

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5790 OF 2003

Laxman Rakmaji Wankar. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents
—
Shri Surel S. Shah for the Petitioner.
Shri Manish M. Pabale, AGP for the Respondent Nos.1 and 2.
—

CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 8TH JUNE 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. Called out for final hearing. The property subject matter of this Petition has been described in Paragraph 3 of the Petition. The said property was reserved in the Development Plan sanctioned under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) for the purposes of fire station, cultural centre, stadium and swimming pool. According to the case of the Petitioner, which is not disputed in the affidavit-in-reply filed by the second Respondent, at the relevant time, the second Respondent was a Special Planning Authority in accordance with Section 40 of the MRTP Act. As no steps were taken for acquisition of the said land, a notice dated 11th September 2001 under Section 127 of the MRTP Act was issued by the

Petitioner to the second and third Respondents and to several others including the Government of Maharashtra. By a letter dated 7th/12th February 2002 (Exhibit-B to the Petition), the State Government informed the Chief Executive Officer of the second Respondent- the Maharashtra Housing and Area Development Authority that within a period of six months from issuance of notice dated 11th September 2011, the second Respondent will have to take necessary steps and if steps are not taken within the stipulated time, reservation would lapse in accordance with Section 127 of the MRTP Act. An Application was made on 13th June 2008 (Exhibit-C to the Petition) by the Petitioner to the third Respondent Solapur Municipal Corporation for grant of development permission on the ground that the reservation has lapsed in accordance with Section 127 of the MRTP Act. The third Respondent responded by a letter dated 18th August 2008 by informing the Petitioner that the land has been reserved in the sanctioned Development Plan vide Reservation No.19 for fire station.

2. By this Petition under Article 226 of the Constitution of India, the first prayer is for directing the Respondents to dereserve the land in question and permit the Petitioner and other co-owners to use the same for development. The second prayer is for challenging the communication dated 18th August 2008 issued by the third Respondent Solapur Municipal Corporation rejecting the proposal submitted by the

Petitioner for grant of sanction to the lay out in respect of the said property.

3. The second Respondent has filed a reply of Shri Sidhaling Gangadhar Madihalli, the Sectional Engineer of Pune Housing Area Development Board, Pune. In Paragraph 2 of the said reply, reliance is placed on the Resolution passed by the second Respondent by which it was resolved not to acquire any land under reservation. In Paragraph 3 of the reply, it is stated that with effect from 24th November 2005, the State Government has denotified the second Respondent as the Special Planning Authority and now the third Respondent Solapur Municipal Corporation shall be the Planning Authority for the said area.

4. There a reply filed by the third Respondent of Shri Shantaram Manohar Awatade, the Assistant Engineer in the Town Planning Department of the third Respondent- Solapur Municipal Corporation. In the said reply, which is affirmed on 21st July 2004, it is stated that the process of handing over the said area to the Municipal Corporation has commenced. As stated earlier, the second Respondent ceased to be the Planning Authority for the said area with effect from 24th November 2005 and with effect from that date, the third Respondent became the Planning Authority.

5. It is not the case made out by the Respondents that within the period stipulated in Section 127 of the MRTP Act, a declaration either under Sub-section (2) or Sub-section (4) of Section 126 of the MRTP Act was issued.

6. As no such declaration has been issued, the law laid down by the Apex Court in the case of *Shrirampur Municipal Council v. Statyabhamabai Bhimaji Dawkher*¹ will squarely apply to the facts of the present case. Therefore, the reservation shall be deemed to have lapsed. Hence, the Application for sanction of lay out and for grant of development permission which may be made by the Petitioner and his co-owners will have to be considered by the third Respondent in view of lapsing of reservation. Accordingly, the Petition must succeed and we pass the following order.

ORDER :

- (a) We declare that the reservation imposed on the land as described in Paragraph 3 of the Petition in the sanctioned Development Plan vide Reservation No.19 shall be deemed to have been lapsed;

¹ (2013)5 SCC 627

- (b) We declare that the said land shall be deemed to be released from such reservation and shall become available to the owners thereof for the purposes of development as otherwise permissible in case of adjacent land under the relevant sanctioned Development Plan;
- (c) It will be open for the Petitioner and his co-owners to make a fresh Application for grant of sanction of lay out and/or for grant of development permission to the third Respondent-Solapur Municipal Corporation;
- (d) If such Application is made, the same shall be decided afresh and in the light of this judgment and without being influenced by the communication dated 18th August 2008 which is impugned in this Petition;
- (e) Rule is made absolute on above terms with no orders as to costs.