

pmw

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

WRIT PETITION NO.9196 OF 2013

M/s. Gupta Loom Industries and Another	... Petitioners
Versus	
The State of Maharashtra and Others	... Respondents

**WITH
WRIT PETITION NO.9197 OF 2013**

M/s. Sanjeev Woolen Mills	... Petitioner
Versus	
The State of Maharashtra and Others	... Respondents

**WITH
WRIT PETITION NO.9198 OF 2013**

M/s. Gopal Dass Jagat Ram (P) Ltd. and Another	... Petitioners
Versus	
The State of Maharashtra and Others	... Respondents

Mr. Shardul Singh i/by Ms. Sushma H. Singh for the Petitioners in all the Petitions.
Mrs. M.P. Thakur, AGP for Respondent Nos.1 and 2 in all the Petitions.
Mr. Mandar Limaye, for the Respondents No.3 in all the Petitions.

CORAM : A.S. OKA & REVATI MOHITE DERE, JJ.

JUDGMENT RESERVED ON : 13th AUGUST, 2015

JUDGMENT PRONOUNCED ON : 29th OCTOBER, 2015

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

. Writ Petition No.9196 of 2013 relates to Plot No.24 more particularly described in paragraph 3 of the said Writ Petition. The said

plot is out of the lands bearing Survey Nos.145, 146, 147, 148, 152, 153 and 154 Hissa No.3 (for short ' the larger plot') at village Kavesar, Taluka and District Thane within the limits of the third Respondent – the Municipal Corporation of City of Thane (for short “the said Corporation). The case made out in the Petition is that the Textile Stores and Manufacturers Co-operative Estate Limited (for short “the said Co-operative Society”), a Co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 was the owner of the larger plot. It is contended that the said Society allotted the said Plot No.24 to the first Petitioner under an agreement dated 17th September, 1975 by virtue of the membership of the first Petitioner of the said Society. The said Society agreed to grant a lease of the said Plot No.24 to the first Petitioner under the said agreement for a period of 999 years.

2. It is disclosed in the Petition that in the sanctioned Development Plan for the area of the said Corporation, the said plot No.24 is covered by Reservation No.4 for Garden and 40 meter wide development Plan Road. As no steps were taken by the said Municipal Corporation to acquire the said land within a period of 10 years from the date on which the Development Plan was brought into force, the Petitioners through their Advocate served notice dated 7th October, 2010 to the said Corporation purporting to be a notice under Sub-section (1)

of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The said notice was served on 12th October, 2010. By a letter dated 20th November, 2010, the Assistant Director of Town Planning of the said Corporation replied to the said notice. It is was contended in the reply that the Petitioners were relying upon an unregistered agreement. Therefore, he was called upon to produce latest copies of the 7/12 extracts, a copy of mutation entry and certified TILR measurement plan. In the said letter, it was stated that though the notice issued by the Advocate for the Petitioners was not acceptable to the said Corporation, it was stated in the said reply that if the owner or person interested is ready to hand over possession of reserved land, the said Corporation is ready to hand over Transferable Development Rights (TDR) in respect of the surrendered land as per the Development Control Regulations. By letter dated 15th December, 2010, Advocate for the Petitioners replied to the said Corporation. It was contended that being a member of the said Co-operative Society and shareholder thereof, the said Society which is the owner of the larger plot has allotted the said plot to the first Petitioner on a lease for a period of 999 years. Therefore, the first Petitioner is a person having interest in the said plot. A copy of the share certificate, 7/12 extract, joint measurement plan prepared by the TILR were forwarded along with the said letter to the said Corporation. By a letter dated 18th June,

2013, the said Corporation replied by pointing out that the notice dated 12th October, 2010 under Section 127 of the MRTP Act has been served and on 8th December, 2010 a proposal for acquiring the said plot has been submitted by the said Corporation to the District Collector.

3. As no steps were taken for acquisition of the said plot within the time stipulated under Sub-section (1) of Section 127 of the MRTP Act, the present Petition has been filed seeking a declaration that the reservation on the said Plot No.24 stands lapsed. There is another prayer for setting aside the impugned communication addressed by the said Corporation by which the application for development permission was rejected.

