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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10405 OF 2015

1. M/s. Merit Magnum Construction
(formerly known as M/s. Vimal Builders)
a partnership firm duly registered under
the provisions of the Indian Partnership
Act, 1932 having its principal place of
business at Samruddhi, Office Floor,
Plot no.157, 18th Road, Near Ambedkar
Garden, Chembur, Mumbai – 400 071.
 2. Mr. Nainesh Kishor Shah
aged 38 years, Indian inhabitant, Partner
of Petitioner No.1, having address at
Samruddhi, Office Floor, Plot No.157,
18th Road, Near Ambedkar Garden,
Chembur, Mumbai – 400 071
- ... Petitioners

Versus

1. The Thane Municipal Corporation,
a municipal corporation constituted
under the provisions of the Maharashtra
Municipal Corporations Act, 1949
(formerly Bombay Provincial Municipal
Corporations Act, 1949) and having
its office at panchpakhadi,
Thane (W) – 400 601.
2. The Municipal Commissioner,
Thane Municipal Corporation
having his office at Panchpakhadi,
Thane (W)
3. The Collector,
Thane having his office at
Court Naka, Old Pune Road
Thane (W) 400 601

4. State of Maharashtra
through The Secretary,
Urban Development Department,
Mantralaya, Mumbai – 400 032. ... Respondents

Mr. Pravin Samdani, Senior Advocate a/w Mr. Vishal Kanade and Mr. Nivit Srivastava, Mr. Harsh Behany i/by Maniar Srivastava Associates for the petitioners.

Mr. Ajit Ram Pitale for the Respondent Nos.1 and 2.

Ms. N. Mehra, AGP for the Respondent Nos.3 and 4.

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

DATE : 17th JULY, 2017

ORAL JUDGMENT (Per A.S.Oka, J.)

1 Heard the learned Senior Counsel appearing for the petitioners, the learned AGP for the third and fourth respondents and the learned counsel appearing for the first and second respondents. On 19th October, 2015 parties were put to notice that an endeavour shall be made to decide the Petition finally at the stage of admission.

2 With a view to appreciate the controversy, a brief reference to the facts of the case will be necessary. On 28th April, 1995 the State Government sanctioned Development Plan for the area of the first respondent – Corporation in exercise of powers under Section 31 of the

Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). In this Petition, the subject property has been described in paragraph 3.1 of the Petition. On 6th September, 2013 a notice under Section 127(1) of the MRTP Act was served by the petitioners to the second respondent. In the sanctioned Development Plan, the subject property has been reserved for a park. By the said notice, the petitioners called upon the second respondent to take necessary steps for acquisition of the subject lands within a period of 12 months from the date of service of notice. The notice was replied by the Assistant Director of Town Planning of the first respondent by a reply dated 22nd November, 2013. In the reply, it is stated that earlier, the petitioners had applied for grant of TDR against one of the said lands subject matter of this Petition. The petitioners were also called upon to submit upto date copy of the 7/12 extract and other documents mentioned therein. The petitioners replied by a letter dated 6th December, 2013. It is mentioned therein that the first respondent has not taken over possession of the subject lands in absence of road. Another set of 7/12 extract was forwarded along with the said letter.

3 The prayer in this Petition under Article 226 of the Constitution of India is based on effect of the failure of the first respondent to take steps for acquisition of the subject lands within a time specified in Sub-Section (1) of Section 127 of the MRTP Act.

4 There is a reply filed on behalf of the first and second respondents in which the service of the notice under Section 127(1) of the MRTP Act is not disputed. It is pointed out that a proposal for acquisition of the subject lands under the Land Acquisition Act, 1894 was forwarded to the General Body on 8th January, 2014 for grant of permission to initiate acquisition proceedings. On 27th June, 2014 General Body granted permission to acquire subject lands and accordingly on 16th January, 2016 a proposal for acquisition was submitted which was returned for compliance. The affidavit records that as per the modified Development Control Regulations (DCR), the petitioners are entitled to transferable development rights equivalent to double the area of the said lands under reservation.

5 There is an additional affidavit filed by Mr. Pradip Laxmidas Gohil on behalf of the first and second respondents which explains delay in moving the State Government for acquisition. Even in the said affidavit, reliance is placed on modified DCR.

6 Thus, the admitted position which emerges is that on the basis of notice under Sub-Section (1) of Section 127 of the MRTP Act which was served on 6th September, 2013, a declaration either under

Sub-Section (2) or Sub-Section (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 has not been issued till date. The law on this aspect is well settled by various decisions of the Apex Court. One of the leading decisions of the Apex Court is in the case of *Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and others*¹. The Apex Court has reiterated that the only mode of taking steps for acquisition as contemplated under Sub-Section (1) of Section 127 is by taking recourse to declaration either under Sub-Section (2) or (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894. This has not been admittedly done within the time stipulated under Sub-Section (1) of Section 127 of the MRTP Act.

7 Hence, the Petition must succeed and we pass the following order :-

ORDER

- (i) We hold that subject lands described in paragraph 3.1 of the Petition are free from the reservation imposed under the Development Plan which was sanctioned by the State Government on 28th April, 1995 and that the said lands shall become available to the owners for the

1. 2013(5) SCC 627

purpose of development as otherwise permissible in case of adjacent land under the said sanctioned Development Plan;

(ii) We direct the State Government to issue a notification under Sub-Section (2) of Section 127 of the MRTP Act within a period of three months from today;

(iii) The Petition is disposed of on above terms.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)