

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2351 OF 2015

Nirmala Hiranand Rajwani]
Residing at Barrack No.543,]
Room No.16, Ulhasnagar-2] Petitioner

Versus

1. The Municipal Commissioner,]
Municipal Corporation, Ulhasnagar,]
Ulhasnagar.]
]]
2. Asstt. Director, Town Planning,]
Ulhasnagar Municipal Corporation,]
Ulhasnagar.]
]]
3. Director, Town Planning,]
Maharashtra State, Pune]
]]
4. The State of Maharashtra,]
Through the Principal Secretary,]
Urban Development Department,]
Mantralaya, Mumbai.] Respondents

Mr. S.P. Kanuga, i/by Ms. Sapna Nath, for the
Petitioner.

Mr. Rajendra Desai for Respondent No.1.

Mrs. M.P. Thakur, A.G.P., for Respondent No.4-State.

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

DATE : 7TH APRIL 2016.

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

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

2. By this Petition, preferred under Article 226 of the Constitution of India, the Petitioner seeks a declaration that reservation of land admeasuring about 1456.3/9 Square Yards described as U. Nos.390 to 394, Sheet No.63, Camp No.2, Ulhasnagar-2 in the Draft Development Plan of 4th April 2013, is invalid and non-operative in law and consequently seeks a further direction permitting him to develop the said land in pursuance of her application dated 10th January 2013.

3. The undisputed fact is that the Petitioner is the holder of the aforesaid land, which was shown as 'reserved for school' in the Development Plan of the erstwhile Ulhasnagar Municipal Council, sanctioned by the Urban Land Development Department, Government of Maharashtra vide Notification No.TPS/1272/60185/RPC dated 20th May 1974, which came into force from 1st July 1974. As despite the expiry of ten years from the date on which the Development Plan came into force, the land was not acquired by an agreement as well as the proceedings for acquisition of land had not been adopted under the provisions of Section 127 of the MRTP Act, the Petitioner served a purchase notice dated 19th

May 2009 upon Respondent No.1 and the same was received by the office of Respondent No.1 on 25th May 2009. Till the expiry of the period of one year therefrom, no steps were taken under Section 6 of the Land Acquisition Act for acquiring the said land. As a result, the Petitioner filed Writ Petition No.4308 of 2012 in this Court seeking declaration that the reservation designated on her land has lapsed and the land stands released from reservation, allotment and designation and is available to the Petitioner for development, which is permissible in law. The said Writ Petition was allowed by this Court on 17th August 2012.

4. The Petitioner thereafter submitted, through his licensed Architect, an application under Section 44 of the MRTP Act, with all the documents necessary for development of the said property, to Respondent No.1. Respondent No.1 acknowledged receipt of the building proposal along with the plans and issued Token No.1334130000360 dated 10th January 2013. The Petitioner also paid the scrutiny charges. Respondent No.1, however, initially kept the said proposal pending for some time and thereafter gave an excuse that on 4th April 2013, the Ulhasnagar Municipal Corporation has published Revised Draft Development Plan by exercising powers under Section 38 of MRTP Act, in which the reservation shown on the land of the Petitioner in the earlier Development Plan has been repeated. The Planning Committee, under Section 28(3) of the MRTP Act,

has, however, recommended that the said reservation be deleted. The plan and recommendation was accordingly sent to the State Government under Section 30 of the MRTP Act on 2nd July 2014 and the sanction of the Government was awaited. However, the Director of the Town Planning Authority has written a letter dated 24th September 2014 informing the Commissioner, Ulhasnagar Municipal Corporation, that till sanction of the plans under Section 31 of the MRTP Act is granted by the State Government, the plans submitted for the plots designated as 'reserved' in the Revised Development Plan should not be considered. As a result, the development proposal submitted by the Petitioner is yet not sanctioned.

5. In view thereof, the Petitioner is again constrained to approach this Court by submitting that, once the land is released from the reservation under Section 127 of the MRTP Act, it becomes available to the owner for the purpose of development, which is otherwise permissible. This right, which is accrued to the Petitioner due to lapse of reservation, cannot be taken away by the Planning Authority by exercising powers under Section 38 of MRTP Act by again reserving the said land for public purpose in the Revised Development Plan. According to learned counsel for the Petitioner, in view of the settled position of law, as enunciated by the Apex Court in the case of **Godrej & Boyce Manufacturing Company Limited Vs. State of Maharashtra & Ors., (Civil Appeal No.1086 of 2015)**, the

reservation of Petitioner's land again in the Revised Development Plan is patently illegal and on that ground, rejection of the Petitioner's proposal for development of his land also being illegal, cannot be sustained.

