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

WRIT PETITION NO.1777 OF 2009

Dhananjay Himmatlal Trivedi

... Petitioner

Vs.

Mumbai Municipal Corporation
of Greater Mumbai & Ors.

... Respondents

Mrs. Jyoti Chavan, for the Petitioner.

Mr. Vinod Mahadik, for the Respondent No.1 - BMC.

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

DATE : 11th MARCH, 2015

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

. Called out for final hearing. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the Respondent Nos.1 to 3. The Petitioner is claiming to be a Trustee of a Charitable Trust which is said to be the owner of the land more particularly described in paragraph 1 of the Petition.

2. The said land described in paragraph 1 of the Petition was reserved under the sanctioned development plan. Under the sanctioned development plan, the said land was under reservation for the purposes

of Dhobighat. The Petitioner is relying upon the notice dated 20th February, 2009 addressed by him as a Trustee of Shree Ravishankar Gangubhai Charitable Trust to the first to third Respondents under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. The contention of the Petitioner is that as no steps were taken within the stipulated period of six months from the date of service of the said notice, the reservation on the said land shall be deemed to have lapsed.

3. There is a reply filed by Mrs. Anita D. Naik, the Assistant Engineer (Development Plan) of the first Respondent – Municipal Corporation. In the said reply, it is accepted that the said land described in paragraph 1 was reserved in the revised development plan for Dhobighat and for widening of existing road. Clauses (b) and (c) of paragraph 5 of the said affidavit read thus :-

“(b) I say that the purchase notice has been served by the trustee of the petitioner on 20.02.2009 under section 127 of M.R.T.P. Act 1966 for the land under reference. I say that the necessary action is required to be taken within 6 months from the date of serving Purchase Notice i.e. on or before 19.08.2009.

(c) I say that after receipt of the purchase notice the proposal was processed and sanction of Improvement Committee/ Corporation was obtained vide resolution no.60 dated 24.7.2009 and 460 dated 12.8.2009, the application was made to Collector (M.S.D.) under prescribed format under no. ACQ/2249/WS/KW/dt. 13.8.2009. I say that the details required such as ownership records i.e. 7/12 extract Property Register Card were attached alongwith the required undertaking

to the Collector. I say that these respondents have taken the necessary steps to initiate acquisition proceedings within stipulated period of 6 months i.e. before 19.8.2009 as provided within its means in section 127 of M.R.T.P. Act 1966. I say that the further process is to be conducted entirely by State Government machinery. I say that this respondent is a Planning Authority which can only make application and make available the funds for payment of compensation to the owner as per award at the time of declaration of award or taking the possession of land as per the provisions of the act.”

4. The said affidavit has been filed on 12th November, 2009. Thus, till the date of filing of the affidavit there was no declaration issued either under Sub-Section (2) or Sub-Section (4) of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”).

5. As far as Section 127 of the MRTP Act is concerned, the law is no more *res integra*. The law is laid down in the case of *M/s. Girnar Traders Vs. State Of Maharashtra & Ors.*¹ and *Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher & Ors.*².

6. Admittedly, the declaration as contemplated 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 within the time stipulated under Section 127 of the MRTP Act. Hence, the Petition must succeed and we pass the following order :-

1 (2007) 7 SCC 555

2 (2013) 5 SCC 627

ORDER

- (i) Rule is made absolute in terms of prayer clause (A) with the 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 development plan;
- (ii) We direct the State Government to issue a notification in terms of Sub-Section (2) of Section 127 of the MRTP Act within a period of three months from today;
- (iii) Petition is allowed on above terms. There will be no order as to costs.

(A.K. MENON, J)

(A.S. OKA, J)