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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9437 OF 2015

Smt. Kusum Ramji Sawla & Ors. Petitioners.
V/s
The State of Maharashtra and Others Respondents.

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Mr. Pratik Saksaria with Ms. Heena Chheda and Mr. Bharatkumar Jain i/by Hariani & Co., for the petitioners.

Mr. Bhupesh V. Samant, AGP for respondent No.1.

Mr. Aniruddha A. Garge, for the respondent No.2.

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

DATE : 20th September, 2017.

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

The petitioners by this petition filed under Article 226 of the Constitution of India seek a declaration that the Reservation No.30 that of public garden imposed on their property under the second revised development plan of Lonavala is deemed to have lapsed and that the said land stands released from reservation under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the said Act”). The petitioners have also prayed for appropriate writ, order or direction, directing the respondent No.2 –

Lonavala Municipal Council to process and sanction the plans submitted by the petitioners for development of their property.

2. The facts of the present case in a nutshell are thus :-

The petitioners claim to be the owners of the land bearing Survey No.168, CTS No.174 admeasuring 01 Hectares 37 Acres, situated at Ward B of Lonavala Municipal Council, Taluka Maval, District Pune (hereinafter referred to as “the said land”). In the Development Plan of 1978 the said land was falling in the residential zone. On 17/4/1993, the first DP was proposed to be amended/revised by including the said land for reservation as a public garden. The revised Development Plan (hereinafter referred to as “the DP”) was sanctioned on 1/11/2006. The said land was reserved as Reservation No.30 for public garden in the revised DP. It is the petitioners' case that since 1993 no steps were taken for acquisition of the said land and since the property became incapable of reasonable beneficial use due to the reservation, the petitioners issued a purchase notice dated 5/1/2012 under Section 49 of the said Act to the respondent No.3.

3. The purchase notice dated 5/1/2012 was forwarded by

the respondent No.3 – State of Maharashtra to the respondent No.4 – the Director of Town Planning. The respondent No.4 after considering the same and pursuant to hearing the petitioners, was pleased to pass an order dated 24/5/2012 confirming the purchase notice and directing the respondent No.2 Municipal Council to purchase/acquire the said property within a period of one year from the date of the order as mandated under Section 49 of the said Act.

4. The respondent No.2 – Municipal Council by a resolution bearing No.76 dated 30th June, 2012 resolved that the procedure under Section 49 (7) of the said Act be completed within one year from the date of confirmation order and that a proposal for the same needs to be sent to the Collector, Pune.

5. By an order dated 31/10/2012 the District Collector, Pune directed the respondent No.6 – Special Land Acquisition Officer that on receiving the proposal for acquisition, he should act in terms of the order dated 14th June, 2001 read with government decision dated 17/1/2008 before issuing notice under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as “the LAQ Act). In the said order it is further mentioned that before issuing notice under

Section 4 of the LAQ Act, an amount of 50% of the compensation payable be recovered from the Acquisition Department and from the Government and further that before issuance of notification under Section 6 of the LAQ Act recover the advance amount estimated to be incurred and only thereafter carry on further proceedings with respect to the government decision.

6. At this juncture it would be pertinent to refer to a communication dated 21st May, 2013, addressed by the Municipal Council to the Principal Secretary, Urban Development Department. In this communication the Municipal Council had clearly mentioned that as per the provisions of Section 49(7) of the said Act and prevalent policy, it is necessary that declaration under Section 6 of the LAQ Act has to be issued within a period of one year from the date of confirmation of purchase notice otherwise the reservation will lapse.

7. The respondent No.6 – Land Acquisition Officer addressed several letters to the respondent No.2 between 3/11/2012 and 2/7/2013 calling upon the respondent No.2 to deposit an amount of Rs.6,53,12,000/- towards 50% compensation payable to

the petitioners in respect of the said land so as to enable the respondent No.1 to issue a declaration under Section 6 of the LAQ Act for acquisition of the said land.

