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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1586 OF 2016**

Gyanprakash Kamlashankar Shukla

An Indian inhabitant of Mumbai, age about 57 years, occupation business, residing at 5th Floor, Shukla Bhavan, 95 / 97, Mumbadevi Road, Mumbai 400 053.

...Petitioner

Versus

1. The Municipal Corporation of Greater Mumbai

Municipal Head Office Bldg., Mahapalika Marg, Fort, Mumbai – 1.

2. The Municipal Commissioner

Municipal Corporation of Gr. Mumbai, Mahapalika Marg, Fort. Mumbai – 1.

3. The Chief Engineer (Development Plan)

4. The State of Maharashtra

Thru Chief Secretary, Urban Development Dept. Mantralaya, Mumbai 32 and represented by the learned Government Pleader, High Court, Bombay.

...Respondents

Mr. E.P. Bharucha, Senior Advocate, with Mr. Sarosh Bharucha, Mr. Nikhil Shukla, Mr. Ashok Pande, i/b Mr. Ashok Pande for the Petitioner.

Mr. Himanshu Takke, AGP for Respondent No.4.

Mr. Anil Singh, Senior Advocate, with Mr. Joel Carlos, Ms. Pallavi Thakar, Ms. Carinex S. Xavier for M.C.G.M.

**CORAM: SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.
DATED : 16TH NOVEMBER 2017.**

ORAL JUDGMENT :- (Per Riyaz I. Chagla J.)

1. Rule. Rule made returnable forthwith.

2. The Petitioner by the present petition is seeking a declaration that the reservation on land bearing no. CTS No. 45 (part) and 48 (part) also known as Survey No. 6 – 1A, 6-1B, 3(1) part and 3(2) part of Majas village admeasuring 12,420 sq. meters situate at Shukla Nagar (Vijay Nagar), Bandrekar Wadi, Subhash Road, Jogeshwari (E), Mumbai 400 060 and land bearing CTS No. 45(part) and 48 (part) also known as Survey No. 6-1A, 6-1B, 3(1) part and 3(2) part of Majas village, admeasuring 1254 Sq. meters situate at Shukla Nagar (Vijay Nagar), Bandrekar Wadi, Subhash Road, Jogeshwari (E), Mumbai 400 060 (for short **“Petition property”**) set out in the development plan 1991 has lapsed and that the Petitioner is free to develop the Petition property in accordance with law. The Petitioner is also seeking the quashing and / or setting aside all three letters dated 7th February 2015 and 31st May 2016 (Exhibits H, I & N to the Petition) addressed by Respondent no. 3 / his office to the

Petitioner and his father respectively claiming that the purchase notice served by the Petitioner under Section 127 of the Maharashtra Regional and Town Planning Act, 1996 (for short "**the said Act**") is not proper and valid. The Petitioner also seeks certain consequential reliefs.

A brief description of the facts is necessary :-

3. The Petitioner claims to be the co-owner of the petition property and relies upon the conveyance deed dated 7th December 2001 executed by one Gilbert Sabastian Misquitta (Original Owner) and consent terms dated 9th October 2001 with Gilbert Sebastian Misquitta's heirs undertaking to execute the said Deed of Conveyance in favour of the Petitioner in respect of the Petition property and pursuant to which the conveyance deed dated 7th December, 2001 was executed. The Petitioner states that the first Respondent had sanctioned Final Development Plan 1991 for Mumbai which came into force with effect from 29th December 1992. Under the said Development Plan, the Petition property was reserved for the purpose of recreation ground, (RG,) hospital, Housing for the dis-housed and DP road. It is stated in the Petition that the Respondent no.1 had not acquired the

Petition property for the designated purpose within 10 years from 29th December 1992 i.e. the date when the Development Plan came into force. The Petitioner and his father, each served a purchase notice dated 15th May 2014 on the 2nd and 3rd Respondents under Section 127 of the said Act. The purchase notices enclosed the documents to show that of the Petitioner and his father were co-owners of the Petition property. It was stated that more than 10 years had lapsed since the Development Plan had come into force and the Respondent nos. 2 and 3 had neither acquired the Petition property nor published in the official gazette a declaration in respect of the Petition property under Section 126 of the said Act. It was thus stated that unless the Respondent no.1 acquired or took any steps to acquire the petition property within 12 months from the date of the purchase notice, the reservation on the petition property would be deemed to have lapsed and that the Petitioner and his father would be free to develop the Petition property. Respondent no.3 by two letters, both dated 7th February 2015, responded to the purchase notices and stated that the purchase notices were neither proper nor valid because they were allegedly not served on the competent authority and the documents enclosed in the purchase notices allegedly did not support the Petitioner and / or his father's claim of title to the

