

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1184 OF 2016

Dilip Kachardas SanklechaPetitioner.

V/s

Nashik Municipal Corporation and OthersRespondents.

.....
Mr. R.D. Soni i/b Mr. V.R. Kasle, Advocate for the Petitioner.

Mr. S.V. Gutte, Advocate for Respondent Nos. 1 and 2.

Mr. A.I. Patel, Addl. GP for Respondent No.5.
.....

**CORAM : B. R. GAVAI AND
M.S.KARNIK, JJ.**

DATE : 21st AUGUST, 2017.

ORDER (PER M.S. KARNIK, J.) :-

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks a declaration that the Reservation No.181 in respect of the portion of land admeasuring 2160 sq. meters in Survey No.31/2/1/19 situated at Mauje-Deolali, Nashik (hereinafter referred to as “the said land”) has lapsed and the petitioner is entitled to develop the said land as otherwise permissible in the case of adjacent land under the relevant plan.

2. The Petitioner is the owner of the said land which was reserved for the purpose of “Market and Shopping Centre”. The petitioner claims to be owner of the land pursuant to the execution of the sale deed dated 17/2/2011.

3. In the year 1972 the said land was reserved for the purpose of the market in the sanctioned development plan of Nashik Road Deolali Municipality, which was approved by the State Government in the year 1972. Nashik Road Deolali Municipal Council merged and became part of the Nashik Municipal Corporation in the year 1981. On 20th June, 1993 the development plan for Nashik City for which Nashik Municipal Corporation is the planning authority was approved by the State Government under Section 31 of the Maharashtra Regional & Town Planning Act, 1966 (for short “the said Act”). In the said development plan, the petitioner's property has been shown as reserved for the purpose of market on Site No.181. The petitioner had submitted an application on 26/9/2005 under the policy of developing reservations known as Accommodation Reservation. The petitioner also submitted the plans for sanction under the said policy but Respondent No.1- Corporation rejected the said proposal submitted by the petitioner. The petitioner served a

notice dated 22/10/2014 under Section 127 of the said Act for the purchase of the said land put under reservation since 1972 in respect of which no action for acquisition thereof has been taken by the authorities concerned. As is the requirement of the Section 127 of the said Act, a period of 10 years during which the said reservation has continued in the development plan was completed in June 2003.

4. Learned Counsel for the petitioner submits that the respondent no.1- corporation had passed a Resolution No.156 dated 10/12/1993, whereby the corporation recommended to the Government for deletion and/or cancellation of the said reservation on the petitioner's land, in view of the fact that there already exists a market in the near vicinity and that the entire area was developed and that the residential colonies have already come up. However, no action has been taken by the government on the said recommendations.

5. Learned Counsel for the petitioner submitted that no steps were taken by the Respondent-Corporation in terms of the provisions of Section 127 of the said Act for acquisition within one year from the date of the receipt of the said notice dated 22/10/2014

and therefore the reservation has lapsed and the petitioner is entitled to develop the said property.

6. Learned Counsel for the Respondent-Corporation on the other hand invited our attention to the affidavit-in-reply filed by Shri Bhaskar Uaddhavrao More, Estate Manager of Respondent No.1-Corporation. In the said reply it is contended that the purchase notice was not accompanied with the certified copy of the measurement map prepared by TILR/Survey Officer. According to the learned Counsel the documents of title along with measurement map are necessary to be enclosed with the purchase notice so that a conscious and informed decision to acquire the said land can be taken. In his submission the purchase notice is not valid. It is the stand of the Respondent-Corporation that as a planning authority the Corporation can only make an application to the Collector to acquire the land and it is the sole responsibility and power of the Government to acquire the land and hand over the same to the Corporation. The only obligation of the Corporation is to pay the cost of acquisition. Learned Counsel for the respondent-corporation pointed out that on 14/9/2005 proposal was submitted before the Standing Committee which proposal was approved by the Standing Committee on

6/10/2005. Thereafter, the corporation submitted a proposal to the Collector on 23/1/2006 for acquisition of the land. It would be pertinent to reproduce the stand of the Respondent-Corporation as stated in paragraphs 4, 5 and 6 of the affidavit-in-reply which reads thus :-

“4. I say that in the D.P plan of the Nashik Municipal Corporation sanctioned on 28.06.1993 the land admeasuring about 2160.00 square meters out of S. No.31 situate at Deolali is reserved for the public purpose of Market and Shopping Centre under Site No.181.

