

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10572 OF 2012

Smt. Murdevi Surendra Upadhye and Others. .. Petitioners
Vs
State of Maharashtra and Others. .. Respondents
—
Shri D.V. Sutar for the Petitioners.
Shri V.S. Gokhale, AGP for Respondent Nos.1 to 5.
Shri Manoj A. Patil for Respondent No.6.
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CORAM : A.S. OKA & A.K MENON, JJ
DATED : 7TH JANUARY 2015

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

. Considering the narrow controversy involved in this
Petition, the same is taken up forthwith for final disposal.

2. Rule. The learned AGP waives service for the First to Fifth
Respondents and the learned counsel appearing for the Sixth
Respondent waives service.

3. The Petitioners are claiming to be the legal representatives
of one Shri Surendra Upadhye who was the owner of the land bearing
Gat No.238/A (Old Survey No.663/3) admeasuring 37 Ares (for short
“the said land”) which is situated within the limits of the Sixth
Respondent Kurundwad Municipal Council.

4. The State Government sanctioned the development plan for the area covered by the Sixth Respondent Municipal Council by a Notification dated 3rd June 1985 and the development plan came into force with effect from 15th July 1985. The said land claimed by the Petitioners was affected by Reservation No.55 under the said sanctioned development plan. The said land was reserved for the police department. The Petitioners are relying upon a notice dated 1st January 2009 issued under the unamended Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The said notice was addressed to the Chief Officer of the Sixth Respondent Municipal Council and to the Director General of Police of the State of Maharashtra (describing him as the Appropriate Authority). By the said notice, the Planning Authority and the Appropriate Authority were called upon to acquire the said land within a period of six months from the date of service of the notice. By a letter dated 13th January 2009, the Sixth Respondent informed the Advocate for the Petitioners that it is for the police department to take steps for the acquisition of the said land. The Petitioners filed Writ Petition No.3676 of 2012 for claiming that as no steps were taken within the statutory period for acquisition of the said land, the reservation has lapsed. The said Petition was filed relying upon the said notice dated 1st January 2009. Before the amendment which was brought on the

statute book on 25th June 2009, under the unamended Section 127 of the MRTP Act, the period of six months was provided to the Planning Authority or the Appropriate Authority or the Development Authority to take steps for acquisition of the reserved land. However, by the said amendment, instead of the period of six months, the period of twelve months has been incorporated. Relying upon the said amendment, the Division Bench by its judgment and order dated 17th August 2012 disposed of the said Petition by observing that the Petition was premature inasmuch as when the Petition was filed, the period of twelve months had not expired. Therefore, the present Petition has been filed by the Petitioners by placing reliance on the decision of the Apex Court in the case of *Girnar Traders v. State of Maharashtra and Others*¹. Reliance is placed on what is held by the Apex Court in Paragraph 55 onwards of the said decision.

5. There is a reply filed by Shri Sudhir Gulchand Bhalerao, the Assistant Police Inspector of Kurundwad Police Station, Kolhapur. In the said reply, the service of notice is not disputed. It is stated that the notice was served on 6th January 2009 to the office of the Director General of Police and after receipt of the said notice, by a letter dated 21st February 2009, a request was made by the Superintendent of Police, Kolhapur, to process the proposal submitted on 7th February 2009 for allotment of the said land to the police department. There is a reply

1 (2007)7 SCC 555

filed by the Chief Officer of the Sixth Respondent Municipal Council contending that the reservation is for the police department and hence, no steps were required to be taken by the Sixth Respondent Planning Authority.

6. There is no dispute about the service of notice dated 1st January 2009. The contention raised by the learned AGP is that the notice dated 1st January 2009 issued under Section 127 of the MRTP Act is defective inasmuch as the notice ought to have been served upon the Appropriate Authority as defined in Sub-section (3) of Section 2 of the MRTP Act. He urged that as the reservation was for the police department, the Appropriate Authority was the State Government. His submission is that as held by this Court, the notice will have to be construed strictly as non-compliance with the notice has drastic consequences.

