

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6709 OF 2012

Ms.Sapna Jasbirsingh Chauhan
G-3, Madhusudan,
Koregaon Park,
South Main Road, Pune - 1.

.. Petitioner.

Vs.

1.Nashik Municipal Corporation
having its office at Rajiv Gandhi
Bhavan, Sharanpur Road, Nashik

..

2. The Commissioner
having 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 Petitioner.

Mr.M.L. Patil for the Respondent Nos.1 and 2.

Ms.Aparna Vhatkar AGP for Respondent Nos.3 and 4.

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

RESERVED ON : 28TH JANUARY, 2015

PRONOUNCED ON : 10TH MARCH, 2015

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

1. Rule. Rule made returnable forthwith.

2. By consent of the parties taken up for final hearing.

3. By this petition, the Petitioner seeks a direction that the plot bearing Survey No.893/1/1/1 admeasuring 4595 sq. mtrs.

described in Exhibit-A situated at Nashik stands dereserved and the Petitioner is entitled to develop the said property and for the interim relief to stay further proceedings for acquisition of the Petitioner's land. Respondent No.1 is the Nashik Municipal Corporation which is the planning authority for the City of Nashik. Respondent No.2 is the Commissioner of Respondent No.1 and Respondent No.3 is the Collector, Nashik. Respondent No.4 is the State.

4. It will be useful to set out few facts : The Petitioner claims to be an owner of the land admeasuring 4595 sq. mtrs. situated at Nashik particularly described in 7 X 12 extract at Exhibit-A to the petition bearing Survey No.893/1/1/1. The Petitioner contends that the development plan for the Nashik city was prepared under section 26 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") was submitted to the State Government by the Respondent No.1 seeking sanction under section 31 of the MRTP Act on or about 28.6.1993 which came in effect on 16.11.1993. The Petitioner states that in the Development Plan of Nashik the said land was reserved for playground under the designated reservation bearing No.382. The said plan is annexed to the petition at Exhibit-B.

5. On the date of filing of the petition the land was reserved for playground. No steps were initiated by Respondent No.1 for acquiring the land for more than 10 years from the date on which the

land was brought under reservation for the development land. The Petitioner, therefore, issued a purchase notice through his Advocate on 14.1.2009 under section 127 of the MRTP Act. The notice was received by Respondent No.1 Corporation on 15.1.2009. There is no dispute as to the fact that the notice was issued and received. Vide said notice the Petitioner called upon Respondent No.1 Corporation to acquire the land within the period specified failing which the reservation would be deemed to have lapsed.

6. It is the Petitioner's case that after the period of six months from 15.1.2009 the reservation would be deemed to have lapsed. Even as on date of filing of the petition, namely, 7.7.2012 Respondent No.1 Corporation has not acquired the land and accordingly the Petitioner contends that it should be made available to him for development. It seems that upon receipt of notice the first Respondent issued a standard format of reply dated 31.3.2009 calling upon the Petitioner to supply documents listed in the purchase notice which document, according to the Petitioner, were already available with the Respondent, having been served along with the purchase notice. According to the Petitioner, the said reply is not of any consequence since it was issued in standard format as the matter of practice prevalent in the office of Respondent No.1.

7. In the meanwhile by the letter dated 8.9.2009 Respondent No.3 addressed a letter to Respondent No.1 Corporation raising

certain queries and information from Respondent No.1. Vide letter dated 4.1.2011 the first Respondent forwarded to the third Respondent requisite documents i.e. after almost period of two years on 8.4.2011 the third Respondent Collector of Nashik passed an order under section 52A of the Land Acquisition Act after a period of two years after the purchase notice was issued by the Petitioner.