4. A reply has been filed by the said Corporation of Shri Pramod R. Nimbalkar, its Town Development & Planning Officer. In the said reply, it was contended that the notice is defective as the same has been issued to the Municipal Commissioner and not to the Municipal Corporation which is the Planning Authority. It is submitted that as the notice itself is illegal, the reservation cannot lapse. Secondly, it is contended that the Petitioner has failed to establish any right in respect of the said Plot No.24. It is, therefore, contended that the notice is not legal. Steps taken for acquisition were set out in the said reply. It is

contended that a sum of Rs.6,63,06,240/- being an amount equivalent to 50% of the estimated compensation has been deposited by the said Corporation with the Special Land Acquisition Officer by a cheque dated 14th October, 2011.

5. The Petitioner filed rejoinder and produced a copy of the agreement of lease dated 17th September, 1975 executed by and between the said Society and the first Petitioner. The Petitioner has annexed a copy of the share certificate and a copy of conveyance to show that the said Society was the owner of the larger plot.

6. Writ Petition No.9197 of 2013 is filed by the Petitioners who are the allottees of Plot No.26 forming a part of larger plot held by the said Society. In this Petition also, a reliance is placed by the Petitioners on a notice dated 7th October, 2010 issued by the Advocate for the Petitioners therein to the said Corporation. In the reply filed by Shri Pramod R. Nimbalkar, Town Development and Planning Officer of the said Corporation, similar contentions which were raised in the other Petition have been raised.

7. Writ Petition No.9198 of 2013 is filed by the Petitioners who are claiming to be allottees of Plot No.25 out of the same larger plot held by the said Society. Even in this Petition, the Petitioners are

relying upon a notice under Sub-section (1) of Section 127 of the MRTP Act which is dated 7th October, 2010. The prayer made in the Petition is similar to the prayer made in the other two Petitions. Even the reply of Shri Nimbalkar contains the same contentions as in other two Petitions.

8. The submission of the learned counsel appearing for the Petitioners is that a notice under Sub-section (1) of Section 127 of the MRTP Act can be issued not only by the owner but also by any person interested in the land which is reserved. He submitted that the said Society which is the owner of the larger plot is a tenant Co-partnership Housing Society. He pointed out that the name of the said Society appears in the Kabjedar column of the 7/12 extract in respect of the larger plot. He pointed out copies of the share certificates issued to the Petitioners in these three Petitions by the said Society. He relied upon agreements executed by and between the said Society and the Petitioners in these Petitions. He pointed out that the agreements are similar. Inviting our attention to agreement dated 17th September, 1975 executed by and between the Petitioners and the said Society in respect of the said Plot No.24 shows that a sum of Rs.85,552/- was paid by the Petitioners towards proportionate share of the purchase price of the said Plot No.24. He invited our attention to clause 1 of the said agreement by which the Society agreed to grant a lease in respect of the said Plot

No.24 for a period of 999 years. He urged that 7/12 extract as well as a copy of the lease agreement were forwarded along with the notice under Sub-Section (1) of Section 127. He also relied upon resolution passed by the Special General Meeting dated 29th April, 1973 of the said Society by which smaller plots out of the said large plot were allotted to various members including the Petitioners in these three Petitions. He submitted that the Petitioners have been allotted the plots in their capacity as members of the said Society against payment of consideration by the Petitioners. He submitted that the Petitioners are occupying their respective plots as a matter of right and therefore, the Petitioners will have to be held as persons interested in their respective plots. He urged that apart from the fact that notices were addressed to the Commissioner of the said Corporation who was empowered to accept the notices, it is also addressed to the said Corporation. Inviting our attention to clause (a) of Sub-section (1) of Section 136 of the MRTP Act, he urged that service of notice on local authority can be effected on its Principal Officer. He urged that the Commissioner of the said Municipal Corporation is its Principal Officer. He pointed out that it is not open for the Municipal Corporation to raise an objection to the legality and validity of the notice under Section 127 inasmuch as by passing the resolution dated 21st February, 2011 in its General Body Meeting, the said Corporation acted upon the notices and resolved to

move the Collector for acquisition of the said plots. He pointed out that an application in prescribed form was made by the said Corporation to the District Collector on 8th December, 2010 for initiating acquisition proceedings under the said Act. He pointed out the Resolution dated 21st February, 2011 accepts the fact that the Petitioners are members of the said Society who have been allotted the said plots on leasehold basis. He would, therefore, urge that the Petitioners are persons interested in the said plots.

