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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5528 OF 2012

1. Shri Dharmendra Jayantilal Shah,
Age: 55 years,
2. Shri Bhavesh Jayantilal Shah
3. Shri Jayantilal Hatichand Shah

All adults, Residing at Someshwar
Building, Sanghani Estates,
Ghatkopar (West), Mumbai.

..Petitioners.

V/s.

1. Nashik Municipal Corporation,
A statutory corporation incorporated
under the provisions of the Bombay
Provincial Municipal Corporation Act,
having its office at Rajiv Gandhi
Bhavan, Sharanpur Road, Nashik.
2. The Commissioner,
Nashik Municipal Corporation,
having its office at Rajiv Gandhi
Bhavan, Sharanpur Road, Nashik.
3. The Collector, Nashik
4. The State of Maharashtra

..Respondents.

AND

WRIT PETITION NO.9431 OF 2013

1. Shri Manharlal Hathichand Vora,
Residing at 506, Shreyas Apartment,
Jain Mandir Road, Sarvodaya Nagar,
Mulund (West), Mumbai.

..Petitioner.

V/s.

1. Nashik Municipal Corporation,
A statutory corporation incorporated

under the provisions of the Bombay Provincial Municipal Corporation Act, having its office at Rajiv Gandhi Bhavan, Sharanpur Road, Nashik.

2. The Commissioner,
Nashik Municipal Corporation,
having its office at Rajiv Gandhi
Bhavan, Sharanpur Road, Nashik.
3. The Collector, Nashik
4. The State of Maharashtra ..Respondents.

Mr.R.D.Soni i/b. M/s. Ram & Co. for the Petitioners.

Mr.M.L. Patil for Respondent Nos.1 & 2.

Mrs.M.P.Thakur, AGP for Respondent Nos. 3 & 4.

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

RESERVED ON : 11TH MARCH, 2015

PRONOUNDED ON: 15TH APRIL, 2015

JUDGMENT (PER A.K.MENON, J.)

1. By this common order, we dispose of the above two petitions, both of which involve similar facts.

2. Rule. Rule, made returnable forthwith.

3. Learned counsel for the Respondents waive service.

Both petitions are taken up for final hearing by consent of parties.

We deal with the facts in Writ Petition No.5528 of 2012 first.

4. The Petitioners are the owners of a plot of land bearing Survey No.890/2A/3(P) admeasuring 4800 sq mtrs. situated at Nashik "the said land". Exhibit-A is the 7/12 extract showing all the Petitioners as the owners of the land. Respondent No.1 is the Nashik Municipal Corporation designated as the Planning Authority under the provisions of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "the BPMC Act"). Respondent No.3 is the Collector, Nashik, who is the administrative head of the District Nashik and duly empowered with the powers including the acquisition of lands which are reserved in the development plan for public purposes.

5. The facts reveal that the development plan for Nashik city which was prepared under Section 26 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act") was sanctioned by the State under Section 31 of the MRTP Act on 28th June, 1993. It came into effect on 16th November, 1993. At the material time, the land was reserved for a playground under site reservation No.382 in the development plan. The said land remained under reservation since 1993 and continued to remain as such.

6. It is the Petitioners' case that after acquiring the said land, for more than a period of 10 years from the date on which the land was brought under reservation, no steps were initiated by the Planning Authority for acquiring the said land. The Petitioners' thereafter issued a purchase notice on 10th January, 2009 to the Respondent Corporation under Section 127 of the MRTTP Act, which was received by the Respondent-Corporation on 12th January, 2009. By the said purchase notice, Respondent No.1 was called upon to acquire the said lands within a period specified, failing which the reservation of the land would be deemed to have lapsed. At the material time, Section 127 had not been amended, the period within which the land had to be acquired was six months after receipt of notice.

