

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3564 OF 2014

- | | | |
|---|---|------------------|
| 1. Madanlal Nathmal Navandhar |] | |
| Age – 80 years, |] | |
| Freedom Fighter & Senior Citizen |] | |
| |] | |
| 2. Vijay Madanlal Navandhar, |] | |
| Age – 54 years |] | |
| |] | |
| 3. Vinod Madanlal Navandhar, |] | |
| Age – 50 years |] | |
| |] | |
| 4. Kiran Balkrishna Deshpande |] | |
| Age – 53 years |] | |
| |] | |
| 5. Uday Balkrishna Deshpande |] | |
| Age – 51 years |] | |
| |] | |
| 6. Shodhan Balkrishna Deshpande |] | |
| Age – 49 years |] | |
| |] | |
| All adults, R/o. 14, North Shivaji Nagar, Sangli. |] | Petitioners |

Versus

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

Mr. T.S. Ingale for the Petitioners.

Mr. Sudhir Prabhu for Respondent No.1.

Mrs. M.P. Thakur, A.G.P., for Respondent Nos.2 and 3.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 12TH APRIL 2016.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule. Rule is made returnable forthwith. Heard finally at the stage of admission, by consent of the parties.

2. By this Petition, preferred under Article 226 of the Constitution of India, the Petitioners seek declaration that the reservation in respect of their land bearing Survey No.1807, admeasuring about 3358.8 sq.mtrs., situate at Sangli, being Reservation Site No.126, as 'Municipal Dharmashala and Staff Quarters' in the Sanctioned Development Plan of Respondent No.1-Municipal Corporation has lapsed under the provisions of Section 127 of Maharashtra Regional Town Planning Act, 1966, (*for short "the MRTPA Act"*), and the said land is available to the Petitioners for the purpose of development, which is permissible according to law.

By this Petition, the Petitioners are also seeking further declaration that the Notification No.TPS-2008/244/CR1814/09/DP dated 4th April 2012 issued by Respondent No.3-State of Maharashtra, under Section 31(1) of the MRTPA Act, sanctioning the Revised Development Plan in respect of the Petitioners' aforesaid land, thereby keeping once again under reservation for 'Extension of Fire Brigade and Staff Quarters', bearing Site

No.86, is illegal, arbitrary and bad in law. Hence, it should be set aside in respect of Petitioners' land. Consequently, Respondents be directed to delete the said reservation in the sanctioned Revised Development Plan.

3. Undisputed fact is that the Petitioners are the owners and holders of the aforesaid land, which was shown as 'reserved for Municipal Dharmashala and Staff Quarters' in the Sanctioned Development Plan of Sangli City dated 26th April 1979, which came into force w.e.f. 30th June 1979. Respondent No.1, the then Sangli Municipal Council, has not taken any steps to acquire the said reserved land for more than ten years thereafter. Hence, from time to time, the Petitioners' predecessor-in-title and thereafter the Petitioners had issued various notices to Respondent No.1-Municipal Corporation to take necessary steps for acquisition of the said land, or, to delete the reservation, if the land is not required for the purpose for which it was reserved. Respondent Nos.1 and 2 failed to comply with all these notices on the excuse that the said land is required for public purpose of 'Extension to Fire Brigade and Staff Quarters' and, accordingly, the steps are being taken for reservation of the said land in the Revised Development Plan, to be submitted to the Government. Hence, ultimately, Petitioners were constrained to serve purchase notice dated 9th August 2010 on Respondent No.1-Municipal Corporation, under Section 127 of the MRTP Act. Despite receipt of the said notice and even

after the lapse of more than a year from the date of receipt of the said notice, Respondent No.1-Municipal Corporation did not take any steps for acquisition of the said land. Meanwhile, a proposal submitted by the Petitioners for development of the said land came to be refused by Respondent No.1-Municipal Corporation vide its letter dated 11th June 2013 on the ground that, in the Development Plan submitted by Respondent No.1-Municipal Corporation to the State Government, the Petitioners' land has been re-designated for new purpose of 'Extension to Fire Brigade and Staff Quarters' and the State Government has sanctioned the Development Plan, under Section 31(1) of the MRTP Act, by issuing impugned Notification No.TPS-2008/244/CR1814/09/DP dated 4th April 2012, which came into force w.e.f. 20th April 2012. The Petitioners have, therefore, approached this Court seeking necessary reliefs, as stated above.

4. Learned counsel for the Petitioners, at the time of hearing of the Petition, relied upon a plethora of the case laws of the Supreme Court and this Court, right from the case of ***Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors., (2003) 2 SCC 111***, to ***Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher & Ors., (2013) 5 SCC 627***, including the decision of this Court in ***Uday Madhavrao Patwardhan & Ors. Vs. Sangli, Miraj and Kupwad***

Municipal Corporation, Sangli & Ors., in Writ Petition No.9168 of 2013 dated 9th January 2015, which pertains to the same Municipal Corporation i.e. Respondent No.1 herein.

5. The law, as laid down in these various authorities, is unequivocal to the effect that, once the purpose for which the land was reserved in the sanctioned Development Plan has not been acquired for that purpose, the valid statutory right is acquired by the land owner, after the expiry of period of ten years from the date of reservation made in the sanctioned Development Plan and on the expiry of the period of one year from the date of service of purchase notice, issued under Section 127 of the MRTP Act. The provisions of Section 127 of the MRTP Act are also crystal clear to that effect.

