

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8331 OF 2014

ASHOK MANIKRAO KHOPADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Rahul S. Pawar
AGP for respondent Nos. 1 and 2 : Mr. S.P. Sonpawale.
Advocate for respondent No.3 : Mr. N.M. Desale.

CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.

DATE : 20th APRIL, 2016.

PER COURT:

1] Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] Mr. Kale, learned counsel for the petitioner submits that the land of the petitioner admeasuring 2 Hectare in Survey No. 87, situated within the limits of Dhule Municipal Corporation, was reserved for garden in the Development Plan dated 1.1.1987. No steps were taken for acquisition. As such, the petitioner on 25.2.2002 issued notice under Section 127 of the MRTP Act. Same was served upon the respondents, still no steps were taken for acquisition. As such, the acquisition stood lapsed.

3] The petitioner, after lapse of one and half year, applied for sanction of the layout. Said application was rejected. The petitioner filed an appeal under Section 47 of the MRTP Act and said appeal came to be allowed by the State on 11.3.2004. Thereafter, application for layout was again submitted by the petitioner. Same was rejected. The petitioner filed a writ petition in which the the Dhule Municipal Corporation filed an affidavit that they are in need of land and have initiated acquisition proceedings.

Relying upon the said affidavit, the court disposed of the said writ petition. Learned counsel for the petitioner submits that, as yet, no steps are taken for acquisition and as such, the reservation stands lapsed.

4] Mr. Desale, learned counsel for the respondent Municipal Corporation submits that the respondent requires the said land for the purpose of reservation as stated. The respondent Municipal Corporation has revised the development plan. Part development plan was revised in 2012 and final development plan was revised on 2.7.2015 and the land of the petitioner is shown as reserved for the purposes of Garden, Primary School & Play Ground and School. As such, the reservation has not lapsed.

5] We have considered the submissions canvassed by learned counsel for respective parties. Factual matrix as stated above is not disputed. After the development plan is sanctioned on 1.1.1987, no steps were taken by the respondent Municipal Corporation for acquisition. The petitioner issued purchase notice under Section 127 of the MRTP Act on 25.2.2002. The receipt of the said purchase notice is not disputed by the respondent Municipal Corporation. Still, no steps were taken for acquisition. Even after rejection of layout, appeal filed by the petitioner came to be allowed by the State.

6] The provisions of section 127 of the MRTP Act act as fetters on the power of eminent domain. Axiomatically, on completion of the stipulated period on receipt of purchase notice the reservation stands lapsed. No steps were taken pursuant to the purchase notice issued on 25.2.2002. No declaration under Section 6 of the Land Acquisition Act read with Section 126 of the MRTP Act was issued. The steps for acquisition would commence on the date of issuance of declaration under Section 6 read Section 126 as is held by the Apex Court in the matter of ***Girnar Traders (3) Vs. State of Maharashtra and others*** reported in (2011) 3 SCC page 1.

7] Subsequent reservation in the revised development plan would be of no avail as the reservation stood lapsed. Reference can be had to the judgment of the Apex court in the matter of ***"Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors."*** reported in ***2015 (2) All MR 921 (SC)***. In that light of that, we pass the following order :-

- [a] Writ petition is allowed.
- [b] Rule is made absolute in terms of prayer clause (B).
- [c] The respondent shall issue consequential notification on lapsing of the reservation, in respect of the land of the petitioner.
- [d] There shall be no orders as to costs.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-