that the proposal for acquisition submitted by the said respondent was found to be deficient. He submitted that

in accordance with Sub Section 7 of Section 49 of the MRTP Act, within a period of one year from the date of confirmation of the notice under sub Section (1) of Section 49, effective steps for acquisition have not been taken. He urged that the notice was confirmed on 20 January 2009 but as of today, no effective steps are taken by making any declaration as contemplated by Sub Sections 2 or 4 of Section 126 of the MRTP Act. He submitted that the defective proposal for acquisition submitted by the 2nd respondent has lapsed. He submitted that merely by making an application to the State Government for acquisition of the said land, the 2nd respondent has not made compliance with of the provisions of Sub Section 7 of Section 49 of the MRTP Act. He has invited the attention of the Court to Section 127 of the MRTP Act (unamended). He pointed out the interpretation put by the Apex Court to Section 127 of the MRTP Act. He urged that as laid down by the Apex Court, the only effective way of taking steps for acquisition is by issuing 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, therefore, urged that as compliance has not been made by the 2nd respondent within a stipulated period as provided in sub Section (7) of Section 49, the reservation on the said land has lapsed. He relied

upon the Judgment and order of the Apex Court in Civil Appeal **No.1387 of 2008 dated 3 December 2014 of the Apex Court in Hasmukhrai V. Mehta vs. State of Maharashtra and others.** Lastly, he urged that if this Court is not inclined to accept the contention of the petitioner as regards the lapse of reservation, a direction may be issued to the State Government to complete the acquisition proceedings expeditiously. He urged that it may be directed that on the failure to complete the acquisition proceedings within time stipulated, the reservation shall stand lapsed.

5) Learned counsel appearing for 2nd respondent relied upon the statements made in the affidavit in reply and contended that the acquisition has not lapsed. Learned A.G.P invited attention of the Court to the affidavit of the Assistant Director of Town Planning, Nashik.

6) We have given careful consideration to the submissions. Sub Section 7 of Section 49 of the MRTP Act reads thus:

“(7) If within one year from the date of confirmation of the notice, the Appropriate

Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon , the land shall be deemed to be released from the reservation, designation, or as the case may be allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan”.

7) The Sub Section 7 provides that from the date of confirmation of the notice under sub Section 1 of Section 49, if Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed, the reservation on the land shall be be deemed to have lapsed. Sub Section-7 contemplates that the application to be made shall be under Section-126 of the MRTP Act. Consequences provided under Sub Section-7 of Section 49 of the MRTP Act will come into operation when the Appropriate Authority fails to make an application as contemplated by Clause (c)of Sub Section (1) of Section 126.

8) We have perused section 127 of the MRTP Act. Prior to its amendment by Maharashtra Act X of 2011 and even subsequent to the amendment, both the section 127 and 49 operate in completely different fields. A notice under Section 127 can be issued only after the expiry of period of 10 years from the date on which a Development Plan is brought into force. There is no such embargo provided in sub Section (1) of Section 49. Moreover, the notice under sub Section (1) of Section 49 is required to be confirmed by the State Government whereas in case of a notice under Section-127 of the MRTP, the effect of its non compliance is automatic. On plain reading of sub Section-(7) of Section 49, in order to save a land reserved in a development plan which is the subject matter of a notice under sub Section (1) of Section 49 which has been confirmed under sub Section (4) thereof, all that is required to be done by the Appropriate Authority is to make an application to the State Government to acquire the land subject matter of the notice within a period of one year from the date of confirmation of the notice under sub section 1 of section 49. In this case, such application was admittedly made by the second respondent .

9) The contention of the petitioner is that though an

application for acquisition under Section 126 was made in accordance with sub Section 7 of Section 49 of the MRTP Act, the acquisition based on the said application has lapsed.

10) It is necessary to make a reference to the affidavit of Shri. M.Y. Bhargave, the Assistant Director of Town Planning Nashik. It appears from the said affidavit that on the basis of the application made by the 2nd respondent on 02 May 2009 to the State Government, the District Collector had made certain queries by a letter dated 11 May 2009. The said queries were answered by the 2nd respondent by a letter dated 18 June 2009. The letter dated 18 June 2009 specifically refers to the proposal submitted by the second respondent for the acquisition of the said land. The said letter of the 2nd respondent addressed to the District Collector refers to the letter dated 11 May 2009 by which queries were made by the Collector. The said queries were answered by the 2nd respondent by the said letter dated 18 June 2009. To the affidavit filed by the 2nd respondent, a copy of the order dated 3 September passed 2012 by the Collector in exercise of powers under Section 52A of the Land Acquisition Act, 1894 has been annexed. It shows that the Collector has delegated his own powers to acquire the said land to the Dy. Collector (Acquisition).

In the affidavit-of Shri. M.Y.Bhargave, it is stated that 2nd Respondent submitted an application for the acquisition of the said land of the petitioner on 2 May 2009. Thus, on conjoint reading of the affidavit of the Assistant Director of Town Planning and the affidavit of the 2nd respondent, it is crystal clear that within a period of one year provided in sub Section 7 of Section 49 of the MRTP Act, an application for acquisition as contemplated by the said sub Section has been made. There is no requirement of sub-Section(7) of Section 49 that a declaration of acquisition should be issued within the stipulated period of one year. Hence, the reservation has not lapsed. Therefore, the petitioner will not entitled to the benefit of section 7 of Section 49 and the reservation will not lapsed.

11) At this stage, we may consider the decision of the Apex Court in the case of Hasmukhrai V. Mehta vs, State of Maharashtra and others (supra). Paragraph 17 of the said decision reads thus:

“Accordingly we allow the appeal and set aside the impugned order passed by the High Court. Since no steps appear to have been taken till date for last more than twenty years either for acquisition or for purchase of the land

under MRTP Act, 1966 by the authorities concerned, as such, the land in question stands released from reservation under Section 127 of the MRTP Act".

(underlined added)

12) We have carefully perused the judgment of the Apex Court. The said judgment does not support the interpretation sought to be put by the petitioner to Sub Section 7 of Section 49 of the Act. On the contrary it shows that since no steps were taken for more than twenty years either for acquisition or for purchase of the land in question, the Apex Court held that the land stands released from reservation under Section 127 of the MRTP Act. The said decision does not deal with the interpretation of Sub Section (7) of Section 49 of the MRTP Act. Therefore, the said decision will not support the petitioner.

As an application for acquisition has been made and the Collector has passed an order delegating his powers, we propose to direct the State Government to complete the acquisition within a reasonable time. We make it clear that, if the State Government fails to complete the acquisition within the time granted by this Court, there will not be any lapsing of reservation. In the present case, neither Section 49 nor Section 127 of the

MRTTP Act is attracted as of today. Hence, we pass the following order.

- a) The prayer for declaration of lapsing of reservation is rejected.
- b) We direct the State Government to complete the acquisition process of the said land on the basis of the proposal submitted by the 2nd Respondent as expeditiously as possible and in any event within a period of 18 months from today;
- c) Subject to above directions petition is rejected,.
- d) All concerned to act on a copy of this order duly authenticated by the registry of this Court.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)