

Sharayu.

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

WRIT PETITION NO. 5154 OF 2013

- 1) Narayan Laxman Palekar
2) Smt. Rupali Sardar Patil ...Petitioners

Versus

- 1) The State of Maharashtra & Ors.
2) The Assistant Director Town
Planning
3) The Lonaval Municipal Council
4) Lonavala Education Trust ...Respondents

Mr. Shardul Singh, i/b Ms. Sushma Singh, for the Petitioners.

Mr. N.C. Walimbe, AGP, for the Respondent-State.

Mr. A.A. Garge, for the Respondent No. 3.

**CORAM : SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**

DATE : 7 November 2017

ORAL JUDGMENT : [Per Riyaz I. Chagla J.]

1. Rule. Rule made returnable forthwith. Heard by
consent.

2. The Petitioners by the present Petition are seeking directions from this Court to declare that the Reservation No. 52B on land bearing Survey No. 61/1 admeasuring 0 Hector and 0.5 Ares i.e. 4050 sq.meters situated at Village Walvan, Ward Walvan, Lonavala (for short "***the said land***") has lapsed and the land is available to the Petitioners for the purpose of development. The Petitioners are further seeking direction from this Court to set aside and quash the communication dated August 2011 and directions against the Respondents to decide the Application for building permission of the Petitioners in accordance with law.

The brief background of the facts are necessary.

3. The final Development Plan for the town of Lonawala came into force on 1st February 1978. Under the Development Plan, the said land came to be reserved for the purpose of extension of Dr. B.N. Purandare Mahavidyalaya for the purpose of extension of the college. The benefit of the land

is now claimed by Respondent No. 4. A Purchase Notice was issued on 20th August 1996 by the erstwhile owner to Respondent No. 3-Lonavala Municipal Council calling upon the Council to take steps to acquire of the said land within the period prescribed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "***the said Act***"). A copy of the said Purchase Notice was also served upon the Lonavala Education Trust (Respondent No. 4). The Lonavala Education Trust allegedly passed a resolution to take steps for acquisition of the said land and by a letter dated 6th January 1996 called upon the Respondent No. 3 in turn to take steps to acquire the said land for the purpose of its reservation. By a Registered Sale Deed, the erstwhile owner of the said land sold the said land to the Petitioners on 7th June 2008. In pursuance of the Registered Sale Deed, the Petitioners' names were mutated on the 7/12 extract for the village Walvan, Ward Walvan, Lonavala. After purchasing the said land, the Petitioners made an Application for development seeking building permission on the said land. The Petitioners state that

the reservation on the said land had lapsed and the same was available for development as in the case of adjacent lands. In August 2011, the Respondent No. 3 rejected the building permission of the Petitioners on the ground that there was reservation on the said land. Hence, the present Writ Petition is filed.

4. Mr. Shardul Singh, the learned Counsel for the Petitioners has submitted that the reservation of the said land had lapsed under Section 127 of the said Act as Respondent No.3 had failed to take steps to acquire the said land during the period prescribed under Section 127 of the said Act. He has submitted that the adjacent lands in respect of which reservation had lapsed are similarly placed as the said lands. In the case of adjacent lands, the owner had already filed proceedings under the said Act claiming the lapse of reservation and this has been finally determined in his favour by the Supreme Court in ***Prakash R. Gupta Vs. Lonavala Municipal Council & Ors***¹. The decision of this Court in ***Prakash R. Gupta Vs. Lonavala***

¹ (2009)1 SCC 514

Municipal Council & Ors². had been set aside. This Court had held that they had been no lapse of reservation, as the Petitioners therein had failed to take steps contemplated under Section 49 of the said Act. The Supreme Court held that the reservation had lapsed under Section 127 of the said Act, as the Respondents therein had failed to take steps to acquire the said land within the period prescribed and the said land was ordered to be released in favour of the Appellant therein. The Supreme Court held that the reference to Section 49 by this Court was totally misconceived and uncalled for.

5. Mr. Singh has also referred to the decision of the Supreme Court in **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors**³., wherein the Supreme Court has held that where the reservation of the said land had lapsed, merely because the draft revised plan is subsequently made, does not automatically give rise to a revival thereof. He has submitted that the Respondents cannot rely upon any draft Development

² 2002(2) Bom.C.R.484

³ (2003) 2 SCC 111

Plan made after lapsing of reservation for claiming its revival. He has therefore, submitted that the present Petition be made absolute by declaring that the reservation of the said land has lapsed and that the said land is available to the Petitioners for the purpose of development.

