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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9253 OF 2010

Mohammed Ibrahim Abdul Khalique ...Petitioner
vs.
Director of Town Planning,
Maharashtra State, Central Bldg.,
Pune and others ...Respondents

Mr.C.G.Gavnekar for the Petitioner
Mr.V.S.Gokhale, AGP for the respondent Nos.1 to 5.
Mr.S.S.Patwardhan for the respondent No.6

CORAM : A.S.OKA AND REVATI MOHITE DERE, JJ.
DATE ON WHICH SUBMISSIONS WERE HEARD: JUNE 26, 2015
DATE ON WHICH JUDGMENT IS PRONOUNCED: JULY 15, 2015

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

OVERVIEW

1 Originally this petition was filed by total seven petitioners (for short "Original Petitioners"). The names of petitioner Nos.2 to 7 were permitted to be deleted by order dated 19th November 2013. Therefore, this petition remains confined to the property claimed by the Petitioner No.1.

2 The petitioner No.1 (for short "the petitioner") is claiming to be the owner of an area admeasuring 440 sq meters (for short "the said land") out of plot No.83 Survey No.86/2/1/B and 86/2/2 situated at Malegaon, Taluka Malegaon District Nashik. The said land is situated within the limits of the Municipal Corporation of city of

Malegaon-sixth respondent.

3 The original petitioner made an application to the sixth respondent-Malegaon Municipal Corporation for grant of development permission. The said land is covered by the Site No.216 which is shown reserved for parking in the Revised Development Plan for the city of Malegaon sanctioned under the provisions of the Maharashtra Regional and Town Planning Act,1966 (for short "MRTP Act"). As the development permission was not granted, the petitioners served a notice under Sub-section (1) of section 49 of the MRTP Act on 3rd March 2009 to the State Government. By a communication dated 25th August 2009, the said purchase notice was confirmed by the State Government in accordance with sub-section (4) of section 49 of the MRTP Act. A copy of the said letter dated 25th August 2009 was forwarded by the State Government to the Commissioner of the sixth respondent-Municipal Corporation calling upon the said Corporation to take steps for acquisition within a period of one year from 25th August 2009. On 22nd January 2010, the Commissioner of the sixth respondent submitted a proposal for acquisition of the said land to the District Collector of District Nashik in a prescribed form. It is pointed out in the petition that as the said proposal was incomplete, the same was returned to the Commissioner of the sixth respondent and that the sixth respondent was called upon to submit a fresh proposal. Therefore, a contention is raised that within the time specified

under sub-section 7 of section 49 of the MRTTP Act, an application for acquisition was not submitted by the sixth respondent.

4 The first substantive prayer in this petition under Article 226 of the Constitution of India is for setting aside the reservation covered by Site No.216 on the said land. The second prayer is for a declaration that the said land is available to the petitioner for development.

5 One Vijay Mahadev Gangavane, the Assistant Director of Town Planning has filed an affidavit in reply on behalf of the State Government. He has stated that on 22nd January 2010, the sixth respondent-Municipal Corporation submitted a regular proposal to the District Collector of Nashik for acquisition of the said land and, therefore, compliance was made with sub-section 7 of section 49 of the MRTTP Act.

6 On behalf of the sixth respondent, its Town Planner Shri Sayyed Shakil Ahmad Md. Yusuf filed an affidavit in reply. Even in the said affidavit, reliance has been placed on application dated 22nd January 2010 submitted by the sixth respondent. It is pointed out in the reply that by a letter dated 29th September 2010, office of the Collector informed the Commissioner of the sixth respondent that a Resolution of the Standing Committee was not forwarded along with the proposal and that there is no statement made whether the said land was free of

encroachments. It was stated in the said letter that unless compliance is made, acquisition cannot proceed. The Commissioner of the Municipal Corporation by his letter dated 19th April 2011 informed the District Collector that the proposal has been submitted in terms of the directions of the State Government dated 25th August 2009 and, therefore, it was not necessary to submit the Resolution of the Standing Committee. The Commissioner informed the Collector that the said land was free of encroachments.

