

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

WRIT PETITION NO.2538/2015

Shri Sahakari Bhadekaru Malki Gruh Nirman Sanstha Maryadit, Daryapur
through its President

...Versus...

The Special Land Acquisition Officer, Upper Wardha Project No.4 Amravati and
another

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

Court's or Judge's orders

Shri S.S. Joshi, Advocate for petitioner
Ms N.P. Mehta, AGP for respondent no.1
Shri R.S. Kankale, Advocate for respondent no.2

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATE : 03.09.2015

By this petition, the petitioner – Society seeks a declaration that the acquisition proceedings in respect of the petitioner's land, initiated by the notification dated 29.10.2003 issued by the respondent no.1 – Special Land Acquisition Officer stand lapsed, in view of the provisions of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as neither the physical possession of the land has been secured by the Municipal Council – acquiring body nor the petitioner has been paid the compensation for the acquisition.

It is stated that since the award was passed 5 years or more before the commencement of the Act of 2013 and since the petitioner has not lost the possession of the land and has also not

received the compensation, the acquisition proceeding in respect of the petitioner's land would lapse in view of the provisions of Section 24 (2) of the Act of 2013.

The learned Assistant Government Pleader appearing on behalf of the State Government and the learned Counsel for the Municipal Council state that since the acquisition of the land of the petitioner is initiated under the provisions of the Maharashtra Regional and Town Planning Act, 1966 and since the provisions of Section 24 (2) of the Act of 2013 cannot be made applicable to the acquisition under the Maharashtra Regional & Town Planning Act, there cannot be any lapsing of the acquisition proceedings in respect of the land of the petitioner. The learned Counsel have relied on the order dated 6.5.2015 in Writ Petition Nos.440/2014 and 6928/2014 in this regard. It is stated that the petitioner has filed a reference under Section 18 of the Land Acquisition Act for enhancement of compensation. It is stated that the petitioner had filed Writ Petition No.5159/2003 challenging the reservation of the land and seeking de-reservation under Section 127 of the MRTP Act. It is stated that after the said petition was dismissed by an order dated 5.4.2004, the petitioner has filed Writ Petition No.1260/2008, challenging the award passed on 25.1.2006 on the ground that the award was not passed within a period of two years from the date of issuance of Section 6 Notification as required by the provisions of Section 11 A of the Land Acquisition Act. It is stated that the said petition is still pending and stay granted earlier was vacated by an order dated 1.10.2008. It is stated that since the acquisition is initiated under the provisions of the MRTP Act, the provisions of Section 24 (2) of the Act of 2013 would not apply.

Shri Joshi, the learned Counsel for the petitioner submits in reply that there is a mention about the issuance of a notification under Section 4 of the Land Acquisition Act in the award dated 25.1.2006 and hence, it cannot be said that the acquisition is initiated under the provisions of the MRTP Act. It is stated that the acquisition is initiated under the Land Acquisition Act in this case, and hence, the provisions of Section 24 (2) of the Act of 2013 would apply.

On hearing the learned Counsel for the parties and on a perusal of the order dated 6.5.2015 in Writ Petition Nos.440/2014 and 6928/2014, it appears that the declaration sought by the petitioner cannot be granted. The petitioner cannot be permitted to blow hot and cold. In the previous petition filed by the petitioner bearing Writ Petition No.1260/2008, which we have called for perusal, the case of the petitioner is fully based on the initiation of the proceedings for acquisition under the provisions of the MRTP Act, 1966. In fact, in ground no.5 of the said writ petition, it is stated that Section 4 Notification under the Land Acquisition Act was not issued as the acquisition is under the MRTP Act and hence, the notification under Section 6 of the Land Acquisition Act read with 126 of the MRTP Act 1966 is issued. In the said proceedings, by placing reliance on the judgment in ***Girnar (3)***, it is sought to be canvassed that even in respect of the application under the MRTP Act, the provisions of Section 11 A of the Land Acquisition Act would apply and the land acquisition proceedings would lapse, if the award is not passed within a period of two years from date of the issuance of Section 6 Notification. The Hon'ble Supreme Court in the case, which is popularly known as ***Girnar (3)*** and reported in ***(2011)***

3 SCC 1, has clearly held that the provisions of lapsing of the acquisition proceedings under Section 11 A of the Land Acquisition Act 1894 would not apply to the acquisition initiated under the MRTP Act, 1966. Be that as it may, the case of the petitioner in this petition is also based on the Section 6 Notification issued under the provisions of the Land Acquisition Act read with Section 126 (2) of the MRTP Act, 1966 on 29.10.2003. It is clear from a reading of the notification dated 29.10.2003 that is annexed to this petition that the acquisition is not initiated under the Land Acquisition Act but is initiated under the provisions of the MRTP Act, 1966. Merely because there is some mention in respect of the issuance of Section 4 Notification in the award dated 25.1.2006, the same cannot be helpful to the petitioner in seeking a declaration, as sought. We find that a reference to the issuance of Section 4 Notification in the award dated 25.1.2006 is a general reference and there is no mention about the date or the newspaper in which the notification is issued. In fact, a reference to the issuance of Section 6 Notification is clearly made in the award and the date on which the notification was issued in the newspaper in the public place (Chavdi) is also mentioned. All the respondents have clearly stated that Section 4 Notification under the Land Acquisition Act was not issued and the acquisition proceedings are initiated under the provisions of the MRTP Act, 1966. The petitioner has not produced the Section 4 Notification on record to disprove the statement. It is apparent from a reading of both the petitions filed by the petitioner bearing Writ Petition No.1260/2008 and the present writ petition that the petitioner has asserted that the acquisition of the land is under the MRTP Act. There is also no

dispute about the fact that the land of the petitioner was reserved in the final development plan for the maternity home and dispensary and the petitioner had sought the de-reservation of the land by the first petition filed by the petitioner. The land was reserved under the final development plan and in pursuance of the request made by the planning authority under Section 126 of the MRTP Act, a notification under Section 6 of the Land Acquisition Act was issued on 29.10.2003. Since this Court has held in the order dated 6.5.2015 in Writ Petition Nos.440/2014 and 6918/2014 that the provisions of Section 24 of the Act of 2013 would not apply to the acquisitions initiated under the MRTP Act and since it is found that the acquisition proceedings are initiated in the instant case under the MRTP Act, the declaration that the acquisition proceedings have lapsed under Section 24 (3) of the Act of 2013 cannot be granted.

For the reasons aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar