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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1834 OF 2016

Shri Rajan Nemisharan Goel Petitioner.

V/s

State of Maharashtra and Others Respondents.

.....
Mr. Manoj A. Patil, Advocate for the petitioner.
Mr. B.V. Samant, AGP for respondent Nos.1 and 2.
Mr. Rajesh S. Datar, Advocate for respondent No.3.
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**CORAM : B. R. GAVAI AND
M.S.KARNIK, JJ.**

DATE : 12th September, 2017

ORDER (PER M.S. KARNIK, J.) :-

The petitioner by this petition prays for declaration that the Reservation No.6, over the petitioner's landed properties i.e. area admeasuring 0.29.2 R, from Survey No.25/5 (C.T.S.No.1416), area admeasuring 0.13 R, from Survey No.25/4 (C.T.S.No.1417) and area admeasuring 1 Hec-51 R, from Survey No.24, (C.T.S.No.1418), situated at Mouje Takai, Tal. : Khalapur, Dist. Raigad (hereinafter referred as "the said lands"), stands lapsed as per the provisions of

Section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred as “the said Act”).

2. The petitioner has also prayed for issuance of appropriate directions to the State of Maharashtra to issue notification regarding lapsing and that he may be permitted to develop the landed properties as permissible in the case of adjacent land under the Development Plan.

3. The facts in brief are thus :-

The petitioner claims to be owner of the said properties. The development plan of Khopoli Municipal Council-Respondent No.3 came into force on 14/5/2003. Respondent No.3 – Council reserved the petitioner's properties as Reservation No.6 for the Regional Transport Office viz. respondent No.2 herein.

4. The learned Counsel for the petitioner invited our attention to the provisions of Section 127 of the said Act which reads thus :-

127. [(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final

Regional Plan, or final Development Plan comes into force [or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]

5. As is the requirement of Section 127 of the said Act the period of 10 years elapsed from the date the final development plan come into force within which time the respondents did not acquire the said lands. The period of 10 years elapsed on 13/5/2013. The petitioner, therefore, issued a notice dated 7th August, 2013 under Section 127 of the said Act calling upon the respondents to take appropriate steps for acquisition of the said lands which are under reservation. It is the submission of the learned Counsel for the petitioner that no steps for acquisition of the said lands are taken by

the Planning Authority within a period of 12 months from the date of service of the notice dated 7th August, 2013 therefore, he is entitled to declaration that the reservation has lapsed.

6. Learned Counsel for the respondent No.3 – Municipal Council- invited our attention to the affidavit-in-reply filed on behalf of the respondent No.3. In the said affidavit-in-reply respondent No.3 has only referred to a purchase notice dated 1st September, 2007 issued u/s. 49 of the said Act. However, the said purchase notice issued by the petitioner was rejected by the government. However, insofar as the purchase notice issued by the petitioner under Section 127 of the said Act on 7th August, 2013, it is not disputed that the same has been received by the respondents.

7. Learned AGP invited our attention to the affidavit-in-reply filed on behalf of the respondent No.1 on 12th June, 2017. In the said affidavit it is stated that the petitioner is owner of the said lands and that he has issued notice dated 7th August, 2013 under Section 127 of the said Act to the respondent No.2 which is appropriate authority to develop the above mentioned Reservation No.6. It is further stated that as per provision of Section 127 (1) of

the said Act if the land is not acquired or no steps are commenced for its acquisition by the concerned appropriate authority within 24 months from the date of service of such notice, then the reservation stands lapsed. Accordingly respondent No.1 has taken a stand that appropriate order may be passed in the petition.

8. In the light of the pleadings and the submissions made by the learned Counsel there is no dispute that the petitioner is owner of the said lands and that valid purchase notice u/s. 127 (1) of the said Act has been issued and served on the respondents on 7/8/2013. There is also no dispute that the respondents have not taken any steps for acquiring the said lands within a period of 12 months from the service of the notice dated 7/8/2013. Though in the affidavit dated 12th June, 2017 respondent No.1 has taken a stand that no steps are commenced for acquisition by concerned appropriate authority within 24 months from the date of service of such notice, however, the requirement of Section 127 (1) of the said Act as it stood on the date of the issuance of the notice dated 7/8/2013 provided for steps to be taken for acquisition within a period of 12 months from the date of service of notice. Section 127(1) of the said Act came to be amended with effect from

29/8/2015 and the words “12 months” were substituted with the words “24 months” by the amending Act. In any case it is admitted that even within period of 24 months from the date of service of notice no steps have been taken for acquisition of the said lands by the concerned authority. In this light of the matter and in view of the law laid down by the Apex Court in the case between **Girnar Traders v. State of Maharashtra & Ors. (2007) 7 SCC 555** the petition deserves to be allowed and is accordingly allowed in terms of prayer clauses (a), (b) and (c) with no order as to costs.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)