7. In these circumstances, it is the Petitioners' case that after the receipt of the purchase notice, Respondent No.1 issued a formal reply on 31st March, 2009 calling upon the Petitioners to submit certain documents. According to the Petitioners, the said reply enlisting certain requisitions were already complied with. All the documents were already on record and the copies of the said documents had been submitted along with the purchase notice. According to the Petitioners, After the stipulated period of six months, it appears that a proposal was forwarded by Respondent No.1 to Respondent No.3, who returned the proposal to Respondent No.1 on 8th September, 2009 since several infirmities were noticed.

Several clarifications were required by Respondent No.3. In any event, since no steps were taken as contemplated under Section 127, the reservation is deemed to have lapsed.

8. The Petitioners' case is that Respondent No.1 responded to the letter dated 8th September, 2011 sent by Respondent No.3 only on 4th January, 2011 i.e. after a period of sixteen months. No effective steps were taken by Respondent No.1 for acquiring the land after the receipt of said purchase notice and accordingly, by virtue of section 127 of the MRTP Act, the reservation of the land lapsed and the Petitioners became entitled to develop the land in accordance with the development control regulations as applicable to the adjoining lands.

9. The Petitioners, therefore, approached this Court under Article 226 of the Constitution of India seeking a writ of mandamus directing that the reservation of the land bearing Survey No.890/2A/3(P) admeasuring 4800 sq. mtrs. situated at Nashik is deemed to have lapsed and the Petitioners are entitled to develop the said land in accordance with law and for further relief that the proceedings of acquisition be stayed.

10. The State has not filed any affidavit. An affidavit in reply of Mr.Bhaskar Uddhavrao More, an Estate Manager in Nashik Municipal Corporation has been filed on behalf of Respondent No.1.

According to him, the purchase notice issued under section 127 of the MRTP Act is invalid since the owner had not enclosed all the documents of the land along with the notice. According to Respondent No.1, in order that the land can be identified, the purchase notice must also be accompanied by the certified copy of the measurement map prepared by the Taluka Land Inspector or Record or Survey Officer and documents of title.

11. According to the Corporation, it was not necessary to maintain the revenue record and the Town Planning Authority is only required make an application to the Collector to acquire the land and it is the sole responsibility of the Collector to acquire the land and hand over the same to the Corporation. The only obligation of the Corporation is to pay the cost of acquisition. According to Respondent No.1, the development plan of the Nashik city has been sanctioned by the Urban Development Department on 28th June, 1993 and it came into effect from 16th November, 1993. At that time, the said land was reserved under site No.382 for playground. A request was submitted before the Standing Committee on 30th January, 2009 for approval to submit the proposal for acquisition. The Standing Committee on 5th February, 2009 granted approval to submit the proposal for acquisition and on 31st March, 2009 Respondent No.1 wrote to the Petitioners calling upon them to submit the documents. Thereafter, a proposal was submitted in 18th June, 2009. As a result, the Collector wrote a

letter on 8th September, 2009 to the Commissioner calling upon him to submit a copy of the Resolution of the Standing Committee. It is admitted that the Estate Manager on 4th January, 2011 wrote a letter to the Collector stating that the documents called for in the said letter were already submitted along with the proposal. However, the Collector did not take any steps. On 26th August, 2011, the Estate Manager wrote a letter to the Collector that an order under section 52A of the Land Acquisition Act, 1894 (hereinafter referred to as 'the LA Act') be passed. According to Respondent No.1, no steps were taken by the office of the Collector.

12. On 23rd January, 2012 a letter was received from the Collector by the Commissioner calling upon him to issue a certificate stating that the land was not encroached and that the acquired land would be used for the same public purpose and the same would not be returned to the original owner after receiving compensation. The affidavit further reveals that on 26th July, 2012 the Estate Manager wrote a letter to the Collector providing the required documents. On 6th August, 2012, the Collector issued an order under section 52A of the LA Act appointing SLAO-2 for acquiring the land.

