

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9542 OF 2015

Smt. Radhabai Shripati Mali and Others. .. Petitioners
Vs
State of Maharashtra and Another. .. Respondents

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Shri Manoj A. Patil for the Petitioners.
Shri Manish M. Pabale, AGP for the Respondent No.1.
Shri Amol A. Gatne i/b Shri Tanaji Mhatungade for the Respondent
No.2.

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

DATED : 1ST JULY 2017

PC.

1. Rule. The learned AGP waives service for the first Respondent. The Advocate on record for the second Respondent waives service.

2. Considering the narrow controversy involved in this Petition, the same is immediately taken up for final disposal. With a view to appreciate the controversy involved in this Petition, brief facts of the case are necessary.

3. The second Respondent is a Municipal Council established under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. The second Respondent is also a Planning Authority within the meaning of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). A revised Development Plan for the area covered by the jurisdiction of the second Respondent was sanctioned under Section 31 of the MRTP Act on 25th August 1986. The Petitioners are claiming to be the owners of the land bearing Survey No.247/2/4 admeasuring 1 Hectare and 17 Ares. In the sanctioned Development Plan, the said land was reserved for municipal housing.

4. On 3rd January 2013, the Petitioner served a notice under Section 126 of the MRTP Act to the Chief Officer of the first Respondent pointing out that the period of 10 years and more has lapsed from the date on which the Development Plan was sanctioned and no steps have been taken for acquisition. By a letter dated 26th April 2013, the Chief Officer of the second Respondent informed the Petitioners that a proposal has been submitted to the District Collector for initiating acquisition proceedings in respect of the said land by taking recourse to Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 (for short “the Land Acquisition Act”). The

Petition proceeds on the footing that within the time stipulated under Sub-section (1) of Section 127 of the MRTP Act, no steps for acquisition of the land were taken by the Respondents and, therefore, the said land shall be deemed to have been released from reservation.

5. There is a reply filed by Shri Prabhakar Ramchandra Patki, the Chief Officer of Municipal Council, Kagal-the second Respondent. In the reply, it is stated that on 26th April 2013, the second Respondent submitted a proposal to the District Collector for initiating acquisition proceedings. On 6th September 2013, the second Respondent was informed to submit a fresh proposal. Reliance is placed on the resolution passed by the General Body of the second Respondent on 4th June 2014 by which it was resolved not to acquire the said land by making payment of compensation.

6. Thus, it is an admitted position that no steps have been taken for acquisition of the said land by publishing a declaration either under Sub-section (2) or under Sub-section (4) of Section 126 of the MRTP Act within the time provided under Section 127 thereof. The law on this aspect is laid down in the case of *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher*¹. The said decision reiterates the legal position that the steps towards acquisition would really commence when the State Government takes active steps for

¹ (2013)5 SCC 527

acquisition by publishing a declaration under Section 6 of the Land Acquisition Act.

7. In the present case, a reservation was for municipal housing. Therefore, the second Respondent was the appropriate authority within the meaning of MRTP Act. Moreover, along with the notice dated 3rd January 2013, copies of 7/12 extracts and 8A extracts and the sketch plan of the said land were submitted. In the notice, the Petitioners claim to be owners of the property. In the reply dated 26th April 2013, the second Respondent has not disputed that the Petitioners are the owners of the said land and in fact, the Municipal Council submitted a proposal for acquisition of the said land.

8. In the circumstances, Section 127 of the MRTP Act will operate. Accordingly, the Petition must succeed and we pass the following order.

ORDER :

- (a) The reservation imposed in the sanctioned Development Plan which came into force on 25th October 1986 in respect of the area of 1 Hectare and 17 Ares out of Survey No.247/2/4 Part, situated

within the limits of the second Respondent, shall be deemed to have been lapsed and the said land is available to the owners for the purposes of development as otherwise permissible in case of adjacent land under the relevant Plan;

- (b) We direct the first Respondent to issue a Notification as contemplated by Sub-section (2) of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 within a period of three months from today;
- (c) Rule is, accordingly, made absolute with no order as to costs.

(SMT.VIBHA KANKANWADI, J)

(A.S. OKA, J)