

Smt.Anawarbi Abdulgani Attar & Ors.	...	Petitioners
vs.		
The Sangli Miraj and Kupwad Municipal Corporation & Ors.	...	Respondents

Mr. Sandesh Patil i/by Miss Tanu Khattri for the Petitioners.
Mr. G.H. Keluskar for the Respondent no.1.
Mr. V.S.Gokhale, AGP for the Respondent nos.2 to 4 - State.

CORAM : A.S. OKA & K.R. SHRIRAM, JJ.
DATE : 20TH AUGUST, 2015

P.C.:

1. Heard the learned counsel appearing for the petitioners the learned counsel appearing for the first respondent and the learned AGP for the State. Forthwith taken up for final disposal.
2. The development plan of the erstwhile Miraj Municipal Council was sanctioned on 14th May, 1984 under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The said plan came into force on 12th August, 1984. On 9th February, 1998, the area covered by Miraj Municipal Council was incorporated within the limits

of the newly formed Municipal Corporation of Sangli, Miraj and Kupwad. Under the sanctioned development plan, the land bearing RS No.24 admeasuring 84 Acres was shown reserved for the public purpose of garden. A notice dated 20th March, 2010 was served by the petitioners to the first respondent-Municipal Corporation under section 127 of the MRTP Act. Copies of necessary documents showing the title of the petitioners in respect of the land bearing RS No.24-A/5 admeasuring 32 Acres were annexed to the said notice. On 11th May, 2010 the Incharge Town Planner of the first respondent called upon the petitioners to submit an authenticated survey plan. On 28th June, 2010 the Commissioner of the first respondent informed the advocate for petitioners to ascertain whether the petitioners were willing to handover possession of the reserved land to the first respondent-Municipal Corporation subject to the payment of the compensation amount fixed by the concerned department of the first respondent the Municipal Corporation. The petitioners responded by contending that the compensation amount as determined by the Urban Development Department of the State Government should be paid and subject to the acquisition of the said land, the petitioners were ready to handover the possession to the first respondent.

4. It appears that the proposal for acquisition of said land subject matter of the aforesaid notice, was placed before the General Body of the

first respondent-Municipal Corporation on 20th October, 2010. The resolution passed by the General Body records that considering the financial position of the Municipal Corporation, the proposal to acquire the said land should be kept in abeyance.

5. Since no steps were taken to acquire the land within the time stipulated under section 127 of the MRTP Act, the present petition has been filed by the petitioners for a declaration that the reservation on the said land be declared as lapsed.

6. There is a reply filed by the Shri Akash Tikaram Bagul, Assistant Director of the Town Planning of first respondent the Municipal Corporation. In the reply, reliance was placed on the fact that the earlier notice under section 49(1) of the MRTP Act was served on the Municipal Corporation and the State Government did not confirm the notice. It is contended in the reply that the adjoining land reserved for garden has been acquired by the Municipal Corporation by private negotiations.

7. As far as the section 127 of the MRTP Act is concerned, now the law is well settled by the Apex Court in the case of *Shrirampur Municipal Corporation, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and others*¹. The Apex Court by the said decision, reiterated the law laid down

¹(2013) 5 SCC 627

by the majority view in *Girnar Traders (2) Vs. State of Maharashtra*² .

The Apex Court reiterated the view taken earlier that the publication of a declaration 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, 1994 is a *sine qua non* for commencement of any proceedings for acquisition under the MRTP Act. The Apex Court held that unless such a declaration is issued, it cannot be said that the steps for acquisition are commenced.

8. In the present case, admittedly within the stipulated period of 12 months from the date of service of the notice dated 20th March, 2010 under section 127 of the MRTP Act, such a declaration has not been issued. That is an admitted position. On the contrary, the resolution of the General Body of first Respondent Corporation records that the proposal for acquisition should be kept in abeyance.

9. In the reply filed on behalf of the first respondent, there is no challenge to the legality and validity of the notice under section 127 of the MRTP Act.

10. Therefore the petition must succeed and hence we pass the following order :

(a) Rule is made absolute in terms of prayer clause (a) with

²(2007) 7 SCC 555

a clarification that the subject land will be available to the owners thereof for the purpose of development, as otherwise permissible in the case of adjacent land under the sanctioned development plan;

- (b) We direct the State of Maharashtra to issue a notification under sub-section (2) of section 127 within a period of three months from today;
- (c) Rule is made absolute accordingly.

(K.R. SHRIRAM, J.)

(A. S. OKA, J.)

CERTIFICATE

Certified to be true and correct copy of
the original signed Judgment/Order.