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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3567 OF 2016

Shri Digambar Gangadhar Chavan
and Others

..... Petitioners.

V/s

The Nashik Municipal Corporation
and Others

..... Respondents.

.....

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

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

Mr. A.I. Patel, Addl. GP for Respondent Nos. 3 and 4.

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

DATE : 21st AUGUST, 2017.

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

By this petition filed under Article 226 of the Constitution of India, the petitioners seek a declaration that the Reservation No.181 in respect of the portion of land admeasuring 1704.00 sq. meters in Survey No.31/3A/7 situated at Mauje-Deolali, Nashik (hereinafter referred to as “the said land”) has lapsed and the petitioners are entitled to develop the said land as otherwise permissible in the case of adjacent land under the relevant plan.

2. The Petitioner Nos.1 to 5 are the owners of the said land which was reserved for the purpose of “Market and Shopping Centre”. The Petitioner No.6 is a partnership firm duly registered under the Indian Partnership Act and is engaged in the business of land development and construction in and around Nashik.

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. In the said development plan, the petitioners' property has been shown as reserved for the purpose of market on Site No.181. The petitioners had submitted an application on 26/9/2005 under the policy of developing reservations known as Accommodation Reservation. The petitioners also submitted the plans for sanction under the said policy but Respondent No.1- Corporation rejected the said proposal submitted by the petitioners. The petitioners served a notice dated 26/12/2014 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred as “the said Act”) for the purchase of the said land put under reservation

since 1972 as no action for acquisition thereof has been taken by the authorities concerned.

4. Learned Counsel for the petitioners 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 and therefore learned Counsel contends that the reservation has lapsed and the petitioners are entitled to develop the said property.

5. Learned Counsel for the Respondent-Corporation on the other hand pointed out that by a communication dated 6th January, 2015 the Respondent-Corporation informed the petitioners that since the land in question has been reserved for market, shopping centre and parking in the development plan, a proposal has already been submitted to the District Collector/Land Acquisition dated 23/1/2006 and the Land Acquisition Officer initiated action in that respect and the case has been registered as Land Acquisition Case No.24 of 2008. Learned Counsel for the Respondent-Corporation 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 can be taken. In his submission therefore 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. In his submission the only obligation of the Corporation is to pay the cost of acquisition. It would be pertinent to reproduce the stand of the Respondent-Corporation stated in paragraphs 4, 5 and 6 of the affidavit-in-reply.

“4. I say that in the D.P. plan of the Nashik Municipal Corporation sanctioned on 28.06.1993 the land admeasuring about 1704.00 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 26.12.2014 was addressed by the Petitioner No.1 to the Commissioner stating that an area of 1704.00 square meter out of S. No. 31/3A/7 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.”

6. 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 owners of the said land are Petitioner Nos.1 to 5 and the Petitioner No.6 appears to have purchased the development rights. The Petitioner No.6 are builders and developers. It is clear that the Petitioner No.6 has purchased the development rights knowing fully well that the same is under reservation. It is thus clear that the Petitioner No.6 has entered into a speculative transaction by purchasing the development rights of the land under reservation with obvious motive to somehow get the land dereserved. I say that all these officers have not taken steps for acquisition at the instance of the Petitioner and they have not exercised the powers which they were obliged to do so expeditiously. 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.”

7. 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 by the letter dated 2/2/2016 has submitted a fresh proposal for land acquisition under the provisions of new Land Acquisition Act, 2013. On 15/2/2016, the respondent no.3 has passed an order under Section 3G of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short “the Act of 2013) and the acquisition proceeding of the disputed land is in progress with respondent no.3. It is the stand of the respondent no.3 that they are 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.

8. 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.

9. The undisputed facts are that the notice dated 26/12/2014 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 within which time the respondents failed to initiate the necessary action as contemplated under Section 127 of the said Act and as per the stand of the respondent-corporation themselves no steps are taken within the period of 12 months from the date of the service of purchase notice. At the cost of repetition we may mention here that the Planning Authority itself has submitted a fresh proposal for acquisition of land on 2.2.2016 viz. after the period of 12 months elapsed from the date of service of purchase notice. The stand of the respondent-corporation that the notice dated 26/12/2014 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 petitioners as

owners 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 is not on the ground that the petitioners are not owners of the said lands. Even the Land Acquisition Officer in the affidavit filed have categorically stated that the Corporation has submitted a fresh proposal for acquisition by their letter dated 2/2/2016 under the Act of 2013. 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 petitioners which have accrued to them by operation of the statutory provisions.

10. For the very reason that the rights of the petitioners which have accrued to them 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.

11. 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)**.

12. 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 26/12/2014 which was duly received by the Planning Authority. The period of 12 months from the date of the service of the purchase notice elapsed 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 categoric 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.

13. 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 26/12/2014 and there has been corresponding failure on the part of the respondents to take requisite steps as demanded therein within a period of 12 months from 26/12/2014.

14. 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.

15. Be that as it may, the petitioners have 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.

16. 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.)