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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3198 OF 2010

Ramesh Hari Thorat ...Petitioner
vs.
Nashik Municipal Corporation
and others ...Respondents

Mr.P.N.Joshi for the Petitioner
Mr.M.L.Patil for the respondent Nos.1 and 2
Mr.A.I.Patel,Addl.G.P. for respondent No.3

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI, JJ.
DATE : AUGUST 1, 2017

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

1 Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned AGP for second to fourth respondents. The land subject matter of this petition (for short 'the said land') is described in paragraph 4 of this petition. Initially the said land was situated within the limits of Nashik Road, Devlali Nagar Palika, Nashik. A development plan for the said municipal area came into force with effect from 2nd October 1972 under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act'). The said land was shown reserved in the sanctioned development plan for primary school/play ground under reservation No.50. The case of the petitioner is that the area of the said municipal council merged in the first

respondent Municipal Corporation which is established under the Maharashtra Municipal Corporation Act, 1949 and which is the planning authority within the meaning of the MRTP Act. The petitioner is relying upon the notice dated 30th November 1990 served to the Administrator of the first respondent under section 127 of the MRTP Act. The case made out in the notice was that no steps for acquisition have been taken in respect of the said land either by the Nashik Municipal Corporation or by the first respondent within a period of 10 years from 2nd October 1972 i.e the date on which the development plan came into force. The said notice was served on 30th November 1990 by Shri Madhav Ramchandra Gaikwad, erstwhile owner of the said land. The petitioner has stated in paragraph 4 of the petition that he acquired the said land by way of sale deeds from the said Shri Madhav Ramchandra Gaikwad and other co-owners. After service of notice under section 127, a representation was made by the Predecessor of the petitioner to the Urban Development Department of the State Government.

2 On 2nd December 2005, a declaration under sub-section 4 of section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 (for short "the said Act of 1894") was issued by the State Government in respect of the said land. Thereafter, notices under section 9 of the said Act of 1894 were served. The contention raised in the petition is that on the failure of the first respondent to take steps for acquisition within the

period specified under section 127 of the MRTP Act from 30th November 1990, the reservation shall be deemed to have been lapsed.

3 The learned counsel appearing for the petitioner submitted that the case is covered by the several decisions of the Apex Court. He relied upon the decision of the Apex Court in the case of *Shrirampur Municipal Council vs. Satyabhamabai Bhimaji Dawkher*¹. Relying upon some other decisions of the Division Bench of this Court, he urged that the delay in filing the petition will not come in the way of this Court granting relief. The learned counsel for the first respondent submitted that knowing fully well that the said land is reserved in the sanctioned development plan, the petitioner has purchased the said land. He submitted that a sum of Rs.63,70,000/- being 2/3rd of the estimated compensation has been deposited by the first respondent with the State Government. He relied upon the declaration issued in the year 2005 under section 6 of the said Act of 1894 read with sub-section 4 of section 126 of the MRTP Act. In fact, the petitioner approached the Government for cancellation of the said declaration. He pointed out that there was a delay on the part of the Special Land Acquisition Officer in making the Award.

4 We have considered the submissions. There is no dispute about the fact that Shri Madhav Gaikwad was

1(2013) 5 SCC 627

at least a co-owner of the said land. There was no dispute about the service of notice under section 127 of the MRTTP Act. It is also not in dispute that a declaration either under sub-section 2 or 4 of section 126 of the MRTTP Act read with section 6 of the Land Acquisition Act, 1894 was not issued within a period of six months from the date of service of this notice. The Apex Court in the case of *Shrirampur Municipal Council* held that only method by which steps for acquiring the reserved land can be taken is by issuing a declaration under section 6 of the said Act, 1894 within the period stipulated under section 127 of the MRTTP Act.

5 In the present case, a declaration under sub-section 4 of the MRTTP Act was made in the year 2005 14 years after the expiry of statutory period of six months has lapsed. Therefore, it is of no consequences.

6 Now, we turn to the aspect of delay. On plain reading of section 127 of the MRTTP Act, lapsing of reservation is by a deeming fiction and therefore, it is automatic. The reserved land stands released from reservation on the failure of the Planning Authority to take steps for acquisition within the time specified under section 127 from the date of service of notice. Therefore, it was not necessary for the predecessor of the petitioner to approach the Court of law seeking a declaration. When the petitioner purchased the said land, the reservation had already lapsed by the virtue of the provision

of section 127. Therefore, as held by the Division Bench of this Court in the case of *Suraiya Akbarali Jetha and others vs Mumbai Municipal Corporation and others*², the delay will not come in the way of the petitioner filing and prosecuting this petition.

7 Accordingly, the petition must succeed and we pass the following order:

- (I) We hereby hold that reservation on the land covered by the site No.50 under development plan dated 2nd October 1972 in relation the area mentioned in paragraph 4 stands lapsed and that the said land shall become available to the owners for the purposes of development as otherwise permissible in case of adjacent land under the relevant plan;
- (II) Rule is made absolute on above terms.

(VIBHA KANKANWADI, J.)

(A.S.OKA, J.)