

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10259 OF 2013

1. Rabiya Raju Bagwan,	]	
Aged 40 Yrs., Occ.: Housewife,	]	
	]	
2. Hawabi Shabuddin Sayyed,	]	
Aged 37 Yrs., Occ.: Housewife,	]	
	]	
Both residing at Salai Wada, Sawantwadi,	]	
District Sindhudurg	]	... Petitioners

Versus

1. Sawantwadi Municipal Council	]	
and Town Planning Authority,	]	
Through its Chief Officer at	]	
Sawantwadi, Dist. Sindhudurg.	]	
	]	
2. Collector of Sindhudurg,	]	
at Oras, Dist. Sindhudurg.	]	
	]	
3. The District Town Planning Office,	]	
Oros, Dist. Sindhudurg.	]	
	]	
4. State of Maharashtra,	]	
Through Secretary,	]	
Urban Development Department,	]	
Mantralaya, Mumbai.	]	... Respondents

Mr. G.H. Keluskar for the Petitioners.

Mr. S.M. Railkar for Respondent No.1.

Mr. Vikas Mali, A.G.P., for Respondent Nos.2 to 4-State.

Mr. V.C. Dwase, Chief Officer of Respondent No.1-Sawantwadi Municipal Council is present.

**CORAM : NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**
DATE : 25TH APRIL 2017.

ORAL JUDGMENT : [Per Naresh H. Patil, J.]

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

2. Petitioners pray for a direction to declare that reservation in respect of their land, bearing Survey No.55, Hissa No.9 and Survey No.24A, Hissa No.1/7, which is described as C.T.S. No.4480 and 4479 in the City Survey Record, situate at Sawantwadi, Dist. Sindhudurg, for construction of 24.0 meter wide Ring Road under the Development Plan of Sawantwadi City stood lapsed and the said land be made available to the Petitioners for the purpose of development.

3. Brief facts of the case that, on 1st April 1989, Development Plan of Sawantwadi City was sanctioned. The Petitioners' land was reserved for construction of Ring Road under the Development Plan. The Petitioners had issued purchase notice on 10th August 2012, under Section 127 of the Maharashtra Regional and Town Planning Act, 1966, addressed to the Chief Officer of Respondent No.1-Municipal

Council and Planning Authority and to the Collector i.e. Respondent No.2 herein. Since after receipt of the said notice, no steps were taken according to law by the Respondent No.1-Municipal Council within the stipulated time-frame. On behalf of Respondent Nos.3 and 4, affidavit-in-reply was filed by Mr. Sanjay R. Kurvey, Joint Director of Town Planning, Konkan Division, Konkan Bhavan, Navi Mumbai. In paragraph No.4 of the said affidavit, the Deponent states as under :-

“4. I state that, as mentioned above, the land in question is designated as 24.0 m wide Development Plan Road, which forms an integral part of the Development Plan for overall development of the city, including petitioners' remaining land. Further, petitioners' land is part of 24.0 m wide Development Plan Road, which runs from East to West, thereby connecting various parts of the city.

I state that Section 127 of the Maharashtra Regional and Town Planning Act, 1966, deals with lapsing of reservation, which, in general, relates to any kind of reservation for public purpose or allocation/designation for specific public purpose. However, as, in this case, it is the Development Plan Road, the blanket application of this provision will leave most of the adjoining property renderless to development, which can be developed only in case of availability of access i.e. road to the property.”

4. This Petition is pending since last about four years. Respondent No.1-Municipal Council preferred not to file any reply. Therefore, on the last date of hearing, i.e. on 20th April 2017, we directed the Chief Officer of Respondent No.1-Municipal Council to remain present before the Court today. Accordingly, the Chief Officer of Respondent No.1-Municipal Council is present before the Court today.

5. Today, the learned counsel for Respondent No.1-Municipal Council has tendered affidavit-in-reply of Mr. Vijaykumar Chandrakant Dwase, the Chief Officer of Respondent No.1-Municipal Council, who is present in Court. The said affidavit-in-reply is taken on record. In paragraph Nos.6 and 7 of the said affidavit, the Deponent states as under :-

“6. I say that during the pendency of this Petition, Respondent No.1 has, in fact, submitted fresh proposal to the Coordinating Officer, Land Acquisition, through Collector's Office, Sindhudurg, as per provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013. I say that Respondent No.1 has also approached the said office for necessary funds required for acquisition of the said land.