8. The petitioners submitted an application on 14/10/2013 to the respondent No.2- Lonavala Municipal Council proposing to construct a residential house. It is the petitioners' case that despite lapsing of the said reservation under Section 49 of the said Act, the application made by the petitioners was rejected on 13/12/2013 on the ground that the said land was reserved.

9. An appeal filed by the petitioners under Section 47 of the said Act challenging the order dated 13/12/2013 was dismissed.

10. An affidavit-in-reply has been filed on behalf of the respondent No.2 – Council on 29th July, 2016. In the said affidavit, it is stated that with the approval of the respondent No.2 – Council, 50% amount of the compensation is already deposited. It is further stated that the proposal made by the petitioners for development of the land at S.No.168, City Survey No.174 has been rejected as the same has been reserved as reservation No.30 for the purpose of

“Public Garden”. In paragraph 4 it is stated that as the Council has submitted the land acquisition proposal by their communication dated 21/7/2012 to the Collector, Pune, which proposal has been sent to the Special Land Acquisition Officer No.14 for further process. It is stated that under these circumstances as the procedure has been completed with the stipulated time, it cannot be said that the reservation in relation to the petitioners' land has lapsed.

11. It is pertinent to mention here that an additional affidavit on behalf of the petitioners dated 4th February, 2017 has been filed bringing on record some additional documents which are material to decide the present controversy. The communication dated 21st September, 2016 of the respondent No.2 addressed to the Commissioner and Director, Directorate of Municipal Councils, Mumbai, records that the respondent No.2 – Council had submitted proposal to the Collector, Pune, for acquisition of eight properties which are affected by reservation. It is stated that the Special Land Acquisition Officer No.14 had directed the respondent No.2 – Council to deposit 50% of the amount of compensation to be paid for acquisition of the said properties to the tune of Rs.24,40,18,066/-. Out of the eight properties affected by reservation the respondent

No.2 – Council has deposited 50% amount only in respect of reservation No.5 for Secondary School. In the said communication it is further stated that as regards the remaining properties which are under reservation, including that owned by the petitioners, the respondent No.2 – Council has not taken any decision for depositing 50% amount of compensation and neither they have taken any steps to acquire the same.

12. The admitted position therefore as per the own showing of the respondent No.2 is that 50% amount of compensation to the tune of Rs.6,53,12,000/- in respect of reservation No.30 (the said land) has not been deposited with the Special Land Acquisition Officer. The respondent No.2- Council appears to have deposited only 50% amount to the tune of Rs.23,77,993/- towards Reservation No.5. Thus, 50% amount for acquisition in respect of the petitioners' land which are subject matter of the present petition viz. Reservation No.30 has not been deposited.

13. We would also at this juncture note here that the respondent No.4 – Director of Town Planning, Maharashtra State had clearly informed the respondent No.2- Council that the Council

should take steps to acquire the said land within the period of one year from the date of confirmation of the purchase notice issued by the petitioners under Section 49 of the said Act. By said communication dated 24th May, 2012, the respondent No.4 informed the respondent No.2 that the purchase notice dated 5/1/2012 issued by the petitioners under Section 49 of the said Act stands confirmed.

14. The respondent No.2 – Council except for submitting a proposal dated 21/7/2012 of the Collector for acquisition of land have not even deposited 50% amount which they were required to deposit towards compensation payable for the acquisition of the land. At the cost of repetition we note that respondent No.2 – Council has not taken any decision for depositing the said 50% advance amount or compensation payable for the petitioners for acquiring the said land. In the backdrop of these facts and for properly appreciating the controversy and rival submissions, it would be necessary to refer to Section 49 of the said Act which reads thus :-

“49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases. - (1) Where -
(a) any land is designated by a plan as subject to compulsory acquisition, or
(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be

developed for the purposes of any functions of any such Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions and any owner of land referred to in clauses (a), (b), (c) or (d) claims -

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) where planning permission is given subject to conditions that the land cannot be rendered capable or reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions, or