5. I say that a letter dated 22/10/2014 was addressed by the Petitioner No.1 to the Commissioner stating that an area of 2160.00 square meter out of S. No. 31/2/1/19 was under reservation more than 33 years and therefore, the Corporation should pay the compensation for the same as per market rate and if the Corporation did not require the land then the same be released from reservation. It was requested that action be taken under Section 127 of the TP Act.

6. I say that on 14.09.2005 a proposal was submitted before the Standing Committee. The Standing Committee approved the proposal on 06.10.2005. Thereafter, the Corporation submitted a proposal to the Collector on 23.01.2006 for acquisition of the lands. I say that thereafter there was correspondence in which every time a query or objection is raised by the office of the Collector and the same is rectified by the Corporation. I submit that these queries and objections were totally irrelevant. Ultimately on 30.08.2008 the SLAO wrote a letter to the City

Survey Officer to measure and prepare the map of the land. The joint measurement of the land was completed on 21.10.2008. Thereafter the land was again sought to be re-measured and again corrected. I submit that the proposal is still pending at the stage of re-measurement of the land and correction of the map.”

7. The affidavit of the Respondent-Corporation further records that the offices under the control of Collector i.e. LAQ Officer, TILR/City Survey Officer and ADTP entered into endless correspondence for measurement of the land and for making the plan. Several queries were raised at different stages and lot of time was consumed. It would be also pertinent to reproduce paragraphs 11 and 12 of the affidavit-in-reply:

“11. I say that under the act the question of measurement of the land under acquisition arises only after issue of declaration under Section 6 of the Act. Therefore, there is no hindrance absolutely for issuing declaration under Section 6 of the Act immediately. However, contrary to the procedure under the Act, the LAQ Officer instead of issuing a declaration under Section 6 went ahead for measurement of the land and for submission of the map which went on for many years. This was deliberate and with oblique motives to delay issuing of declaration under Section 6 of the LA Act. Many years are taken for measuring the land. I submit that this delay and inaction is deliberate. I submit that even under the Maharashtra Government Services Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 both the LAQ Officer and the City Survey Officer were required and were under obligation to take

prompt steps to acquire the lands as the same are required for public purposes. I submit that the LAQ Officer and Survey Officer/TILR are aware of the consequences of not taking prompt steps for acquisition.

12. I say that the original owner of the said land is Petitioner appears to have purchased the property. It is clear that the Petitioner has purchased the all rights knowing fully well that the same is under reservation. It is thus clear that the Petitioner has entered into a speculative transaction by purchasing the rights of the land under reservation with obvious motive to somehow get the land de-reserved. The method adopted by the petitioner is very simple in that to prevail upon the LAQ Officer, City Survey Officer, ADTP Nashik District not to take steps in acquisition and to complete the acquisition within the prescribed time so that the lands de-reserved. I submit that the said inaction was intended to create a situation to see that the lands are declared free from reservation. I submit that this is nothing but an abuse of power and deliberate non-exercise of power. In the circumstances I submit that this being a fraud on statute the Petitioner is not entitled for a declaration that the reservation has lapsed.”

8. Learned AGP invited our attention to the affidavit-in-reply filed by Mrs. Dipmala Chaure, Deputy Collector (Land Acquisition-2) on behalf of Respondent No.3. In the said affidavit various steps taken by the Respondent no.3 for acquiring the said land are enlisted. On behalf of the respondent no.3 a stand has been taken that the planning authority has by the letter dated 2/2/2016

submitted a fresh proposal for land acquisition under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as “the Act of 2013”) . On 15/2/2016, the respondent no.3 has passed an order under Section 3G of the Act of 2013 and the acquisition proceeding of the disputed land is in progress with respondent no.3. It is stated that the respondent no.3 is taking all possible steps to acquire the land and the Estate Manager in the affidavit dated 10/10/2016 has made wrong and baseless allegations against respondent no.3.

9. We have heard learned Counsel. We have given our anxious consideration to the stand taken by the Respondent-Corporation in the affidavit-in-reply dated 10th October, 2016 filed by the Estate Manager.