Petition property. The Petitioner and his father have replied to the letter of 3rd Respondent and dealt with both the grounds of rejection mentioned in the said letter. It is stated that the purchase notice under Section 127 of the said Act was both valid and proper. Since there was no response on the part of the Respondents, the Petitioner and his father by their letter dated 9th July 2015 claimed that the period of 12 months had expired on 16th May 2015 and that since the Petition property was not acquired within the 12 months of the purchase notice, the reservation of the Petition property had lapsed and that the same is now available to the Petitioner for development. The Deputy Chief Engineer – 1 (DP) addressed letter dated 31st May 2016 to the Petitioner claiming that the documents submitted by the Petitioner along with his purchase notice was verified by the legal department of the M.C.G.M. and as per the opinion of the legal department, the purchase notice under Section 127 of the said Act is neither proper nor valid. The Respondents have claimed that the Petition property is still under reservation. The Petitioner has thus filed the present Petition.

4. Mr. Bharucha, the learned Senior Counsel for the Petitioner has submitted that the Development Plan had been finalised in

1992 and that a period of 10 years had lapsed from the finalisation of the Development Plan and its coming into effect. He has submitted that the purchase notice had been issued on 15th May 2014 i.e. after lapsing of 10 years of the development plan. There was thereafter no acquisition and / or steps to acquire under Section 127 of the said Act and hence the reservation on the Petition property had lapsed.

5. He has submitted that the Petitioner is a co-owner of the Petition property and that the Petitioner had submitted the relevant documents i.e. Conveyance Deed dated 7th December 2001 and the consent decree passed by the City Civil Court pursuant to which the Conveyance Deed had been executed, in respect of his claim to be a co-owner in respect of the Petition property. He has submitted that the Respondents had wrongly claimed that the purchase notice was neither proper nor valid for two reasons (i) the purchase notice had not been addressed to the Municipal Corporation of Greater Mumbai i.e. the competent authority and (ii) that the documents which were forwarded by the Petitioner did not support the Petitioner's claim to title to the Petition property. He has submitted in respect of point (ii) that any person interested in the land can issue the purchase notice under Section 127 of the

said Act. He had relied upon the judgment of the Supreme Court in ***Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants Association & Ors.***¹ in support of his submission that Section 127 of the said Act does not contemplate an investigation into title by the officers of the Planning Authority. It is sufficient that a person interested in the land has served the purchase notice on the Planning Authority. He has also submitted in respect of point (i) above that the purchase notice has been addressed to the Municipal Commissioner of M.C.G.M. and the Chief Engineer (Development Plan) of the M.C.G.M. and thus the purchase notice is properly served on the principal officers of the M.C.G.M. He has relied upon the judgment of this Court in ***M/s. C.V. Shah & A.V., Bhat Vs. State of Maharashtra and Ors.***² which dealt with the similar contention raised by the Respondents and has held that notice required under the said Act may be served upon the principal officer of the local authority and that the notice addressed to the principal officer of the local authority shall be deemed to be duly served on the local authority. It was held that the Municipal Commissioner is the principal officer of the Municipal Corporation and thus service on the Municipal Commissioner is a valid service on the M.C.G.M. He has also

1 1988 (Supp) Supreme Court Cases 55.

2 2005(3) ALL MR 197.

relied upon the judgment in the case of ***Perfect Machine Tools Co. Ltd. Vs. State of Maharashtra & Ors.***³ which had also considered a similar issue of the purchase notices being served on the Chief Engineer (DP), M.C.G.M. and it was held that such notice is a valid notice and in fact had been acted upon and placed before the Municipal Commissioner who had adequate notice of the purchase notice issued under Section 127 of the said Act. In the present case, the purchase notice has in fact been served on the Municipal Commissioner of M.C.G.M. and hence the purchase notice is a valid and proper notice. Mr. Bharucha has submitted that he is not pressing part of prayer (c) of the Petition which is in relation to the portion of the Petition property reserved for the purpose of D.P. Roads, which the Petitioner has undertaken to surrender.

