

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7163 OF 2016

Supreme Industries Ltd.
Through its Authorized Signatory
Anil Kashinath Kabra
age 50 years, occ. business
r/o Jalgaon

Petitioner

Versus

1. State of Maharashtra
Through its Secretary
Urban Development Department,
Mantralaya, Mumbai 32.
2. The Planning Authority / Commissioner
Jalgaon City Municipal Corporation,
Navi Peth, Jalgaon
3. Development Authority
C/o Maharashtra Regional and Town Planning
2nd Floor, Old BJ Market
Jalgaon

Respondents

Mr. S.S. Bora, advocate for petitioner.
Mr. P.S. Pawar, A.G.P. for respondents 1 and 3.
Mr. P.R. Patil, advocate for respondent no. 2.

**CORAM : R.M.BORDE &
S.M. GAVHANE, JJ.**
DATE : 10th AUGUST, 2017

PER COURT:

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel for the respective parties.

3. Petitioner is praying for issuance of declaration that the property belonging to petitioner to the extent of 74 R out of survey no. 245/2 and 92 R out of survey no. 245/3 at village Mehroon, Tq. & Dist. Jalgaon, earmarked for public purpose i.e. for high school and play ground, under final development plan published by the Government on 11.02.2002 and modification plan published on 10.08.2004, is free from reservation/allotment/designation.

4. Final development plan for Jalgaon has been published and brought into existence together with the modified plain on 10.08.2004 and the land referred to above belonging to petitioner has been reserved for public purpose. Since respondent - Jalgaon Municipal Corporation did not take any step for development of the property, petitioner proceeded to issue notice on the Municipal Corporation calling upon the Corporation to take steps for development of the property. It is further informed by petitioner to the Municipal Corporation that in the event of failure to take steps as permissible in law, the reservation in respect of the property under final development plan shall be deemed to have lapsed.

5. Respondent-Municipal Corporation is not disputing receipt of notice issued by petitioner under section 127 of MRTP Act on 09.12.2014. However, it is contended that by issuing communication on 19.12.2014, the petitioner was called upon to submit certain documents such as 7/12 extracts and certified copies of sale-deed, demonstrating his ownership in respect of the land. Petitioner was called upon to tender documents within seven days from the date of receipt of communication. It is the

contention of respondent that inspite of calling upon petitioner to tender documents, those were not tendered, and as such, consequences on account of failure of respondent to take steps shall not follow. It is contended that notice issued by petitioner is not within contemplation of section 127 of MRTP Act and as such, the relief claimed by petitioner in the instant petition shall not be granted.

6. It does appear that after receipt of notice from petitioner, the Municipal Corporation adopted resolution on 29.04.2015, resolving to acquire the property which is required for public purpose. The resolution adopted by general body on 29.04.2015 makes reference to the ownership of petitioner over property bearing survey no. 245/2 and 245/3 and also makes reference in respect of recording of name of petitioner in the 7/12 extracts, which documents were presumably before the general body while adopting the resolution. No controversy is raised in respect of ownership of the property in relation to the property.

7. Prayer made by petitioner in the instant petition is opposed on the ground that the mandatory requirement of presenting documents alongwith notice issued to the Municipal Corporation showing title or interest of petitioner in the land, laid down under section 127 of MRTP Act, is not complied with. It is contended on behalf of respondent-Municipal Corporation that the notice shall be deemed to be not in consonance with the mandatory provisions of law and as such, the consequences recorded in law of such defective notice shall not follow.

8. In reply to the contentions raised in the affidavit-in-reply, petitioner has filed rejoinder affidavit and disputed the contentions raised by Corporation in respect of submission of documents of ownership to the Municipal Corporation. It is stated in the rejoinder affidavit that after receipt of the communication from the Municipal Corporation on 12.12.2014, calling upon petitioner to submit certain documents, those were stated to have been submitted with one Mr. V.O. Sonawane who was working in the Town Planning department at the relevant time. It is also further contended that the documents and the measurement plan submitted by petitioner were before the general body of the Corporation while the resolution was adopted and as such, it cannot be construed that the documents of ownership were not forwarded to the Corporation for establishing ownership of petitioner. Though dispute in respect of procedural defects is raised by respondent-Corporation, according to us, it need not be gone into in view of subsequent act of the Corporation.

