

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3492 OF 2016

Mr.Siddharam Shivappa Patil .. Petitioner
Vs.
State of Maharashtra and ors. .. Respondents

Dr.Ramdas P. Sabban, for Petitioner.
Ms.M.P. Thakur, AGP for State.
Mr.Samir Kumbhakoni, for Respondents No. 3 & 4.

**CORAM : NARESH H. PATIL &
M.S.KARNIK, JJ.**

**RESERVED ON: 05th JANUARY, 2017
PRONOUNCED ON : 17th FEBRUARY, 2017**

JUDGMENT (PER M.S.KARNIK, J.) :

. Rule, returnable forthwith. Heard finally by consent
of the parties.

2. The petitioner seeks appropriate writ and/or
directions for declaring that the reservation in respect of the
petitioner's land reserved for development plan of Solapur 1997-
2017 (a) for the primary school area admeasuring 5197
sq.meters being reservation No. 13/67 & (b) for the parking

area 1638 sq. meters being reservation No. 13/68, situated at old survey No. 219/1/1, new survey No. 23/1/1 of Majrewadi, Solapur has lapsed as per provisions of section 127 of the Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred to as the 'said Act' for short). The petitioner further prays for appropriate directions for declaring that the said lands are released from the reservations and have become available to the petitioner for the purpose of development as otherwise permissible in the case of adjacent land under plan. The petitioner has also prayed for appropriate order directing the respondent No.1 to forthwith notify the lapsing of reservation of said land by an order published in the official gazette as per requirement of Section 127(2) of the said Act.

3. The petitioner in this Petition under Article 226 of the Constitution of India contends that he is the owner of the land subject matter of reservation in the sanctioned development plan of the respondent No.3 - Solapur Municipal Corporation. The details of the reservation have been set out in

paragraph 3 of the petition. The first reservation is for primary school and the second one is for parking. As far as the reservation for primary school is concerned, a resolution was passed by the General Body of the Solapur Municipal Corporation on 18th June 2007 recommending cancellation of the reservation.

4. On 8th October 2010 two separate purchase notices under sub-section 1 of section 49 of the said Act were served to the State Government by the Advocate for the petitioner. The first notice was as regards the reservation for primary school and the second one was for the reservation for parking. On 12th and 13th July 2011 respectively, the State Government issued a communication to the Commissioner of the respondent No.3 informing the Commissioner that the purchase Notices have been confirmed. Therefore, the Municipal Commissioner was called upon to initiate acquisition proceedings in respect of the land subject matter of the purchase notices. It appears that within the stipulated period of twelve months provided under

sub-section 7 of section 49 of the MRTP Act on 16th September 2011, an application for acquisition of the land was made by the respondent Nos.3 and 4. Therefore, the reservation did not lapse. The orders dated 2nd November 2011 and 25th January 2012 were passed by the District Collector on the basis of the said proposals/applications submitted by the respondent No.6 on 16th September 2011 and 3rd October 2011 directing that Special Land Acquisition Officer, Solapur to take steps for acquisition after taking 2/3rd of the estimated compensation amount from the respondent No.5 Corporation. A direction was issued thereafter to issue a notification under the Land Acquisition Act,1894.

5. In the year 2013, the petitioner applied for development permission which was rejected on the ground of reservation. An appeal was preferred by the petitioner against the said order which has been dismissed by the Appellate Authority on 7th July 2014.

6. The first application for acquisition was made by respondents No. 3 & 4 within the time stipulated under subsection 7 of Section 49 of the said Act seeking declaration that reservation has not lapsed. Hence, the petitioner by filing Writ Petition No. 8140 of 2014 sought appropriate orders directing the respondents to complete the acquisition proceedings.