6. Mr. Anil Singh, Additional Solicitor General of India appearing for the Respondents Corporation has submitted that the Petitioner is not the owner of the Petition property and has relied upon the Affidavit in Reply filed by the Respondent Corporation in support of his submission. He has claimed that the documents relied upon by the Petitioner in the purchase notice would show

³ Civil Appeal No. 2946 of 2012 decided on 17th March 2016

that the Petitioner does not have title to the Petition property. He has submitted that neither in the property card nor in the 7/12 extract is the Petitioner shown as the co-owner of the Petition property. He has submitted that the purchase notice is neither valid nor proper as it has been issued by the Petitioner who is not the owner of the Petition property. He has submitted that the description of the Petition property in the original agreement dated 27th January 1978 executed between the original owner and the other co-purchasers of the said property and that in the consent terms in SC Suit No. 7603 of 1989, is different and there is no demarcation, subdivision or even proof of disposal of the Petition property. He has submitted that the Petitioner has not been able to explain the correct status of the Petition property. He has thus submitted that MCGM was duly justified in rejecting the purchase notice of the Petitioner on account of Petitioner not having perfect title over the Petition property. He has also submitted that there was a Conveyance Deed dated 18th September 1989 which is prior to the Conveyance Deed executed by the Petitioner in the year 2001 by which the Petitioner claimed to have purchased the petition property. It is submitted that in view of the prior Conveyance Deed having been entered into by the original owner with another party, the Petitioner cannot claim that he had

purchased the property by a subsequent conveyance. He has also submitted that the purchase notice ought to have been served on the M.C.G.M. and that the notice issued to Respondent Nos. 2 and 3 cannot be said to be a valid notice. He has submitted that the M.C.G.M. has recently passed a resolution on 22nd September 2017 to acquire the said land and that the Petition property has once again been reserved as per the Development Plan (2014-2034).

7. We have considered the submissions made on behalf of the parties. We are of the view that the purchase notice issued by the Petitioner after 10 years of the coming into effect of Development Plan 1992 i.e. on 15th May 2014 is a valid and proper notice to the Respondent Nos. 2 and 3. We find that the Respondents have in rejecting the purchase notices raised two issues viz. (i) that the purchase notice has to be addressed to the M.C.G.M. and not the Municipal Commissioner and (ii) that the issue of the purchase notice is required to have clear title to the property. We find that these two issues are no longer *res integra* and have been answered by the Supreme Court as well as by this Court. In the judgment of this Court in **C.V. Shah (Supra)**, this Court had in paragraph 22 held thus:-

“ 22. Section 136 of the MRTP Act, 1966 provides, interalia, that any notice required under the MRTP Act may be served upon the Principal Officer of the local authority and if such notice is addressed to the Principal Officer of the local authority that shall be deemed to be duly served on the local authority. It is not in dispute that the Commissioner is the Principal Officer of the Municipal Corporation. The contention that the expression “any person” in section 136 does not include the Planning Authority is wholly fallacious. The expression “any person” is too wide and comprehensive and includes both natural and unnatural person. That would include the local authority is clear from clause (1) of sub-section (1) of Section 136 itself. We may immediately notice here that the Planning Authority is defined as “local authority” in Section 2(19) and the 'local authority' in Section 2(15) means, interalia, the Municipal Corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949 (For short, BPMC Act). That the Pune Municipal is the Municipal Corporation constituted under the BPMC Act is not in doubt.

It is thus clear from this decision that the purchase notice addressed to the principal officer viz. the Municipal Commissioner of the M.C.G.M. is deemed to be notice duly served on the M.C.G.M. The judgment of the Supreme Court in ***Perfect Machine Tools (Supra)*** has also gone into issue of the service of notice on the Chief Engineer (DP), M.C.G.M., being a valid notice as that notice had been circulated in the M.C.G.M. and that it had been placed before the Municipal Commissioner who had adequate notice of the purchase notice under Section 127 of the Act. In the present case, we find from the documents on record

that the purchase notice had been verified by the legal department of the M.C.G.M. and had also been issued to the Municipal Commissioner and hence the Respondents cannot contend that the purchase notice had not been served on the M.C.G.M. and due to which the purchase notice was not proper and valid notice. Hence, in view of this decision, it is not open for the Respondents to raise this contention that the issuance of the purchase notice on the Municipal Commissioner is not proper and valid service on the M.C.G.M.

