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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4811 OF 2012**

Saroj Babubhai Kapadiya and Ors.	... Petitioners
Versus	
Nashik Municipal Corporation and Ors.	... Respondents

Mr. R.D. Soni i/by M/s. Ram and Co., for the Petitioners.
Mr. M.L. Patil, for the Respondent Nos.1 and 2.
Mr. V.S. Gokhale, AGP, for Respondent Nos.3 to 5.

**CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.**

DATE : 8th OCTOBER, 2015

PC.

. The learned counsel appearing for the Petitioners stated that the first Petitioner has expired on 25th November, 2014 and therefore, other three Petitioners being co-owners are prosecuting the Petition. Hence, the name of the first Petitioner be deleted.

2. On 8th October, 2012, a notice for final disposal was issued. Accordingly, the Petition is forthwith taken up for final disposal. The Petitioners are claiming to be the owners of land more particularly described in paragraph 1 of the Petition. The Development Plan for the City of Nashik was sanctioned by the State Government under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short

“MRTP Act”) on 28th June, 1993 which was brought into force on 16th November, 1993. The land claimed by the Petitioners which is described in paragraph 1 (for short “the said land”) was shown reserved in the sanctioned Development Plan for 'Stadium' under Reservation No.294. As no steps were taken for acquisition of the said land, on 26th July, 2006 a notice under Section 127 of the MRTP Act was served by the Advocate for the Petitioners on the first Respondent which is the Planning Authority. In this Petition, the contention raised is that as no steps for acquisition were taken within the time stipulated under Section 127 of the MRTP Act, the reservation shall be deemed to have been lapsed. Accordingly, necessary declaration has been sought.

3. There is an affidavit filed by Shri Bhaskar Uddhavrao More, Estate Manager of the first Respondent – Municipal Corporation. It is stated that on 18th January, 2007, a proposal for acquisition of the said land was submitted by the Municipal Corporation and on 3rd April, 2014, the first Respondent has deposited a sum of Rs.4 Crores towards the compensation.

4. The submission of the learned counsel appearing for the Petitioners is that there is no dispute about the service and the legality of the notice under Section 127. He pointed out the Resolution passed by the Standing Committee of the Municipal Corporation on 27th July,

2006 which shows that on the basis of the said notice dated 26th July, 2006, it was resolved to acquire the said land. He pointed out that the resolution was passed for moving the Collector for acquisition in respect of a part of the area covered by reservation. He urged that no steps were taken within the time stipulated under Section 127 and therefore, reservation has lapsed.

5. The learned counsel appearing for the first Respondent – Municipal Corporation invited our attention to the letter dated 6th June, 2013 addressed by the third Petitioner to the Municipal Commissioner of the first Respondent. He pointed out that the said letter shows that the Petitioners were willing to accept the compensation on account of the acquisition of the said land. He would, therefore, urge that no relief can be granted in a Petition under Article 226 of the Constitution of India.

6. We have carefully considered the submissions. There is no dispute about the service of notice dated 26th July, 2006 issued under Section 127 of the MRTP Act. From page 28, it appears that the notice was duly served on 11th August, 2006. There is no dispute regarding the service of notice as well as the legality thereof. Even in the affidavit-in-reply filed by the Estate Manager, no such contention has been raised.

7. It is not the case of the Respondents that within the period stipulated in Section 127, a notification 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 was issued. Therefore, the law laid down by the Apex Court in the case of Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher¹ will squarely apply. We must note here that when the notice under Section 127 was served, the law provided the period of six months for issuing a notification as aforesaid.

8. On the failure of the Planning Authority or Appropriate Authority to take steps as contemplated by the decision of the Apex Court within the stipulated time, lapsing of reservation is automatic. In the present case, the reservation stood lapsed on 11th February, 2007 as the notice was served on 11th August, 2006.

9. Taking the contents of the letter dated 6th June, 2013 as correct, at highest, what can be inferred is that one of the Petitioners was ready to accept the compensation provided the said land was acquired. The law is well settled. Even after lapsing of the reservation provided under the Development Plan, it is always open for the Planning Authority or the Appropriate Authority to initiate acquisition proceedings under the provisions of the law relating to the compulsory

1. 2013(5) SCC 627

acquisition. Such proceedings can be always initiated by the first Respondent notwithstanding this Judgment.

10. Affidavit of Shri Bhaskar More records that a sum of Rs.4 Crores has been deposited by the Municipal Corporation with the State Government. If the said amount is not already adjusted towards any other acquisition and if the Municipal Corporation does not intend to initiate fresh acquisition proceedings in respect of the said land, the Municipal Corporation can always apply to the State Government for refund of the said amount.

11. Subject to what is observed above, the Petition must succeed and we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a);
- (ii) We direct the State Government to issue a notification under Sub-section (2) of Section 127 within a period of six months from today;
- (iii) There will be no order as to cost.

(VL. ACHLIYA, J)

(A.S. OKA, J)