

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6906 OF 2015

- | | | | |
|----|----------------------------------|---|----------------|
| 1. | Shital Jingonda Patil |] | |
| 2. | Smt. Sonabai Jangonda Patil |] | |
| 3. | Smt. Kamal Adgonda Patil |] | |
| 4. | Sou. Ujwalla Yuvraj Patil |] | |
| 5. | Sou. Shakuntala Suresh Patil |] | |
| | @ Chougule. |] | |
| | All Adults, R/o Chintamani Nagar |] | |
| | Sangli. |] | ..Petitioners. |

Versus

- | | | | |
|----|---|---|----------------|
| 1. | Sangli, Miraj & Kupwad Municipal Corporation, Office at Sangli. |] | |
| | Through Commissioner. |] | |
| | |] | |
| 2. | Director, Town Planning, |] | |
| | Maharashtra State, Pune Division |] | |
| | Pune. |] | |
| | |] | |
| 3. | The State of Maharashtra, |] | |
| | through Secretary, |] | |
| | Urban Development Department, |] | |
| | Mantralaya, Mumbai – 400 032. |] | ..Respondents. |

Mr. Tejpal S. Ingale for the Petitioner.
Mr. Shivaji A. Masal for Respondent No. 1.
Mr. V. M. Mali, AGP for Respondent Nos. 2 and 3.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.
Date : **April 6, 2016.**

Oral Order :

1. Rule. Rule made returnable forthwith. On behalf of

Respondent No.1, Advocate Mr. Masal waives notice on the rule. Whereas on behalf of Respondent Nos.2 and 3, AGP Mr. Mali, waives notice on the rule.

2. Since the issue involved in the petition is in narrow compass, by consent of the learned Counsel appearing for the respective parties, writ petition is forthwith taken up for final hearing.

3. Heard Mr. Ingale, learned Counsel appearing for the Petitioner, Mr. Masal, learned Counsel appearing for Respondent No.1 and Mr. Mali learned AGP for the State.

4. The Petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking following reliefs :

“(a) Rule be issued and record and proceedings be called for;

(b) That this Hon'ble Court be pleased to issue any appropriate writ, order or direction in the like nature of Article 226 of the Constitution of India;

(i) To hold and declare that the reservation provided in revised D.P. Dated 04.04.2012 in relation to the Petitioners land bearing Revision Survey No. 217/2-C admeasuring about 22,800 sq. mtrs, situated at Sangli being reservation in revised D.P. In relation to the said land will be no legal consequence.

- (ii) To direct Respondent No.3 the State Government to issue necessary notification forthwith in terms of sub section (2) of section 127 of the MRTP Act, 1966 forthwith in respect of lapsing of reservation, allocation or designation of the Petitioners land Revision Survey No. 217/2-C situated at Sangli as declared by the Hon'ble High Court under sub section (1) of section 127 of the said Act pursuant to the decision dated 31.03.2012 of the Hon'ble High Court in Writ Petition No.4463/2006 filed by the Petitioners and also to carry out necessary required modification in the final map of revised sanctioned D.P. accordingly.
- (iii) To further direct Respondent No.1 Municipal Corporation to grant final development permission and sanction to the layout submitted dated 17.05.2012 to the Petitioners in respect of their land Revision Survey No. 217/2-C situated at Sangli as applied for.
- (c) Pass such further and other reliefs as the nature and circumstances of the case may require.”

5. The Petitioners are the owners of the land bearing Revision Survey No.217/2-C situated at Sangli within the municipal limits of Respondent No.1-Corporation, which is the Planning Authority within the meaning of sub-section (19) of section 2 of the Maharashtra Regional and Town Planning Act, 1966 [for short “the MRTP Act”]. Admittedly, in the sanctioned development plan of the year 1977, the land admeasuring about

22,800 sq. mtrs. from Survey No.217/2-C was reserved for “public park” under Reservation Site No.162. This sanctioned development plan of the city of Sangli of 1977 came into force with effect from 1st June 1977. Admittedly, for the period of 10 years from the date of coming into force of said development plan, Respondent No.1 or its predecessor-Municipal Council of Sangli had not taken any steps to acquire the said reserved land belonging to the Petitioner.

6. Taking recourse to section 127 of the MRTP Act, on 26th November 2002, the Petitioner gave notice to Respondent No.1 inviting Respondent No.1-Corporation to acquire within six months from the date of receipt of the said letter, the subject land. Respondent No.1 was also informed by the Petitioner that if the land is not acquired within six months, the Petitioners will be free to develop the said land as may be permissible under the relevant laws, treating that reservation on the said land has “lapsed”.

7. It appears that Respondent No.1 has not taken any

decision nor acquired the said land within the said stipulated period of six months. The Petitioner thereafter preferred a writ petition in this Court, being Writ Petition No.4463 of 2006, seeking declaration that reservation on the subject land for public park is deemed to have lapsed in view of the provisions of section 127 of the MRTP Act and the said land is deemed to have been released from reservation or designation and became available to the Petitioners for the purpose of development as otherwise permissible. The said writ petition along with other connected group of writ petitions came to be disposed of by this Court *vide* order dated 31st March 2012 [Coram : A. M. Khanwilkar and N. M. Jamadar, JJ.]. It would be apposite to advert to the relevant portion of Paragraph 4 of the said order, which reads thus :

“This legal exposition is holding the field and has not been overruled thus far. In that view of the matter, we have no option but to accede to the request of the Petitioners to declare that the lands referred to in the concerned petition are deemed to have been released from reservation, allotment or designation on and from the date of expiry of six months period from the date of service of notice on the designated authority and the Petitioners who are owners or persons interested therein are entitled to develop the same in conformity with the extant guidelines and as permissible in the case of adjacent land under the relevant plan.”