8. The other issue has also been answered in the judgment of the Supreme Court in *M.C.G.M. Vs. Dr. Hakimwadi (Supra)*, where the Supreme Court in paragraph 7 held thus:-

“7. According to the plain reading of Section 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by Section 127, is a mixed question of fact and law. It would therefore be difficult, if not well high impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under Section 127 of the Act. The condition pre-requisite for the running of time under Section 127 is the service of a valid purchasing notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the

owner of the affected land or any person interested in the land. But, at the same time, Section 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. Viewed in that perspective, the High Court rightly held that the Executive Engineer of the Municipal Corporation was not justified in addressing the letter dated July 28, 1977 by which he required respondents 4-7, the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature and user of the tenements and the total area occupied by them at present. The Corporation had the requisite information in their records. The High Court was therefore right in reaching the conclusion that it did. In the present case, the Planning Authority was the Municipal Corporation of Greater Bombay. It cannot be doubted that the Municipal Corporation has access to all land records including the records pertaining to cadastral survey No. 176 of Tardeo. We are inclined to the view that the aforesaid letter dated July 18, 1977 addressed by the Executive Engineer was just an attempt to prevent the running of time and was of little or no consequence. As was rightly pointed out by respondents 4-7 in the reply dated August 3, 1977, there was no question of the period of six months being reckoned from the date of the receipt from them of the information requisitioned. The Municipal Corporation had been assessing the trust properties to property tax and issuing periodic bills and receipts therefor and obviously could not question the title or ownership of the trust. We are informed that the building being situate on Falkland Road, the occupants are mostly dancing girls and this is in the knowledge of the Corporation authorities. The rateable value of each tenement would also be known by an inspection of the assessment registers. We must accordingly uphold the finding arrived at by the High Court that the appellant having failed to take any steps, namely, of making an application to the State Government for acquiring the land under the Land

Acquisition Act within a period of six months from the date of service of the purchase notice, the impugned notification issued by the State Government under Section 6 of the Land Acquisition Act making the requisite declaration that such land was required for a public purpose i.e. for a recreation ground was invalid, null and void.

It is thus clear from the judgment of the Supreme Court that “any person interested” in the land can issue the purchase notice and that Section 127 of the said Act does not contemplate investigation into title by the officers of the Planning Authority. The Supreme Court has held that title of the person issuing the purchase notice cannot be questioned. Hence, this objection on the part of the Respondents that the purchase notice is not a valid notice as it has been issued by the Petitioner whose title to the said land has been disputed by the Respondents is also rejected.

9. We are accordingly of the view that the purchase notice has been validly and properly issued under Section 127 of the said Act by the Petitioner who is a person interested in the Petition property and has been properly served on the Respondent Nos. 2 and 3 who are the principal officers of the M.C.G.M. We are of the considered view that the reservation in respect of the Petition property had lapsed under Section 127 of the said Act as no steps

had been taken by the Respondents to acquire the Petition property for the designated purposes for more than 10 years after the development plan came into force and / or within 12 months of the issuance of the purchase notice dated 15th May 2014 under Section 127 of the said Act. We are of the view that the reservation on the petition property having lapsed, the Petitioner is entitled to develop the same in accordance with law. We have also noted the submission of the learned Senior Counsel appearing for the Petitioner that in prayer (c) of the Petition viz. the portion of the Petition property reserved for the purpose of DP Roads having lapsed is not pressed by the Petitioner.

10. We accordingly pass the following order:-

- (a) We order and declare that the reservation of the Petition property has lapsed and that the Petitioner is free to develop the petition property in accordance with law.
- (b) We quash and set aside three letters dated 7th February 2015 and 31st May 2016 (Exhibits "H" "I" and "N") to the Petition addressed by the 3rd Respondent to the Petitioner and his father respectively.

- (c) We direct the 4th Respondent to issue and publish order in the official gazette stating that the reservation on the petition property as per the development plan 1991 has lapsed except for portion of the Petition property reserved for the D.P. Roads
- (d) Rule is made absolute in the above terms. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A NAIK, J.)