8. The Petitioner challenges this action and seeks a declaration under section 6 of the Land Acquisition Act which was not issued after the stipulated period of six months of the reservation had already lapsed. The Petitioner's grievance is that Respondent No.1 had no intention of acquiring the land. It is the Petitioner's case that Respondent No.1 was not serious about acquisition and accordingly challenges such belated action of the Collector and Respondent No.1 Corporation on the ground that no effective steps as contemplated under section 127 of the Act have been taken by the Planning Authority or other Respondents.

9. The Petitioner sought to rely upon the fact that the declaration under Section 6 of the Land Acquisition Act is not obtained as required in law. In various pronouncements including the decision of the Apex Court in *Girnar Traders Vs. State of Maharashtra & Ors. (2007) 7 SCC 555*, it was held that if no steps have been taken pursuant to notice under section 127 of the Act, the reservation would lapse.

10. On behalf of Respondent No.1 Nashik Municipal Corporation an affidavit dated 11.2.2014 of Shri Bhaskar Uddhavrao More, Estate Manager has been filed. He has stated that the purchase notice under section 127 of MRTP Act ought to have enclosed all the documents of title of land so that the land could be identified. It should also have been accompanied by a certified copy of the measurement map prepared by TILR/Survey Officer. According to him the Corporation does not have nor maintains the Revenue Records and the documents of title and map are necessary to be enclosed with the purchase notice. According to him the draft D.P. Plan of the Nashik Municipal Corporation published on 16.11.1993 was sanctioned on 28.6.1993 by the State Government under section 31 of the MRTP Act and the land admeasuring 13000 sq. mtrs. out of Survey Nos.890 and 893 situate at Nashik is reserved for "Playground" which includes Petitioner's land admeasuring 4595 sq. mtrs.

11. He also contends that the notice ought to be served on the Commissioner and furthermore the land allegedly owned by the Petitioners cannot be identified and inspected in absence of relevant documents regarding title of the Petitioner to land in question as well as TILR map. Paragraph 6 of the affidavit sets out various steps the Corporation has taken after receipt of the purchase notice. The steps are taken between 31.1.2009 and 27.5.2013. He contends that

although there was no declaration under section 6 of the Act and the measurement of the land and submission of map have taken place after 10 years.

12. He claims that the Petitioner is a recent purchaser of the land having purchased the land knowing fully well that the same was under reservation. He states that the purchasers have entered into speculative transaction and now they demand the land be dereserved. The method adopted by the petitioner according to the deponent is to prevail upon the Land Acquisition Officer, City Survey Officer, ADTP Nashik District not to act so that the inaction would create a situation that land would be dereserved. The deponent has alleged a fraud on the statute. He further states that having given purchase notice on 21.1.2009, the petition is filed only on or about 12.7.2012 and in the meantime the Respondent No.1 had taken several steps as set out in paragraph 6 of the petition. There is gross delay in filing the writ petition and seeks dismissal of the same.

13. We are unable to agree with contentions set out in an affidavit of the Estate Manager. To start with, the allegations of collusion are merely to be stated to be rejected. The affidavit is vague. The bald allegations of collusion cannot entitle the Corporation to benefit of doubt. Therefore, this contention has to be rejected out right. The Apex Court had occasion to consider the effect of section 127 of MRTP Act describing it a special and unique

provision and would be attracted in the peculiar facts and circumstances mentioned in the section itself. An analysis of section 127 reveals that the section provides for land getting dereserved if steps have not been taken by the State Government within the stipulated period. The relief that the land owner is entitled to is also provided.

14. The Supreme Court observed that the steps to be taken for acquisition of the land as provided under section 127 of the MRTP Act are to be considered keeping in mind the time lag between the period the land is brought under reservation and inaction on the part of the State to acquire. The section also provides that the land shall be deemed to have been released from reservation, allotment or designation upon expiry of the period of 12 months. Prior to 25.6.2000, the section provided that after expiry of six months from service of notice alongwith the document showing title or interest in land, if the land has not been acquired the reservation or allotment would be deemed to have lapsed. By Maharashtra Act 16 of 2009, the period of six months was increased to 12 months with effect from 25.6.2000.

