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

WRIT PETITION NO.1641 OF 2008

Devkinandan J. Gupta	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

Mr. Jitendra Jain a/w Ms. Tanmayee Salekar i/by Shah & Sanghavi, for the Petitioner.

Mr. A.B. Ketkar, AGP, for the Respondent No.1.

Mr. Vinod Mahadik, for the Respondent No.2 – BMC.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 11th MARCH, 2015

ORAL JUDGMENT (Per A.S. Oka, J.)

. The Petition is called out for final hearing. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the second and third Respondents. The Petitioner claims to be a lessee of the land (for short “the said land”) more particularly described in paragraph A of the Petition. The development plan under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) came into force on 11th May, 1993. The said plot of land described in paragraph A of the Petition was shown reserved in the sanctioned development plan for a playground.

2. The constituted attorney of the Petitioner on 6th September, 2005 served a notice to the Commissioner of the second Respondent – Municipal Corporation. The said notice was under Section 127 of the MRTP Act. The second Respondent was informed that the said land has been reserved for playground in the sanctioned development plan. The second Respondent was called upon to acquire the said plot of land. The Petitioner is relying upon the information furnished to him on 25th August, 2006 under the Right to Information Act, 2005 by the Chief Engineer (Development Plan) of the second Respondent - the Municipal Corporation Greater Mumbai. In the information furnished, it is stated that the second Respondent submitted a proposal for acquisition of lands bearing CTS Nos.777 and 778 of village Pahadi, Goregaon (West), Mumbai Suburban District on 3rd March, 2006. It was stated that the acquisition proceedings have been initiated within the period of six months from the date of service of notice under Section 127 of the MRTP Act. The prayer in this Petition is for a declaration that the reservation on the said plot of land has lapsed in view of the failure of the second Respondent – Planning Authority to take steps for acquisition of the said land within the time stipulated from the date of the service of the notice under Section 127.

3. The learned counsel appearing for the Petitioner relied upon several decisions of this Court as well as the Apex Court including the decision of the Apex Court in the case of *Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher and Ors.*¹. He urged that a notification either under Sub-Section (2) or Sub-Section (4) of Section 126 of the MRTP Act has not been issued within the time stipulated under Section 127 of the MRTP Act and, therefore, by operation of law, the reservation stands lapsed. The learned counsel appearing for the second Respondent sought time. Later on he pointed out that though a draft affidavit-in-reply is kept ready, the same is not affirmed and filed. He pointed out that after service of notice dated 6th September, 2005, an application was made by the second Respondent to the Collector for initiating acquisition proceedings. He pointed out that as per the demand made by the State on 22nd December, 2009, the second Respondent has deposited a sum of approximately Rs.2.79 Crores with the Special Land Acquisition Officer – 7 which is equivalent to 2/3rd of the estimated amount of the compensation payable. He urged that thereafter a request was made to issue a notification for acquisition.

1 (2013)5 SCC 627

4. We must note here that a notice was issued on this Petition on 16th November, 2010 and after hearing the counsel for the second and third Respondents on 12th January, 2011, Rule was issued. Thereafter, the Petition appeared on board on at least two occasions on 28th February, 2014 and 15th April, 2014. Therefore, no case is made out for grant of any adjournment at the instance of the second and third Respondents.

5. There is no dispute about the service of notice under Section 127 of the MRTP Act. From Exhibit “C” of the Petition, it appears that the notice was served on 6th September, 2005 in the office of the Commissioner of the second Respondent – Municipal Corporation. From Exhibit “D” which is the information furnished to the Constituted Attorney of the Petitioner on 25th August, 2006 by the second Respondent, it appears that a proposal for acquisition in respect of the said plot of land was submitted on 3rd March, 2006. We have perused the draft of the reply tendered by the learned counsel for the second and third Respondents. Even going by the stand taken in the draft reply of the Municipal Corporation, within a period of six months or for that matter within a period of twelve months from 6th September, 2005, a declaration either under Sub-Section (2) or Sub-Section (4) of Section 126 of the MRTP Act was admittedly not issued.

6. In the case of *Shrirampur Municipal Council, Shrirampur*, the Apex Court upheld the view taken by it earlier in the case of *Girnar Traders (II) vs. State of Maharashtra and Ors.*². The law laid down by the Apex Court is that a publication of 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 is a *sine qua non* for commencement of proceedings for acquisition under the MRTP Act. Unless and until such a declaration is not issued, it cannot be said that steps for acquisition are commenced. The Apex Court, while dealing with Sub-Section (1) of Section 127 held that the steps for acquisition within the meaning of Sub-Section (1) would really commence when such a declaration is published by the State Government.

7. If such a declaration is not published by the State Government within the time stipulated under Section 127, the reservation provided for in the sanctioned development plan would lapse by operation of law.

8. We must note here that before amendment made to Section 127 of the MRTP Act by Maharashtra Act No.16 of 2009 on 25th June, 2009, time provided to take steps was of six months. By the amendment made by the Maharashtra Act No.16 of 2009, the said period was

² (2007)7 SCC 555

enhanced to twelve months. In the present case, going by the information furnished to the Constituted Attorney of the Petitioner by the second Respondent under the Right to Information Act, 2005, an application for initiating acquisition proceeding was made on 3rd March, 2006. In any case, even going by the draft affidavit of the Municipal Corporation, within a period of twelve months from 6th September, 2005, such a declaration was not published. In fact as per the submission of the learned counsel for the second Respondent, the amount required to be deposited for issuing such a declaration was deposited on 22nd December, 2009.

9. The learned counsel appearing for the second Respondent seeks time. Going by the information furnished by the Petitioner and even the draft reply pointed out by the counsel, we find that it is not the case of the second Respondent that such a declaration was issued by the State Government within the time provided in Section 127. If such a declaration was in fact issued within the time specified by the statute, the second Respondent can always apply for recall of this order. Subject to what is observed above, the Petition must succeed and we pass the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a) subject to modification that the said land shall become available to the owner 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 issue a notification under Sub-Section (2) of Section 127 of the MRTP Act within a period of three months;
- (iii) The Petition is disposed of on above terms. There will be no order as to costs.

(A.K. MENON, J)**(A.S. OKA, J)**