

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5087 OF 2014

Shrimant Chh. Udayanraje Pratapsinh Bhonsle & Ors.	...Petitioners
Versus	
The State of Maharashtra & Ors.	...Respondents
...	
Mr. V.S. Talkute for the Petitioners.	
Mrs. M.P. Thakur, AGP for Respondent Nos.1 to 4-State.	
Mr. S.D. Chavan for Respondent No.5.	

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 30th AUGUST, 2016.

P. C. :

Heard the learned counsels for the Petitioners, Respondent No.5 and the learned Additional Government Pleader for Respondent Nos.1 to 4-State.

2. By the order dated 13th November, 2014, notice was issued to the Respondent Nos.6 and 7 and the Respondents were put to notice that an endeavour would be made to decide the petition finally at the stage of admission on the next date. Respondent Nos.6 and 7 are also served by private service and an affidavit to that effect is filed by the learned Advocate for the Petitioners. Despite this, none appeared on behalf of Respondent Nos.6 and 7. In the aforesaid circumstances, we

proceed to dispose of this petition.

3. The Petitioners have approached this Court by way of the aforesaid writ petition filed under Article 226 of the Constitution of India seeking a declaration that the Reservation No.22 in respect of the Development plan of 5th Respondent for secondary school and playground out of land admeasuring 1972.4 square meters being CTS No.172 situated at Yadaogopal Peth, Satara is deemed to have been lapsed by virtue of provisions under section 127 of the Maharashtra Regional and Town Planning Act, 1966.

4. The land admeasuring about 7692 square meter from CTS Nos.159 164, 172 and 173 at Yadaogopal Peth was reserved under designation No.22 for secondary school and play ground in final development plan of 1977 by Respondent No.5-Satara Municipal Council. It is the case of the Petitioners that the final development plan was revised in the year 2001, however, this reservation was kept intact. The Petitioners claim to be the owner of CTS No.172 admeasuring 1972.4 square meter. Since within the period of 10 years after sanction of the development plan the said land was not acquired at the instance of Respondent No.5 -Planning authority or Respondent Nos.6 and 7-appropriate authority, the Petitioners were constrained to give purchase

notice dated 23.1.1996 under section 127 of the MRTP Act to the Respondent Nos.5, 6 and 7. It is the case of the Petitioners that despite this notice, no steps as contemplated under section 126 of the M.R.T.P Act are taken by the Respondents and therefore, the said reservation under section 127 of the M.R.T.P Act has lapsed.

5. Mr. Abhijit Satish Bapat, Chief Officer has filed an affidavit on behalf of Respondent No.5-Satara Municipal Council. In para No.6 of the said affidavit the Respondent No.5 has denied that they have not taken any steps for acquisition within six months from the receipt of the notice under section 127 of the M.R.T.P Act. However, the Respondent No.5 has not disputed that declaration under section 6 of the Land Acquisition Act has not been made as on the date of the filing of the affidavit.

6. Mr. Chavan, the learned counsel appearing for the Respondent No.5 also does not dispute that as on the date, declaration under section 6 of the Land Acquisition Act is not issued so far as subject land is concerned.

7. 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. In the present case admittedly as on today no steps as contemplated under section 126(1) (c) of the M.R.T.P. Act are taken. Therefore, reservation / designation No.22 for secondary school and play ground shown in the development plan of Respondent No.5-Satara Municipal Council is deemed to have been lapsed. So far as the land of the Petitioners is concerned, viz. CTS No.172 admeasuring 1792 square meter, shall be deemed to be released from the above

referred reservation and has become available to the Petitioners for the purpose of development permissible in the case of adjacent land under the relevant Act. Consequently, the Government is further directed to issue notification under section 127 (2) of the M.R.T.P. Act as expeditiously as possible and preferably within a period of four months from the date of receipt of this order. Ordered accordingly.

10. The petition stands disposed of.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)