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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4716 OF 2011

1. Purshottam Dattaray Patankar,
Age 80 years, Occu: Retired.
2. Narayan Dattaray Patankar,
Age 70 years, Occu: Retired.
3. Pandurang Dattaray Patankar,
Age 65 years, Occu: Retired. ..Petitioners.

V/s.

1. The Commissioner, Pune
Municipal Corporation, having
office at Pune Corporation Bldg., Pune
2. Assistant Director of Town Planning Dept.,
Pune Municipal Corporation, having
office at Pune Corporation Bldg. Pune.
3. The Collector, Pune having his
office at Collector, Pune.
4. The Government of Maharashtra through
Secretary to the Government of
Maharashtra in Urban Division Dept.
Mantralaya, Mumbai - 400 032. ..Respondents.

Ms.Sucheta Mirrashi for the petitioners.

Mr.Rajdeep Suresh Khadapkar for respondent Nos.1 and 2.

Mr.V.P.Malvankar, AGP 'A' Panel for respondent Nos.3 and 4.

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

DATED : 7TH SEPTEMBER, 2015

ORAL JUDGMENT (PER A.S.OKA, J.)

1. Rule was issued on 13th July, 2011. As it is pointed out that one of the petitioners is of 80 years old, the petition forthwith is taken up for final hearing.

2. The petitioner claims to be the owner of the land more particularly described in paragraph 3 of the petition. In the sanctioned development plan, the said land of the petitioner is shown as reserved for public purposes. The petitioner issued a notice dated 21st May, 2009 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'). The notice was served on the first respondent, who is the Commissioner of the Planning Authority i.e. the Pune Municipal Corporation. The contention of the petitioner is that as no steps were taken in accordance with Section 126 of the MRTP Act within the stipulated period provided under Section 127, the reservation shall deemed to have been lapsed. There is an affidavit filed by Shri Prashant Mahadhukar Waghmare, the City Engineer on behalf of the Planning Authority. There is no dispute that the land in question is under reservation in the sanctioned development plan and that the notice issued under Section 127 of the MRTP Act was issued after the expiry of 10 years from the date of which the development plan came into force. The objections raised in the affidavit are two-fold,

the first objection is that the documents of title have not been submitted along with the notice under Section 127. The second objection is that the notice has not been signed by the petitioners.

3. We have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the Pune Municipal Corporation. The learned counsel appearing for the Pune Municipal Corporation submits that the notice is invalid on the ground that documents showing title of the petitioners are not annexed. Secondly, he submits that it is not shown that the original notice was signed by the petitioners.

4. As far as the law on the notice under Section 127 is concerned, the same has been crystallized in the decision of the Apex Court in the case of **Shriram Municipal Council, Shrirampur V/s. Satyabhamabai Bhimaji Dawkher and others**¹. The Apex Court held that a publication of a declaration 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 is a sine qua non for the commencement of the acquisition under Section 126 of the MRTP Act. In the present case, it is not even the case of the Planning Authority that any such declaration has been issued within the time specified under Section 127 of the MRTP Act.

¹ 2013 (5) SCC 627

5. The issue is about legality and validity of the notice under Section 127 of the MRTP Act on the grounds agitated by the Planning Authority. We must note here that the requirement of producing documents showing the title along with the notice was brought by the Maharashtra Act 16 of 2009 which came into force on 29th September, 2009. Till that date, there was no such provision. Thus, on the date on which the notice under Section 127 of the MRTP Act was admittedly served, there was no such requirement of law of producing the documents showing title.

6. The other objection is that there is nothing on record to show that the notice under Section 127 of the MRTP Act was signed by the petitioners. A copy annexed to the petition is an office copy of the notice. In paragraph 5 of the affidavit of Mr.Waghmare, it is stated that the notice was received but it was misplaced and could not be traced. An inward entry of the notice was made on 28th May, 2009. It is stated that thereafter, the notice was forwarded to the office of City Engineer on 30th May, 2009. The municipal officers had the benefit of looking at the original notice. The defence raised is that the notice is not signed by the petitioners. No officer who has seen the notice has filed any affidavit to that effect. The original notice is misplaced in the municipal office. Therefore, the petitioners are under no obligation to produce the original notice

and satisfy the Court that the original was duly signed by them.

7. As no declaration as contemplated by law is made within the stipulated time, the law laid down by the Apex Court in the case of *Srirampur Municipal Corporation* will squarely apply to the facts of this case. Therefore, the petition must succeed and we pass the following order:-

- i) The reservation on the land more particularly described in paragraph 2 of the petition under the sanctioned development plan stands lapsed and the said land shall deemed to be released from reservation. It shall become available to the owner thereof for the purpose of development as otherwise permissible in case of adjacent lands under the relevant plan;
- ii) We dispose of the petition in the above terms. There shall be no order as to costs.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

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