7. This Court disposed of Writ Petition No. 8140 of 2014 on 26/08/2015. The operative portion of the order dated 26/08/2015 at paragraph 8 reads thus :

(I) We direct the respondent No.5 - Municipal Corporation to deposit requisite amount as per the orders dated 2nd November 2011 and 25th January 2012/8th February 2012 (Exhibit D to the petition) within a period of three months from today;

(II) If the amount is deposited within a period of three months from today, steps shall be taken by the respondent No.3 to commence acquisition proceedings as expeditiously as possible. In any event, the proceedings shall be concluded within a period of one year from the date on which requisite amount is deposited by the respondent No.5;

(III) Needless to add that the acquisition proceedings shall be completed by a declaration of an Award by offering compensation, if any, payable to the petitioner within the aforesaid period of one year;

(IV) In the event, the respondent No.5 fails to deposit the requisite amount within the time specified or in the event after deposit of the amount as specified, the acquisition proceedings are not completed within the stipulated time, we grant liberty to the petitioner to move this Court by

filing appropriate application;

(V) We make it clear that we have made no adjudication on the issue of entitlement of the petitioner to receive compensation;

(VI) Writ Petition is disposed of on above terms;

(VII) All concerned to act upon an authenticated copy of this order.

8. The petitioner, in accordance with the provisions of Section 127 had issued a purchase notice dated 16/01/2015. The same was received by respondents No.3 & 4. However, the respondents for a period of one year from the receipt of purchase notice, admittedly, did not take any steps to acquire the petitioner's land in question. It is well settled that proceedings for acquiring the land for the purpose of Section 127 can be said to have commenced only when declaration under Section 6 of the Land Acquisition Act, 1894 is issued. No such declaration was issued by respondents within a period of twelve months after receipt of the purchase notice. The obvious consequences therefore was that reservation of petitioner's land had lapsed by operation of Section 127 of the said Act. Moreover, the respondents have failed to comply with the order dated 26/08/2015 passed by this Court in Writ Petition No.

8140 of 2014 and therefore as per liberty granted by this Court under sub-clause (IV) of clause 8 of the order, the petitioner is justified in filing present Petition.

9. The petitioners relied upon the decision of the Apex Court in the case of *Girnar Traders vs. State of Maharashtra*, (2007) 7 SCC 555. The Apex Court while considering the provisions of section 127 of the M.R.T.P Act, 1966 has held that "the steps for acquisition" as contemplated under section 127 of the M.R.T.P Act, 1966 would be issuance of a declaration under section 6 of the Land Acquisition Act. The Apex Court has observed as under:

54. "When we conjointly read sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in *Municipal Corpn. of Greater Bombay* case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State

Government by exercising suo motu power under sub-section (4) of section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation."

55. "Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same."

56." The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The

steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the government to acquire the land which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57." It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under section 6 of the LA Act. Clause (c) of Section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act."

10. Furthermore in the case of Shrirampur Municipal Council Shrirampur Vs. Satyabhamabai Bhimaji Dawkher & ors reported in (2013) 5 SCC 627, the Supreme Court held thus :

"42. We are further of the view that the majority in Girnar Traders (2) 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 300-A of the Constitution."

11. In the present case, admittedly the section 6 declaration under the Land Acquisition Act was not issued within a period of twelve months from the date of service of purchase notice and hence adverting to the principles of law laid down by the Supreme Court in the aforesaid decisions it is required to be held that reservation of the land in question had lapsed by operation of section 127 of the M.R.T.P. Act, 1966.

12. Moreover, respondent No.4 in the affidavit dated 23/11/2016 has now taken a stand that because of weak financial position of the Corporation, the Corporation is recommending to the Government to cancel the said reservation.

13. In the light of the aforesaid observations, the inevitable conclusion is that the reservation of the petitioner's land in question has lapsed and the land has become available to the petitioner to be developed as otherwise permissible, as in the

case of the adjacent land under the Development Plan. Writ Petition therefore deserves to be allowed and is accordingly allowed in terms of prayer clauses (a) & (b). The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of section 127 (2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today.

14. Rule is made absolute in the above terms.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)