

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3543 OF 2001

M/s. Kolte Patil Developers Limited. .. Petitioner

Vs

The State of Maharashtra and Others. .. Respondents

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Shri C.M. Korde, Senior Advocate i/by Shri S.D. Mogare for the
Petitioner.

Mrs. M.P. Thakur, AGP for Respondent Nos.1 and 3.

Shri Rajdeep S. Khadapkar for Respondent No.2.

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

DATED : 4TH MARCH 2015

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

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

2. This Petition concerns the land admeasuring 10,588.12 sq.
(for short “the said land”) meters out of the land more particularly
described in Paragraph 2 of this Petition. The revised Development Plan
for the City of Pune was sanctioned by the State Government on 5th
January 1987 in accordance with Sub-section (1) of Section 31 read
with Section 38 of the Maharashtra Regional and Town Planning Act,

1966 (for short “the MRTP Act”). The said land is shown reserved in the said Development Plan for a Primary School vide Site No.90.

3. The Petitioner is relying upon a notice dated 21st August 2000 issued to the Commissioner of the Second Respondent Municipal Corporation under Section 127 of the MRTP Act. The notice was replied by the Second Respondent Municipal Corporation. By a communication dated 14th September 2000, the Municipal Corporation informed the Petitioner that the notice was rejected on the three grounds; (i) Survey map of the City Survey Office was not enclosed; (ii) the extract of 'B' Form recording the ownership right of the said property was not enclosed and (iii) Map of zoning demarcation of the Development Plan was not enclosed. The contention in the Petition is that after service of the notice dated 21st August 2000 during the statutory period provided under Section 127 of the MRTP Act, no steps were taken by the Second Respondent Municipal Corporation for acquisition of the said land and, therefore, the reservation on the said land shall be deemed to have been lapsed. That is the only substantive prayer made in this Petition under Article 226 of the Constitution of India.

4. The Petition was contested by the Second Respondent Municipal Corporation by filing a reply of Shri Vijay Mudholkar, the

Deputy Sub Engineer (Development Plan). In the reply, a reliance is placed on the Resolution dated 13th January 1998 passed by the Standing Committee of the Second Respondent according sanction for the acquisition of the land. It is stated that the Second Respondent made an Application on 10th February 1998 to the Collector, Pune by forwarding a proposal for acquisition of the property in question. It is further stated that the steps have been taken on the basis of the said proposal. It is contended that the requisite steps as contemplated under Section 127 of the MRTP Act were also taken even before the service of notice under Section 127. Therefore, it was contended that the notice will have no legal effect.

5. This Petition came up before a Division Bench of this Court on 27th August 2004. The following three questions were referred by the Division Bench for consideration of a larger Bench.

- “1. Whether making of an application under section 126(1)(c) of the Act is a step in acquisition as contemplated by section 127?
2. Whether the proceedings for acquisition of land as contemplated by section 127 of the Act are liable to be completed in reasonable time after the notice under that section is issued or can be stalled indefinitely after the application is made under section

126(1)(c) of the Act?

3. Whether the definition of “Appropriate Authority” occurring in section 2 of the Act includes the State Government as the Appropriate Authority and therefore action by the planning authority or the Appropriate Authority must include the acquiring authority?”

6. Accordingly, the Hon’ble Chief Justice referred the said questions to a Full Bench. The Full Bench by its Judgment and Order dated 24th December 2014 answered the first two questions. The questions were answered in the light of the law laid down by the Apex Court in the decisions in the cases of *Girnar Traders v. State of Maharashtra and Others*¹ and *Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher and Others*².

7. Paragraphs 11 to 13 of the decision of the Full Bench read thus:

- “11. While dealing with interpretation of section 126(1)(c) and section 127, the Apex Court observed that the steps towards acquisition would really commence when the State Government takes active steps for acquisition of land leading to publication of the declaration under section 6 of the Land Acquisition Act. Any other interpretation of the scheme would make the provisions only unworkable.

1 (2007)7 SCC 555

2 (2013)5 SCC 627

12. While dealing with the same issue, the Apex Court in *Girnar Traders* (supra) held that making of an application to the State Government for acquisition of land would not be a step for acquisition of land under reservation. Sub-section (2) of section 126 of the MRTP Act leaves it open to the State Government either to permit acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. It was reiterated that the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes notification under section 6 of the Land Acquisition Act. In the light of said view as expressed above by the Apex Court, issue Nos.1 and 2 are answered accordingly.
13. The issue No.3 could be considered and dealt with by the Division Bench in the light of the facts of the case and aforementioned judgments of the Apex Court (cited supra)."

8. Thus, the law is very clear. The step as contemplated by Section 127 of the MRTP Act towards acquisition would commence only when a declaration is issued 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 (for short "the said Act of 1894"). In the present case, admittedly, no such declaration has been issued even as of today.

9. As far as the reply dated 14th September 2000 is concerned, at the relevant time, the requirement of producing documents alongwith a notice under Section 127 of the MRTP Act was not on the Statute Book. The said requirement was brought on the Statute Book

by the Maharashtra Act No.16 of 2009.

10. The Issue No.3 which was framed by the Division Bench of this Court has not been answered by the Full Bench and, therefore, the said issue will have to be decided by this Bench. Therefore, unless the third issue is answered against the Petitioner, in the present case, the reservation would lapse on the basis of the aforesaid notice issued under Section 127 of the MRTP Act.