7. As far as the legal position is concerned, the law laid down by the Apex Court in the case of *Girnar Traders* has been specifically affirmed by a recent decision of the Bench of the Hon'ble Apex Court consisting of three Hon'ble Judges in the case of *Shrirampur Municipal Council. v. Stayabhamabai Bhimaji Dawkher*². The view taken by the Apex Court in the case of *Girnar Traders* is that the publication of a declaration either under Sub-section (2) or Sub-section (4) of Section

² (2013)5 SCC 627

126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 (for short “the said Act of 1894”) is a sine qua non for commencement of any proceeding for acquisition under the MRTP Act. The Apex Court held that the steps for acquisition within the meaning of Sub-section (1) of Section 127 of the MRTP Act would really commence when the State Government publishes such a declaration either under Sub-section (2) or Sub-section (4) of Section 126 of the MRTP Act read with Section 6 of the said Act of 1894. In the present case, no such declaration has been admittedly issued within a period of twelve months from 6th January 2009 when the notice dated 1st January 2009 was served upon the Director General of Police of the State of Maharashtra.

8. Therefore, the only issue which survives for our consideration is whether the notice has been served upon the Appropriate Authority. It is true that the reservation is for the benefit of the police department of the State of Maharashtra, and therefore, the State of Maharashtra is the Appropriate Authority within the meaning of Sub-section (3) of Section 2 of the MRTP Act. This Court has repeatedly held that a Notice under Section 127 of the MRTP Act will have to be construed strictly as there is a drastic consequence prescribed by the law for non-compliance with the notice. Mandatory requirement of service of notice is obviously for the benefit of the

Planning Authority, the Development Authority or the Appropriate Authority, as the case may be. It is well settled that a party for whose benefit a mandatory requirement is incorporated in law can always waive the said requirement.

9. Coming back to the facts of the case, we must note here that the Petitioners filed the earlier Writ Petition No.3676 of 2012 on the basis of the same notice dated 1st January 2009. A reply was filed to the said Petition by Shri Nagargoje, the Police Inspector of Kurundwad Police Station, Taluka -Shirol, District - Kolhapur. In paragraph 3 of the said reply dated 9th July 2012, the Police Officer stated that after receipt of the purchase notice dated 1st January 2009, steps were already taken requesting the appropriate authorities to initiate acquisition proceedings. In the said reply, the objection that the notice ought to have been served in the name of the State of Maharashtra was not at all raised. We must note here that while disposing of the said Writ Petition by a detailed judgment and order, the Division Bench has not found fault with the legality and validity of the said notice. The Division Bench has passed the judgment on 17th August 2012 after hearing the learned AGP representing the State. The Writ Petition was disposed of only on the ground that it was premature as it was filed before expiry of 12 months from the date of service of the notice. To the present Petition, as stated earlier, Shri Sudhir G. Bhalerao, the Assistant Police

Inspector attached to the Kurundwad Police Station has filed the affidavit in reply. Even in the said reply, such objection that only the State of Maharashtra is the Appropriate Authority is not raised. On the contrary, the perusal of the Paragraph 2 of the affidavit will show that all concerned proceeded on the footing that the notice dated 1st January 2009 was a valid notice under Section 127 of the MRTP Act. It is stated in the Paragraph 4 of the affidavit that after the service of the said notice on 6th January 2009, the Superintendent of Police, Kolhapur, moved the State Government for acquisition. Considering these peculiar facts, the objection raised by the learned AGP is not at all tenable. In view of the law laid down by the Apex Court, the reservation under the development plan on the said land has lapsed.

10. The learned counsel appearing for the Petitioners states that he is not pressing for the prayer clause (a) and he is pressing for other prayers in the Petition. Prayer clause (b) is for a declaration that the reservation has lapsed. The prayer clause (c) is for directing the Planning Authority to decide the Application for grant of development permission.

11. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) The Rule is made absolute in terms of prayer clause
- (b) with the modification that the said land shall become available to the owners thereof for the purposes of development as otherwise permissible in case of adjacent land under the sanctioned development plan;
- (b) We direct the State Government to issue notification as contemplated by Sub-section (2) of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 within a period of three months from today;
- (c) If the Application made by the Petitioners for grant of development permission is still pending with the Sixth Respondent, the same shall be expeditiously decided in the light of this judgment and order;
- (d) The Rule is made absolute on above terms;
- (e) All concerned to act upon an authenticated copy of this order.