9. The learned counsel appearing for the said Municipal Corporation urged that the Petitioners are relying upon unregistered agreements of lease which are not admissible evidence. He urged that names of the Petitioners have not been recorded in the 7/12 extracts. He pointed out that only the membership of the said society which is the owner of the larger plot of which the said plots are forming part by itself will not confer any right, title and interest on the Petitioners. His submission is that the Petitioners cannot be said to be persons interested in the said plots. He urged that notice addressed to the Commissioner of the said Corporation is illegal. He submitted that this Court has repeatedly held that the notice under Sub-Section (1) of Section 127 cannot be liberally construed and a strict interpretation will have to be given to the provisions considering the drastic legal consequences which flow from service of such notice.

10. We have given careful consideration to the submissions. As facts of these Petitions are more or less identical, we are making a reference only to the facts of Writ Petition No.9196 of 2013. The first question which arises for consideration is whether the notice purporting to be a notice dated 7th October, 2010 under Sub-section (1) of Section 127 of the MRTP Act is legal and valid. There is no dispute that the said notice was delivered on 12th October, 2010 in the office of the said Corporation. The first contention which will have to be dealt with is whether the Petitioners were entitled to issue the said notice. Sub-section (1) of Section 127 reads thus :-

“127. Lapsing of reservation. - (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 a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve 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.

- (2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.”

It provides that the owner of the property under reservation or any person interested in the reserved land may serve the notice. We have perused the contents of the notice dated 7th October, 2010. It is stated that on 29th June, 1970, the said Society purchased the said larger plot. It is further stated that in respect of the Plot No.24 admeasuring 4471 square meters, the said Society entered into an agreement of lease with the first Petitioner on 17th September, 1975. It is stated that the first Petitioner was granted a share certificate by the Society. It is stated that the name of the said Society underwent a change in the year 2003 as the Textile Stores and Machinery Manufacturers Co-operative Housing Society Limited. It is stated that the first Petitioner has an interest in Plot No.24 which is shown under reservation in the sanctioned Development Plan being a member of the said plot holders' society and that the first Petitioner is having leasehold rights in respect of the said Plot No.24. Copies of the share certificate,

agreement of tenancy and lay-out plan were forwarded along with the said notice. The letter dated 20th November, 2010 addressed to the first Petitioner by the Assistant Director of Town Planning of the said Corporation records that a copy of agreement, a copy of share certificate and a copy of record of right were forwarded along with the notice. It is stated that the notice is not acceptable due to failure to submit ownership documents. Thereafter, an offer is given to surrender against reserved land against grant of TDR. The first Petitioner was called upon to furnish latest original copies of the 7/12 extract and mutation entry as well as TILR measurement plan. Along with the letter dated 15th December, 2010, the first Petitioner again forwarded a copy of agreement, joint measurement plan of the TILR, 7/12 extract and a copy of the share certificate. The contents of notice under Section 127 were reiterated in the said letter. Along with the affidavit in rejoinder, a copy of agreement dated 17th September, 1975 by and between the Society and the first Petitioner is annexed which records that the first Petitioner is a member of the said Society and that the said Petitioner has paid a sum of Rs.85,552/- to the said Society towards share in the purchase price. Clause 1 thereof records an agreement to grant lease for a period of 999 years to the first applicant in respect of the said Plot No.24. Share Certificates issued by the said Society in the year 1970 are also annexed showing that the first Petitioner was a member of the said