6. In this case, the initial sanctioned Development Plan of Sangli City dated 26th April 1979 came into force w.e.f. 30th June 1979. In the said Development Plan, Petitioners' land was shown as 'Reserved for Municipal Dharmashala and Staff Quarters'. Admittedly, for a period of more than ten years since the date on which the sanctioned Development Plan came into force and till expiry of the period of one year from service of purchase notice dated 9th August 2010, the State Government has not commenced the proceedings to acquire the said land by following the procedure, as provided under Sections 4 and 6 of the Land Acquisition

Act, 1894. Therefore, the reservation of the land has automatically lapsed. Once the reservation of the land has been lapsed, the consequences have to follow. As a result thereof, Petitioners' land has to be deemed to be released from such reservation, allotment or designation and thereby became available to the Petitioners for the purpose of development, as otherwise permissible under the relevant law.

7. The only argument advanced by learned counsel for the Respondents is that. the Petitioners' land is designated for reservation purposes again in the Revised Development Plan submitted by Respondent No.1-Municipal Corporation to the State Government for sanction. According to the Respondents, the State Government has sanctioned the Revised Development Plan, under Section 31(1) of the MRTP Act, by issuing impugned Notification No.TPS-2008/244/CR1814/09/DP dated 4th April 2012, in which the Petitioners' land is retained and re-designated for new purpose of 'Extention to Fire Brigade and Staff Quarters' bearing Site No.86. According to learned counsel for the Respondents, as this Notification dated 4th April 2012 had come into force w.e.f. 20th April 2012, the reservation on the Petitioners' land has automatically revived. Hence, Petitioners are no more entitled for permission to develop the said land.

8. Hence, now the only question for consideration in this Writ Petition

is, *'whether the Petitioners' land can again be designated as 'reserved', thereby depriving the Petitioners from the rights accrued to them on account of lapse of reservation on the said land, in view of the provisions of Section 127 of the MRTP Act?* The law in this respect is no more *res integra* in view of the Judgment of the Apex Court in the case of ***Bhavnagar University (Supra)***, wherein it is categorically held that, if the land reserved / designated for specific purposes, as mentioned in Section 127 of the MRTP Act, is not acquired for more than ten years from the date of coming into force all the Development Plans, despite service of notice by the land owner or persons interested therein, the land would stand de-reserved / de-designated and the reservation / designation would not get automatically extended or revived by virtue of revision of the Development Plan under Section 21 of the MRTP Act.

9. The Division Bench of this Court has also in the case of ***Baburao Dhondiba Salokhe Vs. Kolhapur Municipal Corporation & Anr., 2003 (5) Bom.C.R. 232***, relying on the decision of the Apex Court in the ***Bhavnagar University (Supra)***, further confirmed that,

“The revision of Development Plan cannot take away the right of the owner in terms of sub-section (2) of Section 127 of the MRTP Act. Section 38 does not envisage that despite the fact that in terms of Section

127, the designation or reservation has lapsed, the same, only because the Draft Revised Development Plan is made, would automatically given rise to revival thereof. Section 38 does not manifest a Legislative Intent to curtail or take away the right acquired by the land-owner under Section 127 of MRTP Act of getting the land de-frozen. The owner is thus entitled to develop his land and the Authorities cannot refuse permission on the ground that the land is again shown as 'reserved' in the Revised Draft Development Plan, after the same has been released under Section 127 of the MRTP Act”.

10. Therefore, the scenario which emerges is that, the law laid down by the Division Bench of this Court in **Baburao D. Salokhe (Supra)** will squarely apply to this case.

11. In the light of this clear legal position, it has to be held that the Respondents cannot, by issuance of fresh Notification dated 4th April 2012, again reserve or re-designate the land of the Petitioners, thereby depriving them of the rights which had already accrued to them by virtue of Section 127 of the MRTP Act. The Petitioners are thus entitled to develop their land and Respondents cannot refuse permission to them on the ground that the land is again shown as 'reserved' in the Revised Development Plan.

12. We are, therefore, allowing this Petition by passing following order :-

“O R D E R”

- (i) We hold and declare that the reservation in respect of the Petitioners' land bearing Survey No.1807, admeasuring about 3358.8 sq.mtrs. situate at Sangli, being Reservation Site No.126 as 'Municipal Dharmashala and Staff Quarters' in the sanctioned Development Plan of Respondent No.1-Municipal Corporation has lapsed, under the provisions of Section 127 of the MRTP Act, and the said land is available to the Petitioners for the purpose of development, as otherwise permissible under the law.
- (ii) We further hold and declare that the impugned Notification No.TPS-2008/244/CR1814/09/DP dated 4th April 2012, issued by Respondent No.3-State of Maharashtra, under Section 31(1) of the MRTP Act, sanctioning the Revised Development Plan in respect of the Petitioners' aforesaid land, thereby keeping once again under reservation for 'Extension of Fire Brigade and Staff Quarters', bearing Site No.86, is

illegal, arbitrary and bad in law and the same is
hereby quashed and set aside.

13. Rule is made absolute accordingly in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]