6. Mr. Walimbe, the learned Assistant Government Pleader for Respondent No. 1 and Mr. Garge, the learned Counsel for the Respondent No. 3 have supported the communication dated August 2011 and have submitted that the said land is still under reservation. Mr. Garge has submitted that Respondent No. 3 is entitled to take steps for acquiring the said land and take possession of the said land from the Petitioners in accordance with law. He has relied upon the decision of this Court in ***Prakash R. Gupta*** (supra) and has contended that the Lonavala Education Trust is not a public authority and hence, has been wrongly served the Purchase Notice under Section 127 of the said Act. He has submitted that there is a subsequent reservation in the draft Development Plan and hence, the said

land continued to be under reservation.

7. We have carefully considered the submissions. We are of the view that the lapsing of reservation of the adjacent land as held in the decision of the Supreme Court in **Prakash R. Gupta** (supra) will squarely apply to the facts of the present case. In the present case although the Development Plan prepared on 1st February 1978 showed a reservation of the said land for the purpose of extension of Dr. B.N. Purandare Mahavidyalaya college, no steps were taken by the Respondent No. 3 to acquire the said land within ten years thereof and/or within the prescribed period from the issuance of the Purchase Notice under Section 127 of the said Act. The reservation in the present case had lapsed and this is noticed by the Supreme Court in the case of adjacent lands. Paragraphs 4 and 5 of the decision in **Prakash R. Gupta** (supra), read thus:-

“4. It is not disputed that the land was not acquired within ten years from the date on which the final

Regional plan or final Development Plan came into force and no proceedings for acquisition of such land under the Land Acquisition Act were commenced within the aforesaid period of ten years. After the said period of ten years, the appellant, who was the owner of the land, served a notice on respondent No.1 as required by Section 127 calling upon the said authority to acquire the said land within six months or take steps within that period, but neither was the land acquired within the further period of six months nor were any steps taken to acquire it. Hence, in our opinion, the reservation lapsed and the land has to be released in favour of the appellant.

5. *The High Court, however, has taken the view that in view of Section 49 of the Act, there is no lapse of the reservation. We do not agree. In our opinion, the scheme contemplated by Section 49 is*

totally different from that contemplated by Section 127. In Section 49, there is no period of ten years as mentioned in Section 127. In Section 49, the owner has to satisfy one of the three conditions mentioned therein which is not so in Section 127. Thus, reference to Section 49 by the High Court was, in our opinion, totally misconceived and uncalled for.”

8. We are of the considered view that the subsequent reservation in the draft Development Plan i.e. after the reservation had lapsed is inconsequential. This has been held by the Supreme Court in the case of **Bhavnagar University** (supra), paragraph 38 reads thus:-

"Section 21 does not envisage that despite the fact that in terms of sub-section (2) of Section 20, the designation of land shall lapse, the same, only because a draft revised plan is made, would

automatically give rise to revival thereof. Section 20 does not manifest a legislative intent to curtail or take away the right acquired by a land-owner under Section 22 of getting the land defreezed. In the event the submission of the learned Solicitor General is accepted the same would completely render the provisions of Section 20(2) otiose and redundant.”

9. It is well settled that when a statutory authority, in this case Respondent No. 3-Lonavala Municipal Council, is required to do a thing in a particular manner, the same must be done in that manner or not at all. In the present case Section 127 of the said Act clearly provides that when the Purchase Notice has been issued after a lapse of ten years from the date of the final Development Plan coming into force and within the prescribed period steps are required to be taken by the Municipal Council for acquisition of the said land, then these steps must be taken or else the reservation lapses. The Council

cannot rely on a subsequent reservation in the draft Development Plan. Hence, we are of the view that the reservation of the said lands has lapsed as the public authority viz. the Lonavala Municipal Council has failed to acquire or take steps to acquire the said lands within the period prescribed under Section 127 of the said Act.

10. We accordingly pass the following order :-

(i) We order and declare that the Reservation No. 52B on land bearing Survey No. 61/1 admeasuring 0 Hecter and 0.5 Ares i.e. 4050 sq.meters situated at Village Walvan, Ward Walvan, Lonavala has lapsed and the land is available to the Petitioners for the purpose of development.

(ii) The Communication dated August 2011 issued by the Respondent No. 3 rejecting the Petitioners' Application seeking permission for

development on the said land on the ground that there was a reservation on the said land is quashed and set aside.

(iii) We direct the Respondents to decide the Application for building permission of the Petitioners in accordance with law.

(iv) The Writ Petition is made absolute in the above terms, with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A NAIK, J.]