11. As far as the third issue is concerned, the submission of the learned counsel appearing for the Second Respondent is that the decisions of the Apex Court in the cases of *Girnar Traders and Shrirampur Municipal Council* will have application only when the State Government is an Appropriate Authority. He urged that when the State Government is not the Appropriate Authority and a local authority is the Appropriate Authority, all that can be done by the local authority is to make an application under Clause (c) of Sub-section (1) of Section 126 of the MRTP Act requesting the State Government to initiate acquisition proceedings. His submission is that the definition of the "Appropriate Authority" does not permit inclusion of the State Government as an Appropriate Authority and, therefore, in all the cases where a notice under Section 127 of the MRTP Act is issued to Appropriate Authority, when an Application is made under Clause (c) of

Sub-section (1) of Section 126 of the MRTP Act by the said Authority, the obligation of the Appropriate Authority comes to an end. In short, the submission is that the decisions of the Apex Court relied upon by the Petitioner on which reliance was also placed by the Full Bench will not apply to the facts of the present case.

12. Section 127 of the MRTP Act underwent major amendments by the Maharashtra Act No.16 of 2009. In the present case, we are concerned with the unamended Section 127. We must note here that in both the decisions of the Apex Court in the cases of *Girnar Traders and Shrirampur Municipal Council*, the Apex Court has dealt with the unamended Section. Unamended Section 127 reads thus:

“127. Lapsing of reservations

(1) 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 acquisition of such land under this Act or under the Land Acquisition Act, 1894 (1 of 1894), are not commenced within such period, the owner or any person interested 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 such 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.”

13. Section 127 of the MRTP Act contemplates service of notice on the planning authority, development authority or as the case may be the Appropriate Authority. Consequences of the steps for acquisition not being taken within a period of six months from the date of service of the notice have been provided in the unamended Section 127. The consequence is of the lapse of reservation, allotment or designation under the sanctioned Development Plan.

14. It is necessary to make a reference to the definition of the Appropriate Authority under Sub-section (3) of Section 2 of the MRTP Act which reads thus:

“2(3) "Appropriate Authority" means any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire;

15. In the present case, reservation is for a primary school. The Second Respondent is admittedly a Planning Authority within the meaning of Section 2(19) of the MRTP Act. The Development Authority is defined under Section 2(8). Thus, under the MRTP Act, the Development Authority, Planning Authority and Appropriate Authority

are separately defined. On plain reading of Section 127, notice to Appropriate Authority is contemplated only when the Appropriate Authority is different from the planning Authority.

16. It will be necessary to make a reference to a decision of the Apex Court in the case of *Shrirampur Municipal Council*. The Apex Court approved its earlier decision in the case of *Girnar Traders* in the said decision of *Shrirampur Municipal Council*. It will be necessary to consider the decision of the Apex Court in the case of *Girnar Traders*. The said decision deals with a specific question. The said question is as regards the nature of the steps which are required to be commenced for acquisition of the reserved land as contemplated by Section 127. The Apex Court considered the entire scheme of Section 127 of the MRTP Act. It will be necessary to make a reference to Paragraphs 56 to 61 of the decision of the Apex Court in the case of *Girnar Traders* which read thus:

“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 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 5A 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 5A of the LA Act. These provisions are 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)".

(underlines added)

17. On perusal of the decision of the larger Bench of the Apex Court in the case of *Shrirampur Municipal Council*, we find that the law laid down by the Apex Court in its earlier decision in the case of *Girnar Traders* has been reaffirmed.

18. Thus, it can be said that the steps are commenced for acquisition of the land under reservation subject matter of notice under Section 127 of the MRTP Act only when there is a declaration issued either under Sub-section (2) or (4) of Section 126 of the MRTP Act read with Section 6 of the said Act of 1894. The contention that making an Application under Clause (c) of Sub-section (1) of Section 126 of the MRTP Act for acquisition of the land to the State Government amounts to commencement of proceedings for acquisition has been rejected by the Apex Court. Section 127 makes no distinction between a Development Authority, Planning Authority and Appropriate Authority. Section 127 applies equally to all the three Authorities. The interpretation put by the Apex Court applies to all the three Authorities. Therefore, the argument of the learned counsel for the Second Respondent deserves to be rejected. The interpretation of the word “steps” under Section 127 of the MRTP Act made by the Apex Court applies to all the three Authorities.

19. In the present case, a notice under Section 127 of the MRTP Act is otherwise valid. Going by the decisions of the Apex Court, no steps have been commenced for acquisition of the said land within a period of six months from the date of service of the notice. The consequence of the failure to take steps is of lapsing of the reservation under the Development Plan. The consequences of not taking steps

within the stipulated time are provided in the Section and, therefore, where a notice is valid and steps are not commenced for acquisition within the stipulated time provided under Section 127 of the MRTP Act, the lapsing of the reservation is automatic.

20. In the present case, the reservation is for the benefit of the Municipal Corporation which is the Planning Authority. The Question No.3 is not relevant in deciding whether the Section 127 of the MRTP Act is attracted. In the facts of the case, the question will not arise.

21. Therefore, the Petition must succeed and we pass the following order:

ORDER :

- (a) The Rule is made absolute in terms of prayer clauses (a) and (b);
- (b) We direct the First Respondent to publish a Notification as contemplated under Section (2) of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 within a period of three months from today;
- (c) There will be no order as to costs.