7 There is a separate affidavit filed by Shri Rajendrakumar Bhagwat Patil, the Deputy Collector, Land Acquisition, Nashik on behalf of the fourth respondent-District Collector. It is stated in the said affidavit that there were certain deficiencies in the proposal submitted by the Commissioner of the sixth respondent on 22nd January 2010. The said deficiencies were cleared and on 14th September 2011, an order has been issued under section 52 of the Land Acquisition Act, 1894 (for short "the Land Acquisition Act") and the proposal has been forwarded by the Collector to the said Deputy Collector for further action.

8 The submission of the learned counsel for the petitioner is that the application contemplated under sub-section (7) of section 49 of the MRTTP Act is the one under clause(c) of sub-section (1) of section 126 of the MRTTP Act. He pointed out that the Commissioner of the sixth respondent-Corporation

had no authority to submit a proposal for acquisition. He urged that in view of the express provisions of the Maharashtra Municipal Corporations Act, 1949 (for short "the Municipal Corporations Act"), the acquisition proposal could have been initiated only on the basis of the Resolution of the General Body of the sixth respondent-Corporation. He urged that the power to apply in accordance with clause(c) of sub-section (1) of section 126 of the MRTP Act is not delegated to the Commissioner even under section 152 of the MRTP Act. He relied upon the provisions of sections 77 and 78 of the Municipal Corporations Act. He invited our attention to the decision of the Division Bench in the case of Shri C.A.Shah and A.V. Bhat Vs State of Maharashtra and others¹. He pointed out that the said decision has been affirmed by the Apex Court by its Judgment and Order dated 7th August 2013 in Civil Appeal No.2152 of 2008. He, therefore, urged that as the Appropriate Authority did not submit an application in accordance with sub-section 7 of section 49 of the MRTP Act within the time stipulated therein, the reservation on the said land shall be deemed to have been lapsed.

9 The learned counsel appearing for the Malegaon Municipal Corporation invited our attention to the provisions of section 49 of the MRTP Act. He urged that sub-section (7) of section 49 contemplates an Appropriate Authority filing an application for acquisition of the land within a period of 12 months

1 2006 (3) Bom.C.R.216

from the date of confirmation of notice under sub-section (1) of section 49. He pointed out that it is not in dispute that for the reservation in question, the Municipal Corporation was the Appropriate Authority. He pointed out that the decision of this Court in the case of C.A.Shah and A.V.Bhat is on section 127 of the MRTP Act. Inviting our attention to the said decision, he urged that this Court held that as section 152 does not confer power on the Municipal Commissioner to perform functions of the Planning Authority prescribed in section 127, the Municipal Commissioner was not empowered to apply for acquisition of the land in accordance with section 127 of the MRTP Act. He urged that section 152 specifically delegates the power under section 49 of the Municipal Corporations Act to the Commissioner. He urged that non inclusion of clause(c) of sub-section (1) of section 126 in section 152 is due to the fact that as per the clause(c), the acquisition has to be made by the State Government. He, therefore, urged that in view of specific provision of section 152 of the MRTP Act, the Commissioner of the sixth respondent was empowered to perform functions of the Municipal Corporation. He derived support to his submissions from a decision of the learned Single Judge of this Court in the case of the Municipal Corporation through Municipal Commissioner, Aurangabad Vs. Shankar s/o Haribhau Jadhav and another². The learned AGP relied upon the affidavit in reply of Shri Rajendrakumar Bhagwat Patil, the Deputy

Collector, Land Acquisition, Nashik.

10 We have given careful consideration to the submissions. The admitted position will have to be noted here. There is no dispute that the land held by the petitioner is reserved in the sanctioned development plan under the MRTP Act for the city of Malegaon for public purpose of parking which is covered by the Reservation No.216. The original petitioners served a notice under sub-section (1) of section 49 of the MRTP Act to the State Government on 3rd March 2009. After calling for the report and after hearing all concerned parties, by the letter dated 25th August 2009 the State Government confirmed the said notice in exercise of powers under sub-section (4) of section 49 of the MRTP Act. A copy of the said letter was forwarded to the Commissioner of the sixth respondent-Corporation calling upon the Corporation to take steps for acquisition of the land within a period of one year from 25th August 2009. On 22nd January 2010, an application was submitted under the signature of the Commissioner of the sixth respondent-Corporation along with the details in prescribed form to the Collector of Nashik requesting the Collector to acquire the said land.