10. The undisputed facts are that the notice dated 22/10/2014 under Section 127 of the said Act for the purchase of land has been duly served on the planning authority. The period of 12 months from the date of the service of the purchase notice elapsed on 22/10/2014, within which time the respondents failed to initiate the

necessary action as contemplated under Section 127 of the said Act. Admittedly no steps for acquisition of the land were taken within the period of 12 months from the issuance of the date of the service of purchase notice.

11. The stand of the respondent-corporation that the notice dated 22/10/2014 is not valid purchase notice as the documents of title along with measurement map are not enclosed, can only be stated to be rejected. The record itself indicates that the proposal submitted by the petitioner as owner for developing the reservation known as "Accommodation Reservation" in respect of the said lands was considered by the respondents but the same was rejected by them. The rejection of the said proposal was not on the ground that the petitioner is not the owner of the said lands. It will also be seen from the stand of the respondent-corporation in paragraphs 5 and 6 of the affidavit-in-reply that the respondent-corporation had submitted proposal on 14/9/2005 before the Standing Committee which proposal came to be approved on 6/10/2005. The Corporation submitted a proposal to the Collector on 23/1/2006 for acquisition of the lands. It is thus apparent that the objection as regards the purchase notice not being valid, is raised by the respondent-

corporation only to defeat the right of the petitioner, which have accrued to him by operation of statutory provisions.

12. For the very reason that the rights of the petitioner which have accrued to him by operation of statutory provisions cannot be defeated, we find the contention of the Planning Authority that delay and inaction on the part of the LAQ officer is deliberate and intentional only to see that lands are declared free from reservation, as untenable. A bold stand is taken by the Planning Authority that non-issuance of the declaration under section 6 of LAQ Act within the stipulated time is abuse of power and that deliberate non-exercise of power constitutes a fraud on the statute dis-entitling the petitioner for the declaration sought. The said contention cannot be accepted as the petitioner cannot be deprived of his statutory rights as a result of operation of section 127 of the said Act. The petitioner having taken positive steps i.e. service of notice on 22/10/2014 as contemplated by section 127 of the said Act and the corresponding failure on the part of the respondents to take requisite steps as demanded therein within the time stipulated brings into effect consequences contemplated by section 127 of the said Act.

13. Learned Counsel for the petitioners relied on the law laid down by the Apex Court in the case **Girnar Traders vs. State of Maharashtra ((2007) 7 SCC 555).**

14. In our view the reservation has lapsed in view of the contingencies mentioned in the Section 127 of the said Act and therefore necessary consequences under the scheme of Section 127 of the said Act must follow. The petitioner has served valid purchase notice on 22/10/2014 which was duly received by the Planning Authority. The period of 12 months from the date of the service of the purchase notice elapsed on 22/10/2015, within which time the respondents failed to initiate the necessary action as contemplated under Section 127 of the said Act. In fact it is the categorical stand of the respondent-corporation that the LAQ officer has purposely delayed taking of any steps in furtherance of acquisition after service of the purchase notice.

15. We find even as per the respondents, the planning authority has submitted a fresh proposal on 2/2/2016 for acquisition of the said land under the provision of the Act of 2013. In these circumstances, we have, therefore, no hesitation in holding that as

mandated by provision under Section 127 of the said Act the petitioner took positive steps i.e. service of the notice on 22/10/2014 and there has been corresponding failure on the part of the respondents to take requisite steps as demanded therein. The failure to take the steps brought into effect the consequences contemplated by Section 127 of the said Act. In any case the respondents themselves have proceeded on the footing that a fresh proposal dated 2/2/2016 has been submitted for acquisition of the said land under the provisions of the Act of 2013.

16. Be that as it may the petitioner has served the valid purchase notice under the said Act. The respondents have not taken steps to acquire the land within 12 months of the service of the notice and therefore the reservation has lapsed. The provisions of Section 127 of the said Act provides for consequences of deemed lapsing and upon such deemed lapsing the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land owner under the relevant plan.

17. The Writ Petition, accordingly is allowed with no order as to costs. Hence the following order.

ORDER

1. Rule is made absolute in terms of prayer clause (a).
2. The Writ Petition is disposed of.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)