

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH, NAGPUR.

WRIT PETITION NO.250 OF 2012

Satyanarayan S/o Shrivallabhji Laddha and ors

..vs..

**The Municipal Corporation of City of Amravati, thr its Commissioner
Amravati and anr**

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
.....

Court's or Judge's order

Shri P. Agrawal, counsel for the Petitioners.
Shri A.P. Kalmegh, counsel for R-1.
Shri N.R. Rode, AGP for R-2.

**CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.**
DATE : JANUARY 20, 2015.

Heard.

The petitioners in writ petition initially sought a direction to respondent No.1 – Municipal Corporation to take necessary steps to release the property of the petitioners from compulsory acquisition.

It is not in dispute that in development plan which has come in force from 25.2.1993, the said property is reserved for extension of

primary school at site no.139. The petitioners earlier served a purchase notice under Section 127 of The Maharashtra Regional & Town Planning Act, 1966 and the learned counsel states that because of that notice the Corporation initiated steps to acquire the land. An Award under Section 11 was passed and the amount of compensation payable by the Municipal Corporation was found exorbitant by it. The Municipal Corporation has, therefore, approached this Court in Writ Petition No.1176 of 1997. In that writ petition, Civil Application No.1745 of 1999 came to be filed and in reply to it, the Corporation declared its intention to withdraw the acquisition proceedings.

Thereafter, no steps for dropping of acquisition were being taken and hence, Writ Petition No.250 of 2012 came to be filed on 4.1.2012.

Shri P. Agrawal, learned counsel for the petitioners, in this background invites our attention to order passed by this Court on 3.7.2013 in Writ Petition No.250 of 2012 to urge that this Court has issued directions to the Corporation as also to the State Government to take suitable decision upon the proposal to drop/release the land of the petitioners from acquisition. He also invites our attention to the subsequent events which have been brought on record vide Pursis Stamp No.9813 of 2014 presented on 22.8.2014. The decision of the State Government not to delete the lands from land acquisition dated 12.8.2014 is filed along with it.

Shri Agrawal, learned counsel, submits that the decision is because of subsequent resolution of the Municipal Corporation dated 23.6.2013. He contends that the petitioners

have been made to suffer from 1992-93 for almost last 23 years for no fault on their part. By way of abundant precaution, he invites our attention to the fact that by seeking amendment, the petitioners have pointed out the provisions of the new enactment i.e. Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (referred to as “**2013 Act**”). According to him, in view of the provisions of Section 24(2) of the said Act, as neither possession has been taken nor the compensation has been paid the acquisition and award lapses. He further insists that in present facts, this Court must declare that the reservation is lapsed.

Learned Assistant Government Pleader is opposing the petition. He states that the State Government after noticing the fact that the reservation exists and the Resolution of the

general body of the Municipal Corporation dated 23.6.2013, taken correct view of the matter. He further argues that, the State Government at this stage is not concerned with the provisions of 2013 Act mentioned *supra* .

Shri Kalmegh, learned counsel, adopts the argument of the learned Assistant Government Pleader. He also invites our attention to the additional affidavit filed on behalf of respondent No.1 on 10.12.2014.

The facts noted *supra* are not in dispute. The development plan in terms of Section 31(1) for Amravati Municipal Corporation Area has come into force from 25.2.1993. The purchase notice under Section 127, therefore, could have been given after ten years of the said date i.e. after February, 2003.

The acquisition proceedings were initiated

by the Municipal Corporation in the meanwhile and as it could not pay the amount of compensation, the Municipal Corporation filed Writ Petition No.1176 of 1997. In that writ petition, Civil Application No.1745 of 1999 declaring its intention not to acquire that land. The petition as well as the civil application were filed by the Municipal Corporation.

The impugned order passed by the State Government on 12.8.2014 shows later Resolution of the Municipal Corporation dated 23.6.2014 which seeks to acquire the land.

These events need to be understood as per the scheme of the Maharashtra Regional & Town Planning Act, 1966. The Resolution lapses only under Section 127 if after ten years of coming into the development plan, the land is not acquired and the purchase notice is served thereafter. After service of purchase notice, the

Municipal Corporation is supposed to take the steps to acquire the land within one year. If no steps are taken, the reservation is deemed to have lapsed. Similar provision for dereservation exists in Section 49 of that enactment.

Thus, these are the two remedies available to the petitioners and the petitioners have not taken recourse to that remedies. The lapsing of reservation is to be modified by the Municipal Corporation in terms of Section 127(2) of the MRTP Act. That also has not been done.

Hence, the reservation which has been fastened after completing formalities as per the provisions as contemplated by Sections 23 to 31 of the MRTP Act, still survives. The general body has on 23.6.2014 again found it necessary to acquire the land. In this situation, it is not possible to declare the reservation as lapsed.

However, the lands are still in possession of the petitioners. They have not been paid the compensation. The Municipal Corporation could not pay the amount of compensation as determined way back and, therefore, was constrained to file Writ Petition No.1176 of 1997. Impact of these facts is to be looked into when the petitioners are either sought to be disturbed or when their land is sought to be taken by the Municipal Corporation. The provisions of Section 24(2) of new Land Acquisition Act, 2013 have been already judicially interpreted.

Hence, in this situation, with liberty to the petitioners to take such other steps as are permissible in law, we dispose of the writ petition with no order as to costs.

JUDGE

JUDGE

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