

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13047 OF 2016

Shri Tukaram Bhagwan Patil .. Petitioner
Vs.
State of Maharashtra and ors. .. Respondents

Mr.R.S.Apte, Senior Advocate a/w Mr.S.C.Wakankar, for Petitioner.
Mr.A.A.Alaspurkar, AGP for Respondents No. 1, 4 & 5 – State.
Mr.N.N.Bhadrashetye, for Respondents No. 2 & 3.

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

DATE : 09th AUGUST, 2017

P. C. :

. Rule. Rule is made returnable forthwith. Heard by consent.

2. By this Petition filed under Article 226 of the Constitution of India, the petitioner seeks declaration that reservation on the land in question has lapsed and to forthwith release the land from reservation.

2. The petitioner is the owner of the land bearing survey No. 366 Hissa No.1 situate at Mauje Pen, Taluka Pen, Dist. Raigad

admeasuring about 43 R (hereinafter referred to as the 'said land' for short). The said land was purchased by the petitioner from its erstwhile owner by virtue of sale deed dated 06/03/1980. Apart from the small house constructed by the petitioner on the said land, he has planted various trees in it and also put fencing around it. In the year 1988, a draft development plan for Pen Municipal Council was published and notification was also published and sanctioned on 16/12/1988 as per provisions of section 31 of the Maharashtra Regional Town Planning Act (hereinafter referred to as 'said Act' for short). The development plan came into force with effect from 01/03/1989. As per the development plan, the said land along with adjoining properties including survey No. 366, Hissa No.3 were shown to be reserved for a garden and was bearing site reservation No. 7 in the list.

3. In the year 2013, the new draft development plan was introduced wherein lands adjoining the property of the petitioner is not shown as reserved though the same was shown reserved in the development plan of 1988. The petitioner's land however is shown as 'reserved for garden' purpose and is bearing site No. 18. The petitioner contends that the draft development plan of the year 2013

is not yet sanctioned and as such development plan of the year 1988 is still in force.

4. By letter dated 30/12/2013, the petitioner requested respondent No.3 to cancel and delete the reservation on his land. The petitioner again addressed a letter on 20/01/2014 with a request to consider deletion of the reservation over the said land. By letter dated 25/07/2014, respondent No.3 called the petitioner to remain present for hearing on 12/08/2014. The petitioner during the hearing submitted all the documents to establish his title but outcome of the hearing was not informed to him. The petitioner on 27/03/2015 served a purchase notice under section 127 of the said Act. The statutory period of 10 years as contemplated by section 127 of the said Act for the purpose of acquisition of the property by agreement had come to an end in the year 1998 itself. Accordingly, it was stated in the notice that if the respondents fail to acquire land in question or fail to take any steps within a period of 12 months from the date of the notice, the reservation shall be deemed to have lapsed and as such the land in question shall be deemed to be released from reservation.

5. By letter dated 04/09/2015, the petitioner was informed about the general body meeting of respondent No.3 that took place on 29/06/2015 and about the resolution that was passed in the said meeting for negotiations with the petitioner in respect of the said land. The petitioner by his reply dated 07/10/2015 through his Advocate submitted a proposal with 3 options. In the meeting that took place, the petitioner was informed that due to financial difficulties of the Municipal Council, it may not be possible to acquire the entire land in question. As such it was resolved on 29/06/2015 that 50% of the said land and the land under 9 meter road out of the total reservation would be acquired by agreement and to cancel the reservation on the remaining land. During the course of negotiations, the petitioner showed his willingness to hand over 30% of the land admeasuring 12 x13 gunthas to the respondent No.3 in lieu of the compensation for the same and with request to cancel reservation on the remaining 70% of the land. At one stage, the petitioner has also conveyed his willingness to hand over 50% of the land admeasuring 21.5 Gunthas out of total property but the same was subject to vacating the reservation on the remaining land belonging to the petitioner and conversion / declaration of the said remaining land into residential zone. It appears that the negotiations were not

fruitful and therefore the petitioner has filed the present Petition for the declaration of lapsing of the reservation.

6. Heard learned Counsel for the respective parties. Learned Senior Counsel for the petitioner contends that the petitioner has served valid purchase notice under section 127 of the Act on 27/03/2015 on the planning authority. The sanctioned development plan under which the said land was shown under reservation came into force on 01/03/1989. The said notice was issued in view of the fact that the respondent No.3 has not initiated any proceedings for acquisition within 10 years from the date on which final development plan has come into force. After the service of notice by the petitioner – owner, the mandatory period of 12 months also lapsed within which time, the respondents failed to initiate the necessary action as contemplated by section 127 of the said Act. In the submission of the learned Senior Counsel, there is no declaration under Section 6 of the Land Acquisition Act within a period of one year from the date of issuance of the notice.

7. Learned Senior Counsel relied upon the judgment of this Court in case of **Shri Ashok Shriram Kulkarni Vs. The State of**

Maharashtra 2017(4) Mh.L.J. 382 and contended that the ratio of the said decision squarely applies to the present case.

8. Learned Counsel for the respondents No. 3 & 4 contended that the Council needs land for the purpose shown in the reservation viz. Garden. According to him, due to financial difficulties it was not possible for them to acquire the entire land. The respondent - Council had given a positive offer to the petitioner which they declined to accept. According to the learned Counsel the said offer was reasonable and the need of the Council is genuine and bonafide. It is their submission that once the new development plan is introduced and the petitioner's land is shown as reserved for garden purpose, the petitioner would not be entitled to claim benefit of section 127 of the said Act. In the submission of the learned Counsel, land would continue under reservation and the period of 10 years would now commence from the date on which final development plan would come into force. According to him, the present Petition therefore deserves to be dismissed.

9. It is not in dispute that on 27/03/2015, the petitioner has served valid purchase notice under section 127 of the said Act on

the respondent No.3 – Planning Authority calling upon it to acquire the said land. The said notice was issued in view of the fact that respondent No.3 has not acquired or initiated proceedings for acquisition within 10 years from the date on which final development plan has come into force. After service of notice by petitioner – owner, the mandatory period of 10 years also elapsed within which time the respondents failed to initiate necessary action as contemplated by section 127 of the said Act. Admittedly, there is no declaration under section 6 of the Land Acquisition Act within a period of 12 months from the date of issuance of the purchase notice. As mandated by the provisions of section 127 of the said Act, the petitioner took positive steps i.e. issuance/serve the notice on 27/03/2015 and there has been corresponding failure on the part of the respondents to take requisite steps. Failure to take such steps has brought into effect the consequences contemplated by section 127 of the said Act. The contention of the respondents that in the year 2013, the new draft development plan was introduced which would have the effect of rendering the purchase notice dated 27/03/2015 as ineffective cannot be countenanced in the light of what has been held by this Court in the case of **Shri Ashok Shriram Kulkarni** (*supra*). Admittedly, in the year 2013, new draft development plan was

introduced which has not yet attained finality and as such, development plan of the year 1988 is still in force.

10. The contention of the respondent No.3 – Council that at one stage, the petitioner has conveyed his willingness to hand over 50% of the land admeasuring 21.05 gunthas of the total property would estop the petitioner from issuing notice under the Act can only stated to be rejected. The offer made by the petitioner to the respondent's proposal was conditional and as the negotiations were not fruitful, the petitioner has filed the present Petition. The present Petition, therefore, deserves to be allowed and is accordingly allowed with no order as to costs.

ORDER

1. Rule is made absolute in terms of prayer clause (A-i).
2. The Respondent State shall issue consequential notification under the provisions of the MRTTP Act.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)