

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4954 OF 2014

Shabbir Ahmed Haji Raj Mohd

and Others.

.. Petitioners

Vs

The State of Maharashtra and Others.

.. Respondents

—

Shri Sandesh Dadasaheb Patil and Ms Monica Kshirsagar for the
Petitioners.

Shri V.S.Gokhale, AGP for the Respondent Nos.1 and 2.

Shri Shriniwas S. Patwardhan for the Respondent No.3.

—

CORAM : A.S. OKA & A.K.MENON, JJ

DATED : 25TH FEBRUARY 2015

PC.

. Heard learned counsel appearing for the Petitioners, the
learned AGP for the First and Second Respondents and the learned
counsel appearing for the Third Respondent.

2. The development plan for the City of Malegaon was
sanctioned on 15th September 2006 in accordance with Sub-section (1)
of Section 31 of the Maharashtra Regional and Town Planning Act,
1966 (for short “the MRTP Act”). A notice purporting to be a notice
under Section 127 of the MRTP Act was served by the Petitioners to the
Third Respondent on 8th June 2009. On the basis of the said notice, a
Writ Petition No.10902 of 2009 was filed by the Petitioners in this

Court. They sought a declaration in the said Writ Petition that the reservation of the land belonging to the Petitioners which is more particularly described in Paragraph 3 of the Petition had lapsed on the basis of the said notice under Section 127 of the MRTP Act. As the period of 10 years had been expired from the date on which the Development Plan came into force, this Court by a judgment and order dated 9th June 2010 disposed of the said Petition on the ground that it was premature.

3. In the present Petition, a reliance is placed on the Resolution dated 20th September 2012 passed by the General Body of the Third Respondent Malegaon Municipal Corporation being Resolution No.22 by which it was resolved that the Third Respondent was not desirous of acquiring the said land claimed by the Petitioners. In the present Petition, the first substantive relief which is sought is of implementation of the Resolution No.22 dated 20th September 2012. The second substantive relief is for a declaration that the reservation on the said land has lapsed. As far as the notice under Section 127 of the MRTP Act which was served on 8th June 2009 is concerned, no relief can be sought in this Petition as admittedly the notice was issued before the expiry of the period of 10 years from the date on which the sanctioned Development Plan came into force. Perhaps, the relief is sought in this Petition on the basis of the said Resolution dated 20th

September 2012 which provides that the reservation has lapsed on the basis of the notice served on 8th June 2009.

4. There is an affidavit filed by Shri Sayyed Shakil Ahmed Mohammed Yusuf, the Town Planner of the Third Respondent. To the said affidavit, a letter dated 12th August 2014 addressed by the Commissioner of the Third Respondent Municipal Corporation to the Principal Secretary of the Urban Development Department of the State has been annexed by which a prayer has been made to set aside the Resolution dated 20th September 2012 by exercising the powers of the State Government under Section 451 of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). It is stated that as of today, the said Application is still pending.

5. We have perused the Resolution dated 20th September 2012. The first part of the Resolution is that the reservation has lapsed on the basis of the notice dated 8th June 2009. This Court has already held that the said notice was premature. Therefore, this part of the resolution is obviously contrary to the law. As far as second part of the Resolution is concerned, the State Government has not yet decided the Application under Section 451 of the said Act of 1949 made by the Municipal Administration. In any event, even assuming that the Resolution of the Municipal Corporation of cancelling the proposal for

acquisition is upheld by the State, the same will not result into lapsing of reservation. If the said Resolution is upheld, at highest, the proposal for acquisition cannot be acted upon. Therefore, as of today, both the reliefs which are prayed for in this Petition cannot be granted. It is obvious that if an occasion arises, the Petitioners can always serve a fresh notice under Section 127 of the MRTP Act and seek appropriate relief on the basis of such notice.

6. The State Government shall decide the Application dated 12th August 2014 as expeditiously as possible.

7. Subject to what is observed above, no interference is called for. The Petition is rejected.

8. The learned counsel appearing for the Petitioners, at this stage, submits that the Petitioners may be permitted to intervene in the pending Application under Section 451 of the said Act of 1949. It is for the Petitioners to make an appropriate Application. The State Government shall pass an appropriate order on such Application in accordance with law.

(A.K.MENON, J)

(A.S. OKA, J)