8. The learned Counsel appearing for the Respondent

No.1 and learned AGP appearing on behalf of Respondent Nos.2 and 3 do not dispute Petitioners' contention that reservation on the Petitioners' said land has lapsed in view of the notice given by them under section 127 of the MRTP Act and the decision of this Court dated 31st March 2012.

9. Nevertheless, subsequent to the decision of this Court referred to above, on 4th April 2012, the State Government sanctioned the revised development plan of Respondent No.1-Corporation and in the revised development plan, the said land of the Petitioners is again reserved for the purpose of "public park" vide reservation site No.71. The Petitioners made representation to the State Government as well as to Respondent Nos.2 and 3 for deletion of the reservation on their land. On 17th May 2012, the Petitioners submitted an application for development of their land under sections 45/69 of the MRTP Act read with section 217 of the BMC Act. On 26th December 2012, Respondent No.1 granted development permission and provisional sanction to the layout submitted by the Petitioner to develop the said land on certain terms and conditions. On 1st

January 2013, Respondent No.1-Corporation submitted proposal to the Government for amendment/modification in sanctioned development plan in terms of the decision of this Court in Writ Petition No.4463 of 2006. Since the State Government has not taken any decision so far, the Petitioner has filed instant petition.

10. Respondent No.1 does not dispute that reservation on the Petitioners' said land has lapsed in terms of the provisions of section 127 of MRTP Act. They also do not dispute that the Petitioner is entitled to develop the said land. Respondent No.1 however contends that since in the revised development plan of the city of Sangli, the Petitioners' said land is again reserved for the public park, 1st Respondent's proposal for deletion of this reservation under section 37 of MRTP Act is pending before the State Government, final permission for the development of said land cannot be granted. He submitted that Respondent No.1 has already submitted an application to the State Government for deleting the reservation of "public park" on the Petitioners' said land in the light of the decision of this Court in Writ Petition No. 4463 of 2006.

11. Mr. Mali, learned AGP for the State submitted that despite his repeated requests, he has not received any instructions from the State Government authorities and therefore he is unable to advance any argument. However, he does not dispute the proposition of law advanced by learned Counsel for the Petitioner.

12. Having considered the rival submissions and having gone through the writ petition and annexures thereto, we find merit in the petition. The question whether on account of the revision of development plan, the reservation which has lapsed under section 127 of the MRTP Act can revive, had fallen for consideration before the Division Bench of this Court in Baburao D. Salokhe v. Kolhapur Municipal [2003(5) Bom.C.R. 232]. This Court in the said decision in paragraph 17 has made following observations :

“The legal position as regards MRTP Act on the basis of aforesaid observations made by the Apex Court in Bhawnagar University emerges that by imposition of a statutory obligation under section 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of section 127 are not taken away. Section 38 of MRTP Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person

interested under section 127 is taken away. In other words, section 38 does not envisage that despite the fact that in terms of section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made would automatically result in revival of reservation that had lapsed. If the reservation of the Petitioner's land for the purposes of garden had lapsed and as we found in fact has lapsed on 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation."

13. In Uday Madhavrao Patwardhan vs. Sangli, Miraj & Kupwad Municipal Corporation, another Division Bench of this Court while dealing with the similar question in Writ Petition No. 9168 of 2013 in respect of the very same Municipal Corporation has made following observations in paragraph 14 of the Judgment dated 9th January 2015 - :

“Therefore, the scenario which emerges is that the law laid down by the Division Bench in the case of Baburao Salokhe (supra) will squarely apply to this case. The revised D.P. was sanctioned on 4th April 2012. Before the date of sanction of revised D.P., on the basis of the notice dated 26th September 2008, the reservation imposed under the original sanctioned D.P. stood lapsed by operation of section 127. It is an admitted position that the reservation under the revised D.P. is the same as the one under the sanctioned D.P. which had lapsed. Therefore, by the revised D.P., the right accrued to the Petitioner by virtue of the notice dated 26th September 2008 is sought to be taken away. It is not permissible to do so in view of the law laid down by the Apex Court and this Court. Therefore, the reservation of the said lands in the revised D.P. for “Housing of Dishoused & EWS Housing” will have no legal effect.”

14. The perusal of the above observations make it

abundantly clear that by the revised development plan, the right accrued to the Petitioner to develop the subject land, as the reservation on the said land has lapsed under section 127 of the MRTP Act, cannot be taken away. The Petitioner is, therefore, entitled to develop the said land and consequently Respondent No.1 cannot refuse to the Petitioner permission to develop the said land on the ground that the same is reserved in the revised development plan. In above circumstances, petition succeeds. Rule is made absolute in terms of prayer clauses (b)(i) and (b)(ii).

15. It is further clarified that Respondent No.1 shall not withhold permission to the Petitioners to develop the subject land on the ground that the said land is reserved in the revised development plan.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]