13. On 28th August, 2012, the SLAO-2 wrote a letter to the Taluka Land Inspector of Record requesting measurement of the land. The measurement did not take place till 8th January, 2013. The

Estate Manager once again wrote a letter to the Taluka Inspector of Land Records on 8th January, 2013 to measure the land and it was informed that the land would be measured on 13th March, 2013. According to the deponent, the appropriate authority instead of issuing a declaration under Section 126 of the MRTP Act read with section 6 of the LA Act entered into correspondence for measurement of the land and the Taluka Inspector of Land Records did not measure the land and deliberately delayed the same. According to him, although there was no hindrance in issuing a declaration under section 6 of the LA Act and contrary to the procedure of the said LA Act, the Land Acquisition Officer went ahead for measurement of the land and for submission of the map.

14. According to Respondent No.1, the Petitioners appear to have purchased the land under reservation and thereafter proceeded to serve notice under section 127 of the MRTP Act with obvious motive to somehow get the land dereserved. He alleges a collusion between the Petitioners and the SLAO, Taluka Inspector of Land Records and Additional Town Planning, Nashik District not to take steps in acquisitions and to ensure that the a situation is created so as to enable the land to be freed from reservation. He accordingly laid the blame at the door-step of the aforesaid authorities and the Petitioners.

15. Now coming to the facts of the Writ Petition No.9431 of

2013. The sole petitioner claims to be owner of the land bearing Survey No.264, admeasuring 3620 sq. mtrs. Situated at Nashik. The array of the respondents is identical to Writ Petition 5528 of 2012. The Nashik Municipal Corporation who is respondent no.1, the Commissioner of the Corporation is respondent no.2 and the Collector is respondent No.3.

16. The development plans sanctioned are the same as in Writ Petition No.5528 of 2012. However, the land in question in Writ Petition No.9431 of 2013 was for the first time reserved for an Educational Complex under the designated site reservation bearing No.269. Although the land was under reservation since 1993, no steps were initiated by the Planning Authority for acquiring the land for more than ten years. The petitioner served a purchase notice on 1st December, 2011 which was duly received by respondent no.1 on the same date i.e. 1st December, 2011. The petitioner states that it was incumbent upon respondent no.1 corporation was take steps to acquire the said land within one year of the receipt of purchase notice but they did not. Accordingly, the reservation in respect of plot No.264 is deemed to have been lapsed. Respondent no.1 did not take any steps in the matter, even till the date of filing of the petition, the petitioner has therefore, approached this Court seeking direction in the nature of writ of mandamus to the effect that the plot No.264 is deemed to have lapsed and the petitioner is entitled to develop the

property, as otherwise permissible in respect of adjacent land in the relevant development plan and for similar interim relief. To this effect, the facts in this case are straightforward. The petitioner does not disclose that any action at all was taken by respondent No.1 corporation and there appears to be no steps whatsoever taken by Respondent No.1 Corporation.

17. In Writ Petition No.9431 of 2013 also the State has not filed an affidavit. The affidavit of Mr.Bhaskar Uddhavrao More, an Estate Manager in Nashik Municipal Corporation has been filed on behalf of the Nashik Municipal Corporation wherein contentions which are almost identical to the set of facts in Writ Petition No.5528 of 2012 have been taken. According to the deponent, the purchase notice was received on 3.12.2011 but was not accompanied with documents i.e. measurement maps and other relevant documents. Hence on 30.12.2011 the Estate Officer of the Corporation called upon the Petitioner to submit the documents and also wrote a letter to the Dy. Superintendent of Land Records (DSLRL) requesting to inform the fees required to be paid for measurement and preparation of the map. That the standing committee of the Corporation granted approval to submit proposal for acquisition on 2.1.2012 and the proposal came to be submitted on 18.1.2012. The Collector, Nashik passed an order under section 52A of the LA Act on 16.3.2012 and on 28.3.2012 the SLAO wrote a letter to DSLRL to measure the land and submit the

map. However, the DSLR did nothing for one year and the SLAO again wrote a letter asking the DSLR to measure the lands. Finally on 30.09.2013 the DSLR informed the Estate Manager that joint measurement will be taken on 7.10.2013. It appears that thereafter the map was submitted and on 1.12.2014. The SLAO wrote a letter to the Estate Manager calling upon to submit remarks on the map. It is stated that the appropriate authority under section 126 of the MRTP Act, entered into correspondence for measurement of the lands and deliberately no action was taken with oblique motive of delaying issuance of declaration. Collusion between the said officers and the petitioner has also been alleged. The petitioner is accused of having purchased the land on 19.4.2011 knowing fully well that the land was reserved and entered in a speculative transaction in collusion with the SLAO, DSLR and ADTP Nashik District. Thus, according to him the petition has to be rejected.