9. Learned counsel for respondent-Corporation urges that since the mandatory requirement of presenting documents showing ownership of petitioner laid down under section 127 of the MRTP Act is not complied with, the notice shall not be deemed to be within contemplation of section 127 of the MRTP Act. Reliance is placed on a judgment in the matter of **Ramchandra Shankar Joshi and others Vs. State of Maharashtra and others** reported in **2016(1) Mh.L.J. 765**. It is laid down by the Division Bench that the object of notice under section 127 of MRTP Act is to inform the authority mentioned therein to acquire the land which is designated, reserved or allotted in the final development plan. It is

settled legal position that form of notice under section 127 of MRTP Act is not prescribed and as such, the notice shall meet sufficient requirement in describing the land in clear terms and require the planning authority or development authority or the appropriate authority, as the case may be, to acquire or compulsorily purchase the land so reserved, allotted or designated in the development plan. In case, such a notice in a proper form is served on the concerned authority and no steps are taken within six months from the date of service of such notice, the reservation/allotment/designation shall be deemed to have lapsed and the land shall be deemed to have been released from the said reservation. The precondition for the land owner or the person interested to claim benefit under the provisions of section 127 of the Act of 1966 would be to give proper notice describing the land in sufficient clarity and intimating the concerned authority in clear terms. There shall be no doubt that the notice within contemplation of section 127 of the act shall be in the proper form and shall be accompanied by the document of ownership so as to claim the benefit of the deeming provision. Reliance is also placed on the judgment of the Honourable Supreme Court in the matter of **Collector, District Gwalior and another Vs. Cine Exhibitors Private Limited and another** reported in **(2012) 4 Supreme Court Cases 441** contending that the doctrine of estoppel shall not operate in the instant matter. The facts giving rise to the abovereferred judgment are totally different and the ratio laid down therein does not apply to the instant petition. Reliance is also placed on the judgment in the matter of **Gupta Loom Industries and others Vs. The State of Maharashtra and others** reported in **2015(6) All MR 307**. The Division Bench while dealing with the

identical circumstances has observed in paragraphs 13 and 14 of the judgment as below :

13. It is true that notice under sub-section (1) of Section 127 has to be construed strictly as non-compliance with the notice has a drastic consequences of lapse of reservation. Therefore, the mandatory requirement of law is that strict compliance must be made of while issuing a notice under sub-section (1) of Section 127. In the facts of the case, we find that specifically on the basis of the said notice dated 7th October, 2010, the General body of the Municipal Corporation passed a resolution for initiating acquisition proceeding. The proposal for the acquisition specifically refers to the said notice. Hence, even the said Corporation has acted upon the said notice dated 7th October 2010 by treating it as a notice under section 127.

14. It is well settled that if certain requirements or conditions are provided by a statute for the benefit of a person, the said requirements or conditions though mandatory, may be waived by the said person if no public interest is involved. In the facts of the case, the Municipal Corporation acted upon the said notice by passing a resolution to initiate acquisition proceedings which shows that the alleged defects in the notice were waived by the said Corporation for whose benefit certain requirements are provided in Section 127.

In the instant matter also, after receipt of notice from petitioner, the general body of Municipal Corporation has adopted a resolution on 19.04.2015 and resolved to purchase the property.

The resolution adopted by the Municipal Corporation in terms admits the ownership of petitioner in relation to the property and also makes reference to 7/12 extracts and copies of the map. Thus, there is no dispute as regards ownership of property and the Municipal Corporation is well informed about it.

10. Since the Municipal Corporation has acted upon the notice issued by petitioner, as has been held by the Division Bench in the matter of Gupta Loom Industries (supra), the alleged defect in the notice shall be deemed to have been waived by the Municipal Corporation for whose benefit certain requirements are provided in section 127 of the Act. It also must be noted that inspite of adopting resolution on 29.04.2015, no steps have been taken by the Municipal Corporation till today. The Corporation infact does not dispute receipt of notice issued by petitioner under section 127 of the Act and ownership of petitioner over the property. However, it is harping upon the technical defects which, in the facts of the case, for the reasons recorded above, do not hold good.

11. In view of discussion as above, writ petition deserves to be allowed and the same is accordingly allowed. Allotment / Reservation / Designation in respect of the property belonging to petitioner described in the notice shall be deemed to have lapsed and the land shall be available to the petitioner for development as in the case of adjacent owner covered by the same plan. Respondent-State shall publish notification as required under section 127(2) of the MRTP Act, as expeditiously as possible, preferably within six months from today.

12. Rule made absolute. No costs.

(S.M. GAVHANE)
JUDGE

(R.M.BORDE)
JUDGE

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