15. It is for the corporation to acquire land after service of notice after 12 months. In the present case the purchase notice was issued in January 2009. The period of six months was applicable at that time and accordingly, the period expired in July 2009, few days

after the amendment came into effect. Even assuming that the amended provision would apply in the present case the period of 12 months would expire on 2.1.2010. Even as late as 2.1.2010 the Corporation took no steps for acquisition of the land. The declaration under section 6 was admittedly not issued. Therefore, applying the provisions of section 127 the Petitioner as the undisputed owner would become entitle to develop land as permissible regard being had to the land adjacent to it provided it is in conformity with relevant plan.

16. Mr.Soni, learned counsel appearing for the Petitioner contended that the present case is squarely covered by case of Girnar Traders (supra).

17. Section 126 provides for the manner of acquisition of land required for public purpose after publication of draft original plan, development plan or any other plan or town planning scheme. It specifies that the acquisition may be made by agreement by paying the amount agreed to or in lieu of such amount by granting land owner the FSI or transfer of development rights against the area of land surrendered or by making an application to the State Government for acquiring such land under the Land Acquisition Act. None of these have been done in the present case.

18. It will be appropriate to observe that section 127 describes

two time period. Firstly, period of 10 years within which acquisition of land reserved/alloted by designated has to be completed. The period of 10 years completed from the date on which the original plan or development is clear. Second period of 12 months (earlier six months) would come into effect on the date on which the notice was served and within 12 months period the land has to be acquired. Neither of these things were done hence, the acquisition lapsed. However, if there is no notice by the person interested there is no question of lapsing reservation of the allotment of land. The steps to be taken are specified in section 126 of the Act. If the said steps are not taken the land shall be released and also be available for development.

19. The decision in case of Girnar Traders (supra) in which majority view prevailed has been approved in *Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others* (2013) 5 SCC 627 wherein the Apex Court observed, while dealing with a batch of SLP, that pursuant to section 126 the development authority can acquire the land by paying an agreed amount or by granting the land owner or the lessee floor space index or TDR in lieu of the area of land surrendered free of cost and free from all encumbrances and that reservation would lapse if the same was not acquired after issuance of purchase notice under section 127.

20. The Court observed that provisions of section 127 is a

valuable safeguard against arbitrary, irrational executive action and section 127 is a fetter upon the power of eminent domain. By enacting section 127 the legislature has struck balance between the competing claims of the interests of the general public vis-a-vis, the rights of an individual. The Development or the Planning authority must take stock of proposed acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. The Court held that such fetter on statutory powers is in the interest of the general public and the conditions imposed must be strictly followed to underline principle evidence under section 127 is for the purpose it is reserved within given time or owner utilise them as permissible under the Town Planning scheme. The State Government permits acquisition as a result of public declaration under section 6 of the Land Acquisition Act.

21. In the facts and circumstances of the present case there is no such eventuality and there is no reason that the Petitioner should be deprived of his rights and it must be protected by virtue of non acquisition. In the circumstances we find that other objections taken such as not providing the copies of documents is inconsequential. The Petitioner is therefore entitled to benefit as can be seen that even declaration under section 6 could be issued and it is revealed in the affidavit in reply that the Land Acquisition Officer

had gone ahead and submitted the map which exercise took several months. It has therefore become evident that there is no clear necessity of the document being verified prior to issuance of declaration. We, therefore, find in favour of the Petitioner and hold that the reservation in the development plan dated 28.6.1993 for the purpose of playground in reservation No.382 has lapsed and Plot bearing Survey No.85/1/1/1 land admeasuring 4595 sq. mtrs. forming subject matter of 7 X 12 extract Exhibit-A to the petition stands free of reservation.

22. In the result the petition succeeds. Rule is made absolute in terms of prayer (a). No order as to costs.

(A.K. MENON, J.)

(A.S. OKA, J.)