18. We have heard the submissions of learned counsel appearing for the parties and the learned AGP for the State. The position of law is very clear under section 127 of the MRTP Act, which reads as under:-

“Lapsing of reservations – If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan

comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interest in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from reservation, allotment or designation and shall become available to the owner for the purpose of Development as otherwise, permissible in the case of adjacent land under the relevant plan. ”

19. At this stage, a reference will have to be made to a decision of the Apex Court in the case of Girnar Traders (II) (supra) and in particular the majority view. It is appropriate that we make reference to Paragraphs 56 to 61 which are reproduced below for ease of reference :-

“55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of “eminent domain”. The State possessed the power to take or control the property of the owner for the benefit of

public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of

the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5- A of the LA Act. These provisions are ash 13 wp-2792.10 purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

59. *There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1)(c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.*

60. *On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority.*

61. *Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and*

declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4)."

20. Thus, the view taken by the Apex Court is that the publication of a declaration under sub-section (2) or sub-section (4) of Section 126 of the Town Planning Act read with Section 6 of the said Act of 1894 is a sine qua non for commencement of any proceeding for acquisition under the Town Planning Act. The Apex Court held that unless and until the Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced. The Apex Court held that steps for acquisition within the meaning of sub-section (1) of Section 127 would really commence when the State Government publishes a declaration under Section 6 of the said Act of 1894.

21. In the present case, admittedly, such a declaration has not been made within the period of 6 months (one year after the amendment) provided under Section 127 of the Town Planning Act. Therefore, within the said period of 6 months (on year in case of Writ Petition No.9431 of 2013), neither the said lands were acquired

nor were any steps taken by publication of the declaration under sub-section (2) or sub-section (4) of Section 126 of the Town Planning Act. Therefore, the reservation as regards the said lands shall be deemed to have lapsed.

22. In the present case, none of the events have transpired within a period of six months / one year as provided under section 127 of the MRTP Act. The section does not require the owner to submit documents of title as contemplated in the letter from Respondent No.1. On the other hand, the land needs to be acquired in the manner contemplated under section 126 of the MRTP Act. This does not appear to have been done in the present case. Admittedly, correspondence ensued in between the parties, but no agreement was arrived at to acquire the said land. So also, no compensation was paid as contemplated under section 126 of the MRTP Act nor was the State Government asked to acquire the land. The period of six months / one year expired respectively in the above petition clearly, the reservation for all practical purposes is deemed to have lapsed on account of failure of the Planning Authority and the State Government to act as contemplated under the MRTP Act. We may observe that the State Government has not filed any affidavit.

23. In the circumstances, both the petitions must be allowed.

- (i) Accordingly, in Writ Petition No.5528 of 2012, rule is made absolute in terms of prayer clause (a);
- (ii) The Petitioners are entitled to develop land bearing Survey No.890/2A/3(P) admeasuring 4800 sq mtrs. situated at Nashik. The designated site reservation No.382 having lapsed, the land is released from reservation and the Petitioners are entitled to use the same for the purpose of development as otherwise permissible in the case of adjacent land under the relevant Development Plan;
- (iii) In Writ Petition No.9431 of 2013, rule is made absolute in terms of prayer clause (a);
- (iii) The Petitioners are entitled to develop land bearing Survey No.264 admeasuring 3620 sq mtrs. situated at Nashik. The designated site reservation No.269 having lapsed, the land is released from reservation and the Petitioners are entitled to use the same for the purpose of development as otherwise permissible in the case of adjacent land under the relevant Development Plan;
- (iv) Both the petitions are disposed of in above terms. No order as to costs.

(A.K.MENON, J.)

(A.S.OKA, J.)