

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.820 OF 2014

Lalitchandra J. Juthani.

..Petitioner.

vs.

State of Maharashtra and ors.

..Respondents.

Mr.Gautam Ankad with Mrs. Anita Borkar for the Petitioner.

Mr.S.S.Joshi, AGP. For Respondent Nos. 1 and 2.

Mr.,A.Y.Sakhare,Sr.Advocate with Mr. Vinod Mahadik for the BMC.

CORAM : A.S.OKA AND

A.P. BHANGALE, JJ.

DATE : 7th April, 2015

PC:

Notice for final disposal has already been issued. Heard learned counsel appearing for the petitioner and the learned Senior Counsel appearing for 3rd and 4th respondents. We have also heard AGP appearing for the first and second respondents.

2) The land subject matter of this petition has been described in Paragraph 2 of the petition. The case made out in the petition is that the said land described in Paragraph 2 of the petition is reserved in the sanctioned revised Development Plan for the City of Mumbai for Development Plan.

3) The case made out by the petitioner is that for a period of

10 years from the date on which sanctioned revised Development Plan for the City of Mumbai came into force, the acquisition proceedings were not initiated by the 3rd and 4th respondents, in respect of the said land. Therefore, a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") was served by the petitioner to the 3rd and 4th respondents. The said notice dated 7 May 2012 was admittedly served to the 3rd and 4th respondents on 8 May 2012. The contention raised in the petition is that as no steps as contemplated by Sub Section 2 or Sub Section 4 of Section 126 of the MRTP Act were taken by 3rd and 4th respondents to acquire the said land, by operation of Sub Section 1 of Section 127, the reservation on the said land stands lapsed. There is a reply filed by Shri. Juthani, the Assistant Engineer (Development Plan) of the 3rd and 4th respondents Municipal Corporation opposing the petition. The submission of the learned counsel appearing for the petitioner is that even going by the reply filed by Mr. Juthani, no steps as contemplated by Sub Section 2 or Sub Section 4 of Section 126 of the MRTP Act have been taken within stipulated period of 12 months from the date of service of the notice under sub Section 1 of Section 127 and therefore, reservation was lapsed.

4) Learned Senior Counsel for the 3rd and 4th respondents opposed the petition by relying upon the statements made in the

affidavit in reply. He submits that on a part of the reserved land, a road is already in existence. He urges that even if no steps have been taken under the MRTP Act, a draft revised development plan of Greater Mumbai has been published on 24 February 2013 and the suggestions and objections to the same have been invited. He urged that same reservation is proposed in the draft revised development plan and therefore, no interference is called for by this Court.

5) We have considered the submissions. It is not in dispute that a notice under sub Section 1 of Section 127 of MRTP Act has been served upon the 3rd and 4th respondents on 8 May 2012. In the affidavit of Shri. Juthani, it is stated that after obtaining sanction of the Municipal Commissioner, a proposal for acquisition of the said land was resubmitted to the Improvement Committee. By the resolution dated 18 July 2013, the said proposal was turned down by the Improvement Committee of the 3rd Respondent Municipal Corporation.

6) Thus, within the period of 12 months from the date of service of the notice under sub Section 1 of Section 127 of the MRTP Act, 1966, no steps have been taken by the 3rd and 4th respondents to acquire said land subject matter of reservation in accordance with Sub Section (2) or (4) of Section 126 of the MRTP Act.

7) The law laid down by the Apex Court on this aspect is well settled. The view taken by the Apex Court is that a publication of a declaration 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 is a sine qua non for the commencement of acquisition proceedings under the MRTP Act. The Apex Court held that unless and until such a declaration is issued, it cannot be said that the steps for acquisition have commenced. In the present case, no such declaration has been issued even as of today.

8) As far as the draft revised development plan published by the Municipal Corporation in the year 2015 under the MRTP Act is concerned, it is for the petitioner to raise appropriate objections. If the objections are raised by the petitioner, firstly, the 3rd respondent being the Planning Authority and subsequently, the State Government are bound to consider the said objections in accordance with law.

9) Accordingly the petition must succeed and we pass the following order:-

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

b) We direct the 1st respondent State Government to issue notification under sub Section 2 of Section 127 of the MRTP Act within a period of three months from today;

c) Petition is allowed in the above terms.

(A.P. BHANGALE, J.)

(A.S. OKA, J.)