

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

WRIT PETITION NO.35 OF 2011

Prabhakar Harishchandra Dingorkar
& Ors.

..Petitioners

v/s.

The Chief Officer,
& Ors.

..Respondents

Mr. A.V. Anturkar a/w. Mr.S.B.Deshmukh, Siddesh Pilankar i/b. Uday Warunjikar for the Petitioner.

Mr.S.A.Sawant and KetanJoshi for the Respondent no.1.

Mrs.M.P.Thakur, AGP for the Respondent No.2.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : AUGUST 22, 2016.**

P.C.

1. Heard Mr. Anturkar, learned Sr. Counsel for the petitioner and Mr. Sawant, learned AGP for the Respondent No.1. By this petition, the petitioner has sought declaration that the reservation of their land under Survey No. 624(old) 355(new) situated at Talegaon Dabhade, Taluka Maval., District Pune admeasuring about 1 Hectare 61.2 R, for garden stands lapsed. The petitioners by amending the petition have challenged declaration under Section 126 of the MRTP

Act r/w. Section 6 of the Land Acquisition Act to acquire said land.

2. The development plan of the respondent no.1 Municipal Council was sanctioned on 16.9.1972. The draft development plan of the said council was subsequently sanctioned on 29.12.1988. In this development plan, the land survey no.624(old) and 355(new), belonging to the petitioner was reserved for the garden. The petitioner gave notice under Section 127 of the MRTP Act on 6.11.2009 requesting the respondent no.1 to acquire the same. The respondent no.1 Corporation, thereafter on 4.11.2010 issued notification under Section 126 of the MRTP Act r/w. Section 6 of the Land Acquisition Act. The said notification was issued within the stipulated period of one year.

3. Mr. Anturkar, the learned Senior Counsel has restricted the challenge to the said declaration on two grounds. He submits that Section 6 declaration was issued by the District Collector and not by the Government or the Divisional Commissioner. He submits that the Collector had no power to issue such declaration and therefore it cannot be said that steps within the meaning of Section 127 are taken within the period of one year from notice under Section 127 of

the MRTP Act by the respondent. He further submitted that in the declaration issued under Section 6 the area of the land of the petitioner was shown as 14.600 sq. meters. However, in the corrigendum issued on 13.4.2011 which was published in the Government Gazette dated 21.4.2011, the land under acquisition was shown as 14,600 sq. meters. According to him by the corrigendum which was issued after a lapse of one year from the date of said notice, an additional area was sought to be acquired.

4. Mr. Sawant, learned Counsel for the respondent no.1 opposed the petition. So far as the first submission is concerned, he relied upon the decision dated 2.4.2014 of the Division Bench of this Court in Writ Petition No.1315 of 2011 in Ramdas Kakade vs. Municipal Council, Talegaon. As far as second submission is concerned, he submitted that the corrigendum was issued only to rectify the typographical error therefore it cannot be considered as a fresh notification under Section 6 of the Land Acquisition Act, so as to enable the petitioner to claim benefit under Section 127 of the MRTP Act.

5. We have considered the submissions advanced by the learned

Sr. Counsel for the petitioner and the learned counsel for the respondent, and the learned AGP for the State. The question regarding powers of the Collector to issue declaration under Section 126(4) r/w. Section 6 of the Land Acquisition came for consideration of the Division Bench of this Court in Ramdas Kakade (supra). The Division Bench, after considering the relevant provisions of the MRTP Act and the Land Acquisition Act held that the Collector has power to issue declaration under sub Section (4) of Section 126 of the MRTP Act. In the light of the said judgment, we do not find any merit in the first submission made by learned Sr. Counsel Shri Anturkar.

6. The submission of Shri Anturkar regarding the corrigendum is also without any substance. As regards the declaration under Section 126(4) of the MRTP Act r/w. Section 6 of the Land Acquisition Act, the same was issued on 3.11.2010 and published in the Government Gazette on 4.11.2010. Thus, the declaration was issued within the stipulated period of one year from the date of issuance of the notice under Section 127 of the MRTP Act. In this notification the subject land was described by giving survey number as well as boundaries. The area of the land , however, was mentioned as 14.600 sq. meters.

It appears that there was a typographical error and instead of “14,600” the figure was shown as “14.600”. By subsequent corrigendum dated 13.4.2011, which was published on 21.4.2011 the typographical error mentioned above was corrected so as to read the area of the petitioner's land as 14,600 sq. meter instead of 14.600 sq. meters. The survey number and the boundaries remained the same. This corrigendum did not increase the area, but only rectified the typographical error. In our considered view the corrigendum relates back to the date of the notification. Therefore, it cannot be said that the notification under Section 126(4) of the MRTTP Act r/w. Section 6 of the Land Acquisition Act was not issued within the statutory period of one year. Hence, the petition is without merit and is therefore dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)