11 In the light of the aforesaid admitted position, further factual details will have to be considered. A case has been made out in the petition that the proposal submitted by the Commissioner of the sixth respondent on 22nd January 2010 was

incomplete and therefore, the office of the District Collector returned the same and thereafter, a complete proposal was not submitted. On this aspect, it will be necessary to make a reference to the affidavit in reply of Shri Rajendrakumar Bhagwat Patil, the Deputy Collector, Land Acquisition, Nashik. He has stated that the proposal dated 22nd January 2010 was scrutinized and certain defects were found which were communicated to the Municipal Corporation by various letters. By letters dated 1st July 2010, 11th March 2011, 19th April 2011 and 6th August 2011, the Commissioner of the Municipal Corporation removed the deficiencies. On 14th September 2011, an order under section 52 of the Land Acquisition Act was passed by the Collector and the proposal was forwarded to the Deputy Collector, Land Acquisition, Nashik for further proceedings. It is, therefore, stated that the acquisition commenced on 22nd January 2010. What is stated in the said affidavit is not disputed by filing any rejoinder.

12 Sub-section (7) of section 49 of the MRTP Act reads thus:

"[(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or

restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.]”

13 In view of the submissions made across the bar, a narrow controversy which arises is whether the proposal/application submitted by the Commissioner of the sixth respondent-Corporation can be treated as “an application to acquire” within the meaning of sub-section (7) of section 49. In other words, the issue is whether the Commissioner of the sixth respondent-corporation was competent to act on behalf of the Municipal Corporation and submit an application for acquisition. There is no dispute that the said Municipal Corporation is the Planning Authority as well as the Appropriate Authority.

14 The sixth respondent as well as the State Government are relying upon section 152 of the MRTTP Act which reads thus:

“152 Powers of planning Authority or Development Authority to be exercised by certain officers – Notwithstanding anything contained in section 151, the powers and functions of a Planning Authority or New Town

Development Authority shall, for the purposes of sections 25, 43, 44, 45, 46, 49, 51, 53, 55, 56, 58, 89, 90, 107, 112 [126(1)(b)], 135, 136 and 142 be exercised and performed by the following officers, namely:-

- (1) the case of a Municipal Corporation by the Municipal Commissioner or such other officer as he may appoint in this behalf;
- (2) in the case of Zilla Parishad, by the Chief Executive Officer or such other officers as he may appoint in this behalf;
- (3) in the case of a Municipal Council, by the Chief Officer of the Council; and
- (4) in the case of any other local authority, Special Planning Authority or New Town Development Authority, by the Chief Executive Officer or person exercising such powers under Acts applicable to such authorities:

[Provided that, in the case of a New Town Development Authority declared under subsection (3-A) of section 113, that Authority shall, for the purpose of information of the public, publish in the Official Gazette, and in such other manner as it may consider necessary, the officers of the Authority who will exercise the powers and perform the functions, of that Authority for the purposes of this Act.]

[Provided further that, the State

Government may, by a notification in the Official Gazette, delegate any of the powers exercisable under sections 44, 45, 46, 51, 53, 54, 55, 56, 135 and 136 of this Act by the Slum Rehabilitation Authority appointed under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, acting as the Planning Authority, to the Chief Executive Officer of the Slum Rehabilitation Authority.]

15 Thus, on plain reading of section 152 of the MRTTP Act, the power and functions of the sixth respondent-Corporation under section 49 of the MRTTP Act have been delegated to the Municipal Commissioner.

16 At this stage, it will be necessary to make a reference to the decision of the Division Bench of this Court in the case of C.A.Shah and A.V.Bhat which has been affirmed by the Apex Court by Judgment and Order dated 7th August 2013. Before the Division Bench a specific question arose whether the Municipal Commissioner or the Standing Committee of the Municipal Corporation can decide to commence the acquisition proceedings of the land reserved in a development plan. The question was whether the action of the Municipal Commissioner or the Standing Committee of proposing to acquire a reserved land can be said to be the decision of the Municipal Corporation in the eye of law. In paragraph 36, the

Division Bench dealt with section 152 of the MRTP Act. The relevant part of paragraph 36 reads thus:

"36 ...By virtue of section 152 of the MRTP Act, 1966, the Municipal Commissioner can exercise and perform the powers of the Municipal Corporation (Planning Authority) as are contained in sections 25, 43, 44, 45, 46, 49, 59, 53, 55, 56, 58, 89, 90, 107, 112, 126(1)(b), 135, 136 and 142. In other words section 152 of the MRTP Act, 1966 excludes the authority of Municipal Commissioner to perform the functions of the Planning Authority prescribed in section 127. In law, therefore, even with the aid of section 68 of the BPMC Act, the functions of the Planning Authority as provided in section 127 cannot be performed by the Municipal Commissioner."