6. Learned counsel for Respondent No.1-Municipal Commissioner has relied upon the direction received from the Director of Town Planning, State of Maharashtra, to submit that, in view of the clear direction issued therein that till the sanction of the Revised Development Plan under Section 31 of the MRTP Act is granted by the State Government, the plans submitted for development of the lands under reservation in Revised Development Plan should not be considered, Respondent No.1-Municipal Corporation has no option but to abide by the said direction.

7. Learned A.G.P. Mrs. Thakur has also advanced her submission on the basis that, as the Revised Draft Development Plan is already submitted to the State Government and in the said plan, the land of the Petitioner is again designated as reserved for the public purpose - school, the permission for development, as sought by the Petitioner, cannot be granted.

8. In our considered opinion, however, this Petition needs to be allowed in view of the legal position well crystallized in the various Judgments of this Court and the Apex Court.

9. It is a matter of record that, in view of the order dated 17th August 2012 passed by this Court in Writ Petition No.4308 of 2012, which was preferred by the Petitioner, the reservation designated on the Petitioner's land is declared to have elapsed and the land is declared to be released from reservation, allotment and designation and further it is declared that it is available to the Petitioner-Owner for development, which is permissible in law.

10. Hence, now the only question for consideration in this Writ Petition is, *'whether the said land can again be designated as 'reserved' in the Revised Draft Development Plan of Respondent No.1-Municipal Corporation?'* The law in this respect is also no more *res integra* in view of the Judgment of the Apex Court in the case of **Godrej & Boyce Manufacturing Company Limited (Supra)** relied upon by learned counsel for the Petitioner. The fact situation raised for consideration in the said Civil Appeal No.1086 of 2015 before the Supreme Court was exactly the same as in the present Petition. In that case also, the land reserved earlier in the Development Plan of the year 1991, for laying additional railway tracks between Thane and Kurla, was released from reservation under Section 127 of MRTP Act. However, again the same land was designated as *'reserved for DP Road'* in the Revised Development Plan

by issuing Notification under Section 37(1) of MRTP Act on 24th May 2006. When the said Notification was challenged before the Supreme Court, the Supreme Court has, after referring to its earlier decision in ***Girnar Traders Vs. State of Maharashtra, (2007) 7 SCC 555***, held the said Notification as bad in law and liable to be quashed. It was held that, once the purpose for which the land was reserved has not been utilized for that purpose and the valid statutory right is acquired by the land owner, after expiry of ten years from the date of reservation made in the Development Plan and six months notice period is also expired and as the State Government has not commenced the proceedings to acquire the land by following the procedure, as provided under Sections 4 and 6 of the Land Acquisition Act, 1894; therefore, the reservation has lapsed. Then it enures to the benefit of the land owner. Therefore, it is not open for the State Government to issue the impugned Notification proposing to modify the Development Plan, again designating the said land as 'reserved'.

11. The similar question 'whether on account of the Revised Draft 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 also in ***Baburao D. Salokhe Vs. Kolhapur Municipal Corporation, [2003 (5) Bom.C.R. 2321]*** and this Court 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 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.”

12. 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.

“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-freezed. 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”.

13. in view of this clear legal position, it has to be held that, as the right has already accrued to the Petitioner on account of the declaration sought by her and granted by this Court in his favour in Writ Petition No.4308 of 2012, that the reservation on his land has lapsed and the land stands released from reservation and thus is available to the Petitioner for development, which is permissible in law, that right cannot be taken away by Respondent No.1 by reserving the said land again in the Revised Draft Development Plan. It has to be held that the said land, being already released from reservation, is very much available to the Petitioner for

development. Hence, the reliefs, as claimed by the Petitioner, are required to be granted and are granted accordingly.

14. It is hereby declared that the reservation shown on the land of the Petitioner, admeasuring about 1456.3/9 Square Yards described as U. Nos.390 to 394, Sheet No.63, Camp No.2, Ulhasnagar-2 in the Draft Development Plan of 4th April 2013, is invalid and non-operative in law and does not affect the application dated 10th January 2013 preferred by the Petitioner for development of the said land.

15. It is hereby directed that the Petitioner's application for development dated 10th January 2013 be decided on the footing that the Petitioner's land is free from reservation.

16. Petition is allowed. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]