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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8222 OF 2011

1. Smt. Taradevi M. Rathi,
Adult, Indian Inhabitant,
having her address at 213,
Swastik Chambers, C.S.T. Road,
Chembur, Mumbai - 400 071.
 2. Smt. Anuradhan Susil Rathi,
Adult, Indian Inhabitant,
residing at Sunder Kunj, 59,
Purnavat Nagar, Near
Akashwani Tower, Nashik-13.
- ..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 State of Maharashtra
- ..Respondents.

Mr.R.D.Soni i/b. Ram and Co. for the petitioners.

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

Mr.V.S.Gokhale, AGP for the respondent No.3.

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

DATED : 13TH OCTOBER, 2015

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

1. Notice of final disposal was already issued.
2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first and second respondents as well as the learned AGP for the third respondent.
3. The petitioner is claiming to be the owner of the land more particularly described in paragraph 1 of the petition. The said land is situated within the limits of the first respondent Nashik Municipal Corporation. The Development Plan for the City of Nashik was sanctioned under section 31 of the Maharashtra and Regional Town Planning Act (for short 'the MRTTP Act'). In the sanctioned Development Plan, the said land described in paragraph 1 was shown reserved for dumping ground. Notice dated 2nd November,

2010 was issued by the Advocate for the petitioner to the first respondent by invoking the provisions of section 127 of the MRTP Act. The contention is that as no steps were taken within the time provided under section 127 of the MRTP Act, the reservation has lapsed.

4. There is a reply filed by Shri Mahesh Narayanprasad Tiwari, Estate Manager of the Nashik Municipal Corporation. In the reply, it is contended that the proposal for acquisition of the said land was submitted on 7th January, 1988. It was forwarded to the Special Land Acquisition Officer No.2, Nashik on 25nd January, 1988. it is pointed out that on 30th November, 2005, the Special Land Acquisition Officer called upon the Municipal Corporation to pay a sum of Rs.4,88,30,400/- which was equivalent to 2/3 of the estimated compensation payable. Accordingly, the amount was deposited on 13th December, 2007 by the first respondent Municipal Corporation. The contention is that though all possible steps were taken by the Municipal Corporation, there was a default on the part of the State Government and, therefore, the necessary declaration under sub-section (4) of section 126 could not be made within the stipulated period. There is a reply filed by Shri Ramesh Karbhari Misal, Deputy Collector (Land Acquisition No.2), Nashik stating that a sum of Rs.4,88,30,400/- was deposited by the first respondent on 13th December, 2007 in the office of the Special

Land Acquisition Officer No.2. It is stated that thereafter, certain clarification was sought from the first respondent which was submitted on 9th August, 2010. It is stated that thereafter remarks from the office of the Assistant Director of Town Planning were called by a letter dated 22nd December, 2011, which are still awaited. It is stated that that is the reason why further steps could not be taken for the acquisition.

5. There is yet another affidavit filed by Shri Bhaskar Uddhavrao More, Estate Manager, Nashik Municipal Corporation, Nashik. It is pointed out that there was wholly unwarranted delay on the part of the State Government in initiating the acquisition proceedings. He has stated that due to the said gross delay, subsequently a demand for payment of Rs.38.85 crores equivalent to 50% of the amount of the estimated compensation on account of the acquisition was made. It is pointed out in the affidavit that the said demand was made by a letter dated 2nd September, 2015 by the Deputy Collector, (Land Acquisition) No.2, Nashik.

6. The submission of the learned counsel appearing for the petitioner is that there is no dispute about the service of the notice under section 127 of the MRTTP Act and there is also no dispute about the legality and validity of the said notice. His contention is that the reservation shall stand lapsed in view of the decision of the

Apex Court in the case of **Sriramphur Municipal Council, Shrirampur V/s. Satyabhmabai Bhimaji Dawkher and others**¹.

7. The learned counsel appearing for the Nashik Municipal Corporation submitted that this Court has already issued directions to the State Government after noticing that there is invariably a gross delay on the part of the officers of the State Government in the initiating the acquisition proceedings. In the present case, as a result of the default on the part of the Government, a sum of Rs.4,88,30,400/- which was deposited by the first respondent Municipal Corporation with the Special Land Officer on 13th December, 2007 remained deposited in the Personal Ledger Account (PLA) of the Land Acquisition Officer without carrying any interest. He submitted that as the first respondent has lost a huge amount by way of interest, the State Government be directed to pay interest on the said amount. He also invited our attention to the letter dated 12th April, 2012 addressed by the Deputy Collector (Land Acquisition) No.2 to the Estate Manager of the Nashik Municipal Corporation. He invited our attention to the objectionable language used in the said letter more particularly in paragraphs 2 to 7 thereof. He submitted that the Deputy Collector is trying to blame the officers of the first respondent though the gross delay

¹ 2013(5) SCC 627

was only on account of the inaction on the part of the officers of the State Government.