(underline supplied)

17 In paragraph 38, the Division Bench proceeded to hold that the Commissioner of the Municipal Corporation is not empowered to exercise the functions of the Planning Authority even by virtue of section 68 of the Municipal Corporations Act. In paragraph 36, the Division Bench held that section 152 of the MRTP Act excludes the authority of the Municipal Commissioner to perform the functions of the Planning Authority described in section 127. However, section 49 has been specifically included in section 152. By virtue of the inclusion of section 49 in section 152, the Municipal

Commissioner has been given power to perform the functions of the Municipal Corporation under section 49. Making an application for acquisition of reserved land in accordance with sub-section 7 of section 49 is also a function of the Municipal Corporation which is the Appropriate Authority. The power of the Municipal Corporation can be exercised by the Commissioner. Hence, the decision of this Court is of no help to the petitioners.

18 The argument of the learned counsel for the petitioner in substance is that the application for acquisition as contemplated by sub-section 7 of section 49 of the MRTP Act is the one under clause(c) of sub-section (1) of section 126 of the MRTP Act and that section 152 does not delegate the power to make such application on behalf of the Municipal Corporation to the Municipal Commissioner.

19 Sub-section (1) of section 126 provides for three modes of acquisition of lands reserved in a Regional Plan or Development Plan under the MRTP Act. Clause(c) is one of the three modes. The said mode is of acquiring the land in accordance with the provisions of the Land Acquisition Act. The second mode is of acquiring the land by consent of the owner by an Agreement. The third mode is of acquiring the land against grant of FSI or TDR.

20 Lapse of reservation takes place under sub-section (7) of section 49 only if there is a failure on the part of the Appropriate Authority to make an

application for acquisition of the reserved land within a period of one year from the date on which notice under sub-section (1) of section 49 is confirmed by the State Government. Thus, if the Appropriate Authority makes an application for acquisition of the reserved land (in respect of which notice is given) to the Collector within the specified period of one year, the acquisition will not lapse. The Municipal Commissioner was empowered by section 152 to perform functions of the Municipal Corporation under section 49 of the MRTP Act. One of the functions of the Municipal Corporation as the Appropriate Authority is to make an application under sub-section (7) of section 49 of the MRTP Act. Discharge of the said function is independent of taking a recourse to one of the three modes of the acquisition provided under sub-section (1) of section 126 of the MRTP Act. There is one more important aspect. If we peruse all the sub-sections of section 49, only action which can be taken thereunder by a Municipal Corporation as the Appropriate Authority is to apply for acquisition of the land subject matter of the notice under sub-section (1). Therefore, if the interpretation sought to be put by the petitioner is accepted, inclusion of section 49 in section 152 will become redundant. Except for making an application for acquisition, no other role can be played under section 49 by a Municipal Corporation as the Appropriate Authority. Hence, by virtue of delegation made by section 152, the function of the Municipal Corporation acting as the Appropriate

Authority under sub-section (7) of section 49 can be discharged by the Commissioner.

21 In view of specific power conferred by section 152 on the Municipal Commissioner to discharge the functions of the Municipal Corporation under section 49 of the MRTP Act, the application made by the Municipal Commissioner on 22nd January 2010 will have to be treated as an application made by the sixth respondent-Municipal Corporation in accordance with sub-section (7) of section 49 of the MRTP Act which was acted upon by the State Government by issuing an order under section 52 of the Land Acquisition Act.

22 Therefore, the reservation did not lapse on the basis of the notice under sub-section (1) of section 49 of the MRTP Act. Hence, the petition must fail.

23 However, we clarify that if otherwise it is permissible in accordance with law, it will be open for the petitioner to issue notices under section 49 or 127 of the MRTP Act.

24 Subject to what is observed above, we pass the following order :

- (I) Writ Petition is rejected;
- (II) Rule is discharged with no order as to costs.