7. I say that Respondent No.1 has also deposited 50% of Award amount of Rs.62,06,000/- to the Land Acquisition Officer, Sawantwadi, for the acquisition of

land for the said Ring Road.”

6. Mr. Railkar, learned counsel appearing for Respondent No.1-Municipal Council, on instructions, submits that earlier, inadvertently, Respondent No.1-Municipal Council could not file reply. Learned counsel further submits, on instructions, that Respondent No.1-Municipal Council has now decided to take necessary steps under the new Land Acquisition Act, namely, *'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'*, for acquiring the land bearing Survey No.55, Hissa No.9 and Survey No.24A, Hissa No.1/7, which is described as C.T.S. No.4480 and 4479 in the City Survey Record, situate at Sawantwadi, Dist. Sindhudurg.

7. We do not express any opinion on the statement made by learned counsel for Respondent No.1-Municipal Council that, the Municipal Council is now taking steps under the new Land Acquisition Act i.e. *'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'*. The fact remains that, till date, Notification under Section 6 of the Land Acquisition Act, 1894, has not been issued by Respondent No.1-Municipal Council.

8. Mr. Keluskar, learned counsel appearing for the Petitioners, places reliance on the Judgment of a Division Bench of this Court [*Coram : A.M. Khanwilkar & N.M. Jamdar, JJ.*], in Writ Petition No.3954 of 2006, along with connected matters; copy of which is annexed as Exhibit-H to the Petition.

9. We may refer to the following judgments delivered by the Apex court on this issue :

- (a) Praful C. Dave and ors. vs. Municipal Commissioner and ors. [(2015) 11 SCC 90].
- (b) Godrej & Boyce Manufacturing Co. Ltd. vs. State of Maharashtra & ors. [2015 (2) Bom. C. R. 354].
- (c) Girnar Traders vs. State of Maharashtra [(2007) 7 SCC 555].

10. We have perused the relevant provisions of the Maharashtra Regional & Town Planning Act, 1966, (*for short, "MRTP Act"*), and Land Acquisition Act, 1894.

11. Section 127 of the MRTP Act provides for '*Lapsing of Reservation*'. In case the Planning Authority fails to take any steps,

even after receipt of notice under Section 127 of the MRTP Act, on expiry of the period stated under the provisions of Section 127 of the MRTP Act, the reservation, allotment or designation of the land automatically lapses and thereupon the land is deemed to be released forthwith.

12. One of the important features of the claim would be that the Petitioners shall issue a valid purchase notice under Section 127 of the MRTP Act. In case such a notice is issued and the same is received by the Planning Authority, the time would start running thereupon from the date of its service. In this case, there is no dispute that the notice under Section 127 of the MRTP Act, issued by the Petitioners, was received by Respondent No.1-Municipal Council. A resolution was passed by Respondent No.1-Municipal Council in October, 2012, for acquisition of the land. However, thereafter, it seems further steps were not taken in accordance with law. The facts of the case show that the provisions prior to amendment of Section 127 of the MRTP Act would be applicable to this case. A period of one year was available to the Planning Authority for taking necessary steps in accordance with law. The Planning Authority failed to take such steps within the prescribed time limit. As a consequence thereof, the land stands released from

reservation and gets available to the Petitioners-land owners for redevelopment.

13. The Parliament has passed an Act, namely, The Right to Fair Compensation in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by repealing the old Act of 1894. Section 114 of the new Act reads as under :-

“114. Repeal and saving.- (1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.”

14. In the given facts of the case, we pass following order :-

“O R D E R”

- (i) The Petition is allowed.
- (ii) It is declared that reservation made in respect of Petitioners' land, bearing Survey No.55, Hissa No.9 and Survey No.24A, Hissa No.1/7, which

is described as C.T.S. No.4480 and 4479 in the City Survey Record, situate at Sawantwadi, Dist. Sindhudurg, for construction of 24.0 meter wide Ring Road under the Development Plan of Sawantwadi City, stands lapsed.

(iii) The subject land is now available to the Petitioners for appropriate development in accordance with law.

(iv) We direct the State Government to issue appropriate Notification to that effect, in accordance with the provisions of Section 127 of the MRTP Act, within a period of six months.

15. Rule is made absolute in the above terms. No costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]