8. The learned AGP urged that in view of the Resolution dated 11th February, 2015 passed by the Standing Committee of the first respondent Municipal Corporation, the amount lying towards the compensation in the present case has been utilised towards payment of compensation in respect of some other urgent land acquisition proposals of the first respondent-Corporation. He invited our attention to various Government circulars and Government Resolutions. He urged that in view of the Government Resolutions, the amount received by the Special Land Acquisition Officers towards compensation for acquisition is required to be credited in PLA account in the name of the Special Land Acquisition Officer. He invited our attention to the Government Resolution dated 17th January, 2008 which specifically records that the acquiring body will have to deposit 25% of the estimated compensation with the Special Land Acquisition Officer before a notification under section 4 of the Land Acquisition Act, 1894 (for short 'the said Act of 1894') is issued and further 25% is required to be deposited before the declaration under Section 6 of the said Act of 1894 is made. He pointed out that the State Government Resolution makes it very clear that the said deposits will be interest free. He would, therefore, urge that the first respondent cannot

claim interest.

9. We have given careful consideration to the submissions. There is no dispute about the service of notice dated 2nd November, 2010 under section 127 of the MRTP Act. There is no challenge to the said notice on the ground of any illegality. It is also not in dispute that a declaration either under sub-section (2) or sub-section (4) of section 126 was not made within the period provided under section 127 of the MRTP Act. Therefore, it follows that the law laid down by the Apex Court in the case of **Srirampur Municipal Council, Shrirampur V/s. Satyabhmabai Bhimaji Dawkher and others** will squarely apply and the reservation shall stand lapsed as far as the said land described in paragraph 1 is concerned.

10. We have perused the affidavit of Shri Mahesh Narayanprasad Tiwari and Shri Bhaskar Uddhavrao More, Estate Managers of the Nashik Municipal Corporation. There is a great deal of substance in the submission by the learned counsel appearing for first and second respondents that there was unwarranted delay on the party of State Government and the Deputy Collector in initiating the proceedings for acquisition by issuing the necessary declaration. It is also true that the necessary declaration was not issued only on the ground that certain

clarification was sought from the Assistant Director of Town Planning by a letter dated 22th December, 2011 and that the Assistant Director of Town Planning did not respond to the said letter. The learned counsel appearing for the first and second respondents is right to the extent that there was no necessity of waiting for the remarks of the Assistant Director of Town Planning.

11. As far as the delay on the part of the government machinery is concerned, appropriate directions have been already issued by this Court in another case with a view to ensure that a declaration contemplated by sub-sections (2) or (4) section 126 of the MRTP Act is issued within the time provided under section 127.

12. As far as the issue of payment of interest on the amount deposited by the first respondent is concerned, as stated earlier, in terms of the Government Resolution dated 17th January, 2008, the said amount will not carry an interest as the deposits made by the acquiring body towards compensation on account of proposed acquisition are interest free deposits. Moreover, with the consent of the first respondents, the said amount has been appropriated towards the compensation in respect of some other urgent acquisition proposals.

13. However, we cannot ignore that large amounts are

being deposited by the acquiring bodies with the Land Acquisition Officers which are kept in the PLA account of the concerned land Acquisition Officer. The said amounts deposited in PLA accounts do not carry any interest as the same are not investments. In view of the various Government Resolutions, the Special Land Acquisition Officers cannot invest any amount lying deposited in the PLA even with any nationalised bank. Invariably, there is a delay in initiating and completing the acquisition proceedings even after deposit of large amounts towards compensation by the acquiring body. Therefore, the interest payable on the compensation amount goes on increasing. On the other hand, the amounts deposited by the acquiring body towards compensation are not invested and therefore, they do not carry any interest.

14. The learned AGP pointed out the possibility of malpractice or misuse in case the amounts are deposited by the Land Acquisition Officers in the nationalised banks. It is ultimately for the State Government to work out the modalities to ensure the safety and security of the amounts deposited by the acquiring body. Suffice it to say that the amounts can be conveniently invested in fixed deposits. In case of acquisition under MRTP Act, in several cases, the reservation lapses due to delay on the part of the Government and, therefore, the acquiring body becomes entitled to the refund of the amounts deposited. As the amounts

are deposited in the PLA accounts, the acquiring body loses large amount of interest on the said amounts. Therefore, we propose to direct the State Government to take appropriate decision and to provide for a mechanism for investment of the amounts lying in the PLA accounts of the Land Acquisition Officers. It is in everybody's interest to ensure that the amounts are invested and the same carry interest.

15. In the facts of the case, with the consent of the Municipal Corporation, the amounts deposited have been used in other acquisition proceeding. Hence, in this petition, we are not issuing any directions regarding the payment of any interest.

16. Before we part with the judgment, we must record here that the language used by the Deputy Collector (Land Acquisition) No.2 Nashik in his letter dated 12th April, 2012 addressed to the Estate Manager of the first respondent corporation is most objectionable. In our view, no responsible officer should use such a language while addressing a letter to any other public officer.

17. Hence, we pass the following order:-

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

- (ii) We make it clear that the reservation stands lapsed only in relation to the petitioners' land described in paragraph 1 of the petition;
- (iii) We direct the State Government to publish a notification under sub-section (2) of section 127 of the MRTP Act within a period of three months from today;
- (iv) We direct the State Government to take appropriate steps for ensuring that the amounts lying deposited with the Special Land Acquisition Officers which are deposited by the acquiring bodies are suitably invested in nationalised banks. The State Government shall take appropriate decision in this behalf within a period of 6 weeks from today;
- (v) The petition is disposed of in the above terms with no order as to costs;
- (vi) For reporting compliance by the State Government, the petition shall be listed on 10th December, 2015 under the caption of directions.

(V.L.ACHLIYA,, J.)

(A.S.OKA, J.)