Society. The 7/12 extracts of the larger plot showing the name of the said Society in Kabjedar column are also annexed to the affidavit in rejoinder. The said documents were forwarded by the Petitioners along with the notice dated 7th October, 2010 and the letter dated 15th December, 2010. These documents produced along with the notice shows that the first Petitioner was a member of the said Society which was the owner of the larger plot. The copy of the agreement produced shows the allotment of the said Plot No.24 to the first Petitioner and the payment of consideration to the said Society. The said agreement contains a recital that the first Petitioner was a member of the Society and by virtue of membership, that the said plot was allotted. A very clear agreement to grant lease in respect of the said plot for 999 years is spelt out from the said agreement. By virtue of membership of the said Society, the first Petitioner was allotted the said plot for 999 years. As provided in Sub-section (1) of Section 127, either the owner or a person interested in the land subject matter of reservation can give a notice. Considering the aforesaid documents, it can be certainly stated that the first Petitioner has an interest in the said Plot No.24. Moreover, requirement of Sub-section (1) of Section 127 is of producing documents showing title of the persons giving notice. There is no requirement of producing documents of title. Documents showing title were produced along with notice dated 7th October, 2010 and letter

dated 15th December, 2010. Hence, the first Petitioner had authority to serve a notice under Sub-section (1) of Section 127. The notice is also otherwise valid.

11. The other issue canvassed is that the notice has not been served to the Municipal Corporation of the City of Thane which is the Planning Authority and the same has been served to the Municipal Commissioner. We have perused Exhibit-B which is a copy of the notice. The name of the addressee is mentioned thus:-

“To,
The Municipal Commissioner, Thane
The Municipal Corporation of the City of Thane,
Mahanagar Palika Bhavan,
Dr. Almeida Road,
Panchpakhadi,
Thane – 400 602.”

12. The rubber stamp on the first page of the office copy of said notice shows that it was delivered in the head office of the Municipal Corporation. Thus, the notice is addressed both to the Municipal Commissioner as well as to the Municipal Corporation which was duly delivered in the office of the said Corporation. Even the letter dated 15th December, 2010 is addressed to both the Municipal Commissioner and the Municipal Corporation.

13. It is true that the notice under Sub-section (1) of Section 127 has to be construed strictly as non-compliance with the notice has a drastic consequence of lapse of reservation. Therefore, the mandatory requirement of law is that strict compliance must be made of while issuing a notice under Sub-section (1) of Section 127. In the facts of the case, we find that specifically on the basis of the said notice dated 7th October, 2010, the General Body of the Municipal Corporation passed a resolution for initiating acquisition proceedings. The proposal for the acquisition specifically refers to the said notice. Hence, even the said Corporation has acted upon the said notice dated 7th October 2010 by treating it as a notice under section 127.

14. It is well settled that if certain requirements or conditions are provided by a statute for the benefit of a person, the said requirements or conditions though mandatory, may be waived by the said person if no public interest is involved. In the facts of the case, the Municipal Corporation acted upon the said notice by passing a resolution to initiate acquisition proceedings which shows that the alleged defects in the notice were waived by the said Corporation for whose benefit certain requirements are provided in Section 127.

15. Therefore, it is not possible to find any infirmity in the notice. The notice is legal and valid.

16. It is not in dispute that within a period of 12 months from the date of service of the notice dated 7th October 2010 and even as of today, 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, 1894 has not been issued. It is not issued till today though the Municipal Corporation has deposited a substantial amount with the Special Land Acquisition Officer towards compensation. As a result of the failure to publish the declaration as aforesaid, the reservation under the sanctioned Development Plan stands lapsed.

17. There is a grievance made regarding rejection of the application for development permission. The Petitioner can always file a fresh application for grant of development permission.

18. Hence, the Petitions must succeed and we pass the following order :-

ORDER

- (i) We declare that the reservation imposed by the sanctioned Development Plan on the three plots subject matter of these three Petitions shall be deemed to have lapsed and that the said plots shall be deemed to be released from the reservation. Accordingly, the said

plots shall become available to the owners thereof for the purposes of development as otherwise permissible in case of adjacent land under the relevant sanctioned Development Plan;

- (ii) 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;
- (iii) The Petitions are allowed on above terms with no order as to costs.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)