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated, the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations a notice (hereinafter referred to as "purchase notice") requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the planning authority, and of any order or decision of that authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the planning authority and the appropriate authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not to later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in subsection (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice or direct that the planning permission be granted without condition or subject to such conditions as will make the land capable of

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

15. The Division Bench of this Court had occasion to consider the scheme of Section 49 in the case of **Subhash s/o Ramrao Jadhav and others vs. State of Maharashtra and others (2012(4) Mh.L.J. 236)** of which one of us (Gavai J) was a member. Paragraphs 7, 8 and 9 of the decision in **Subhash s/o. Ramrao Jadhav** which reads thus :-

“7. It can thus be seen that section 49 of the MRTTP Act, is a complete code in itself. When a owner of the land claims that on account of designation of the land, he is unable to sell it, except at a lower price, he can serve a purchase notice on the State Government. A discretion is vested under sub-section (4) of said section, with the State Government to, either confirm the purchase notice, or direct the concerned authority for

granting planning permission without condition or subject to such conditions as will make the land capable of reasonably beneficial use. The said sub-section also provides that in case the State Government refuses to confirm the purchase notice, a reasonable opportunity of being heard will be given to the applicant. Sub-section (5) provides that in case the State Government fails to take any steps within six months from the date of service of purchase notice, the notice shall be deemed to have been confirmed at the expiry of that period, and sub-section (7) provides that in case the appropriate authority fails to make an application for acquiring the land as required under section 126 of the MRTP Act within one year from the date of confirmation of the purchase notice, the reservation or allotment or restriction on the land shall be deemed to have lapsed and the owner will be entitled to develop his land as permissible in the case of adjacent land.

8. It is thus clear from the aforesaid statutory provisions that a right vests in favour of the owner of the land, in case the planning authority fails to make an application for acquisition of the land within a period of one year from the date on which the purchase notice has been confirmed by the State Govt., as required under section 126 of the MRTP Act.

9. Indisputably, in the present case, though the purchase notice was confirmed on 28-12-2005. No doubt, that an application was made by the appropriate authority on 28-11-2006, so that it would be within a period of one year from the date of confirmation of the purchase notice. However, a perusal of the communication dated 22-2-2007 by the Collector, itself would reveal that the said proposal was not consistent with the statutory provisions. It can, thus, be seen that in the present case, the Appropriate Authority had even failed to make an application as per the provisions of section 126 of the MRTP Act for acquiring the land within a period of one year from the date of confirmation of purchase notice, and as much, reservation stood lapsed on expiry of one year's period from the date of confirmation of the purchase notice, and therefore, the petitioners were free to develop their land as was permissible in case of adjacent land. It is further to be noted that the Municipal Corporation itself has passed a resolution that if the proceedings were not initiated within one year from the date of confirmation of purchase notice, the land would be de-reserved."

16. This Court in Writ Petition No.9778/2014 in the case of **Smt.Mangalbai w/o. Subhash Patil vs. The State of Maharashtra** after placing reliance on the decision in the case of **Subhash s/o. Ramrao Jadhav** (supra) has observed thus :-

“8. In the present case also, though the application/proposal for acquisition of the lands of the petitioner was made by respondent No.5 within the stipulated period of one year, as seen from the reply filed on behalf of respondent No.5, the said proposal was incomplete, in the sense that some of the documents were not annexed thereto. Such incomplete proposal/application cannot be said to have been made as per the provisions of section 126 of the Act. If that be so, mere sending of an application/proposal, which is not complete as required under section 126 of the act, would be of no help to respondent No.5 to save the reservation in respect of the lands of the petitioner. In the circumstances, we hold that the reservation in respect of the lands of the petitioner stood lapsed and the said lands would be deemed to be released from the reservation on expiry of the period of one year from the date of confirmation of the purchase notice. The petitioner would be free to develop her lands.”

