

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1395 OF 2015

Mr. Umesh Sahadev Walke & Ors. ..Petitioners

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. Sanskar Marathe for the Petitioner.

Mrs.M.P.Thakur, AGP for the State.

Mr.G.K.S.Hegde, for the Respondent No.3.

Mr.P.G.Sawant i/b. P.P. Kakde for the Respondent No.2.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI,JJ.

DATED : AUGUST 22, 2016.

P.C.

1. Heard Mr. Marathe, the learned Counsel for the petitioner, Mr. Sawant i/b. Mr. Kakde for the respondent no.2, Mr. Hegde for the Respondent no.3 Corporation and the learned AGP for the respondent nos.1 and 4.

2. By this petition under Article 226 of the Constitution of India,

1950, the petitioners are seeking declaration that the reservation of the S.T. Stand shown in the subject land belonging to the petitioners in final development plan is lapsed. The petitioner has also prayed for declaration that the said land is deemed to be released from reservation and has become available to them for the purpose of development as permissible in the case of the adjacent land under the relevant Development Plan.

3. The respondent no.1 State approved final development plan of respondent no.2 Kankavli Nagar Parishad on 30.9.1999 and the said development plan was published in the Government Gazette on 4.10.1999. In the said development plan the following six lands belonging to the petitioners were reserved for S.T.Stand.

Sr. No.	Survey No.	Hissa No.	Area	Assessment
1.	159A	71A	0-02-60	0-10
2.	159A	96	0-03-80	0-18
3.	159A	43	0-07-0	0-09
			kh.0-01-80	
4.	159A	56A	0-02-0	0-02
			kh.0-01-80	
5.	159A	57	0-01-0	0-02
6.	159A	92	0-00-80	0-05

4. Since the respondent no.2 Nagar Parishad as well as the respondent no.3 State Transport Corporation did not take any action for acquisition of the land within the period of 10 years, the petitioners gave notice under Section 127 of the MRTP Act on 27.2.2013. It is the case of the petitioners that the respondent nos.2 and 3 as Planning Authority and Appropriate Authority respectively were obliged to take action within the period of one year from the date of receipt of the notice, however, they have not done anything and therefore the said land belonging to the petitioner stand lapsed from reservation.

5. On behalf of the respondent no.2 affidavit is filed by Shri Avdhoot Tawde, Chief Officer of Kankavli Nagar Panchayat. In para 7 he admitted the receipt of the notice by petitioner under Section 127 of the MRTP Act to respondent nos.2 and 3. An averment is also made that the respondent no.3 has informed the respondent no.2 that they require the subject land. In para 13, however, averment is made that the entire onus would lie on the respondent no.3 whether they require the subject land for S.T. Stand or not and

whether they have started any process for acquisition under Section 126 of the notice under of the MRTTP Act.

6. On behalf of Respondent no.3, one Suresh Bille, Junior Engineer has filed an affidavit. In para 2 he has made a categorical statement that the respondent no.3 Corporation has taken the decision not to acquire the subject land as there is S.T. Stand already existing at a distance of 2 kms from the present site. Alongwith the affidavit, a communication dated 18.8.2016 from Deputy Chief Manager (Construction) to Regional Controller is annexed. Para 4 of the communication shows that the respondent no.3 Corporation is not interested in acquiring the subject land for S.T. Stand. That apart, Mr. Kakde, learned Counsel for the respondent no.2 placed on record the communication by Regional Controller, S.T. Transport, Sindhudurg Division to the Chief Officer of the Respondent no.2 Nagar Panchayat. By the said communication dated 19.8.2016 the Regional Controller has informed the Chief Officer of the respondent no.2 Nagar Panchayat that the subject land is not required for construction of the S.T. Stand. Mr. Hegde, learned Counsel for the

respondent no.3 reiterated that the subject land is not required for the respondent no.3 and therefore appropriate order may be passed.

7. The facts stated hereinabove makes it clear that neither the Planning Authority nor the Appropriate Authority are interested in acquisition of the subject land for the purpose of S.T. Stand. Be that as it may, notice under Section 127 of the MRTP Act was given by the petitioner on 27.2.2013. Both respondent nos.2 and 3 do not dispute acknowledgment of the said notice.

8. The Apex Court in ***Shrirampur Municipal Council Vs. Satyabhamabai Bhimaji Dawkher and Ors. (2013) 5 SCC 627*** observed as under:

“42. We are further of the view that the majority in Girnar Traders (2) v. State of Maharashtra, (2007) 7 SCC 555 had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution.

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46. As a sequel to the above discussion, we hold that the majority judgment in *Girnar Traders (2) v. State of Maharashtra*, (2007) 7 SCC 555 lays down correct law and does not require reconsideration by a larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court.

The appeals are accordingly dismissed.”

8. While dealing with interpretation of section 126(1) (c) and section 127, the Apex Court observed that the steps towards acquisition would really commence when the State Government takes active steps for acquisition of land leading to publication of declaration under section 6 of the Land Acquisition Act. Any other interpretation of the scheme would make the provisions only unworkable.

9. Since in instant case, admittedly no steps are taken as contemplated under Section 126 of the MRTP Act, within the stipulated period of one year of receipt of the notice by respondent nos.2 and 3, we have no alternative but to allow the petition.

10. The petition is accordingly allowed in terms of prayer clauses (a), (b) and (c).

. The Government is directed to issue consequential certificate under Section 127 of the MRTP Act.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)