17. As stated earlier, the purchase notice in the present case was confirmed on 24/5/2012. No doubt, respondent No.2 – Council passed a resolution No.76 dated 30/6/2012 resolving that the procedure under Section 49 (7) of the said Act be completed within one year from the date of the confirmation order and that a proposal for the same needs to be sent to Collector, Pune, which proposal infact was sent to the Collector, Pune on 21/7/2012. We find that the respondent No.4 while confirming the purchase notice on 24/5/2012

had clearly informed the respondent No.2 – Council that as per the provisions of Section 49(7) the respondent No.2 – Council should take steps for land acquisition within the period of one year therefrom. Even the respondent No.2 – Council in the communication dated 21/5/2013 addressed to the State Government clearly informed that as per the provisions of Section 49(7) of the said Act and as per the prevailing policy the declaration under the LAQ Act as to be issued in view of Section 126 (4) of the said Act and otherwise the reservation will lapse.

18. Time and again the LAQ officer called upon the respondent No.2 – Council to deposit 50% advance amount as directed by the Collector. The Special LAQ officer has clearly by various communications dated 3/11/2012, 6/11/2012, 20/11/2012, 4/12/2012 and 22/1/2013 informed the respondent No.2-Council to deposit 50% advance compensation payable to the petitioners. It is clearly mentioned in the said communications that compliance with requisite documents demanded by the LAQ Officer and the deposit of 50% advance compensation would facilitate taking further steps for acquisition. Even in the communication dated 3/11/2012 the Special LAQ officer has mentioned that though the purchase notice was

confirmed on 24/5/2012, the proposal dated 21/7/2012 regarding acquisition was submitted to the office of the District Collector only on 4/9/2012. The Special LAQ officer called upon the Chief Officer of respondent No.2 – Council to personally look into the matter and get the measurements done by paying necessary measurement fee and produce the requisite documents. The Deputy Superintendent of Land Records ultimately submitted the land measurement map only on 4/4/2013.

19. There is no doubt that an application was made by the appropriate authority on 21/7/2012, so that it would be within a period of one year from the date of confirmation of the purchase notice. However, a subsequent communication of the LAQ Officer calling upon the respondent No.2- Council to deposit 50% advance as directed by the Collector itself would reveal that the said proposal was not consistent with the statutory provisions. It is an admitted position that the respondent No.2 – Council has not deposited the 50% amount as directed by the Collector within the period of one year from the date of confirmation of the purchase notice.

20. The Director, Town Planning, by the communication

dated 24th May, 2012 had clearly informed the Municipal Council that as per Section 49 (7) of the said Act, the procedure under Section 49(7) should be completed within the period of one year from the date of confirmation of purchase notice. The Municipal Council had also by a resolution dated 30th June, 2012 resolved that the procedure under Section 49 (7) of the said Act would be completed within one year from the date of confirmation. The communication dated 6/11/2012 of the Special Land Acquisition Officer to the Chief Executive Officer of the Municipal Council clearly reveals that Section 6 declaration under LAQ Act as contemplated by Section 126 (4) of the said Act should be made within one year from the date of confirmation of purchase notice or else the reservation will lapse.

21. As per the own showing of the respondent No.2–Municipal Council they are completely aware of the consequences of not issuing a declaration under Section 6 of the LAQ Act within the period of one year from the date when the purchase notice is confirmed. The Municipal Council itself has understood the effect of not issuing declaration under Section 6 of the LAQ Act within the period of one year from the date of issuance of purchase notice, the consequence of which is lapsing of reservation. It is therefore

apparent that the application so made under Section 49(7) cannot be said to be an application in terms of Section 126 of the said Act.

22. It can, thus, be seen that , the appropriate authority had even failed to make an application as per the provisions of Section 126 of the MRTP Act for acquiring the land within a period of one year from the date of confirmation of purchase notice, and as such, reservation stood lapsed on expiry of one year's period from the date of confirmation of the purchase notice, and therefore, the petitioners were free to develop their lands as was permissible in case of adjacent land. It is further be noted that the Municipal Council itself has passed a resolution that if the proceedings are not initiated within one year from the date of confirmation of purchase notice, the land would be de-reserved.

23. In that view of the matter, the petition deserves to be allowed. Rule is made absolute in terms of prayer clauses (a) and (c).

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)