

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8076 of 2017

Smt. Nilima Bhalchandra Shiralkar and ors.Petitioners
versus
Collector, Sangli and ors.Respondents

Mr. Y. P. Narvankar, advocate for the petitioners.
Mrs. M. P. Thakur, AGP for the State.

CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.

DATE : 1st MARCH, 2018.

P. C. :

By an order dated 20th September, 2017, this Court issued notice for final disposal of the petition to the respondents returnable on 11th October, 2017. The bailiff's reports reveals that the respondent No.3 – Ashta Municipal Council is served. Despite that, nobody appears on their behalf. We, therefore, heard Mr. Narvankar, learned counsel for the petitioners and Mrs. Thakur, learned AGP for the State and dispose of the instant petition.

2. By this petition, the petitioners are seeking declaration that reservation No.3/31 and 3/32 on the land bearing old survey No. 2080 (survey No.1611/1A/1 and new survey No.1355/33) in the sanctioned Development Plan of Ashta Municipal Council has lapsed and further declaration for de-reservation of the subject land.

3. In the year 1982, the development plan for Ashta Municipal Council came into force. In the said development plan, the subject land was shown to have been reserved for the purpose of primary school and playground. Despite reservation, the respondent No.3 has not taken any steps for acquisition thereof. On the contrary, by resolution dated 20th June, 1989, the respondent No.3 resolved to exclude the subject land from reservation.

4. It is the case of the petitioners that on 27th January, 1994, the respondent No.3 again passed a resolution to delete the reservation for primary school and playground so far as petitioner's subject land is concerned and submitted proposal to the Director of Town Planning under Section 37(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). However, it seems that no action was taken on this proposal. On 30th July, 2005 i.e. after completion of the period of more than 10 years from the publication of the said development plan, the petitioners served purchase notice under Section 127 of the MRTP Act upon respondent Nos. 1 to 3. The respondent Nos. 1 to 3, despite this notice, has not taken any steps. The petitioners, thereafter, filed regular civil suit No.3 of 2006 for declaration that the subject land stands de-reserved in the light of the provisions of Section 127 of the MRTP Act. This suit was decreed by the Civil Judge Senior

Division at Islamapur by his order dated 10th September, 2008 and the subject land was declared to be de-reserved from reservation referred above. The respondent No.3 – Ashta Municipal Council challenged this order by filing civil appeal No.128 of 2009 in the Court of the Additional District Judge and Sessions Judge at Islampur, which came to be dismissed in default. The respondent No.3 has not taken steps to restore the said appeal.

5. In the draft revised development plan prepared in the year 2007, the land was sought to be reserved by the respondent No.3 for the same purpose i.e. for primary school and playground. The petitioners raised objection by giving notice dated 6th July, 2007. The State Government ultimately sanctioned the draft revised development plan on 4th April, 2012 and, therefore, the petitioners, being aggrieved, preferred this petition.

6. The record reveals that the first development plan of the respondent No.3 came into operation in the year 1982 and, thereafter, on 30th July, 2005 i.e. after expiry of more than 10 years, the petitioners served purchase notice under Section 127 of the MRTP Act upon the respondent Nos.1 to 3. The record further reveals that the respondent No.3 who is the planning as well as appropriate authority has not taken

steps as contemplated under law. In this regard, reference can be made to the decisions of the Apex Court in **Girnar Traders versus State of Maharashtra and ors. (2007) 7 SCC 555 and Shrirampur Municipal Council, Shrirampur versus Satyabhamabai Bhimaji Dawkher and ors. AIR 2013 SC 3757.**

In **Girnar Traders (supra)**, the Apex Court in paragraph 58 observed as follows:

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for

acquisition under the MRTTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced."

In **Shrirampur Municipal Council (supra)**, the Apex Court in paragraph 22 observed as follows:

22. *The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc. are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that*

if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

10. After having heard the learned counsel for the petitioner and learned AGP for the State, it is apparent that the present case is covered by the decisions of the Apex Court in both **Girnar Traders and Shrirampur Municipal Council, Shrirampur (supra)**. Since steps as contemplated under law are not taken by the respondents, the reservation stands lapsed and the said land has become available to the petitioners for development in accordance with law.

11. The respondents are not entitled to re-reserve the subject land for the same purpose, for which it was previously reserved, once the reservation has lapsed and the rights in respect of the subject land are accrued to the petitioners. A reference, in this regard, can be made to the decision of a Division Bench in **Kishor Siddheshwar Wadotkar (Dr.) vs. Director of Town Planning and ors. 2007(3) Mh.L.J.399**. The

Division Bench in paragraph 8 has observed thus :

8. *In view of settled legal position, it is evident that right accrued to the petitioner to get the land released from the reservation under section 127 of the MRTTP Act cannot be taken away merely because land in question is again shown to be reserved in the revised development plan. On the other hand, plain reading of provisions of section 127 of the MRTTP Act demonstrate that after lapsing of period of ten years, if the concerned Authority fails to take steps in respect of acquisition of land or does not acquire the land within a period of six months from the date of service of notice as contemplated under section 127, reservation shall be deemed to have lapsed and land shall be deemed to be released from such reservation. As per the scheme prescribed under Section 127 of the MRTTP Act, it is implicitly clear that once the period of ten years is lapsed and the Planning Authority has not taken steps to acquire the land within a period of six months from the date of service of notice, by virtue of deeming fiction, reservation shall be deemed to have been lapsed and land shall be deemed to have been released from such reservation. Similarly, right which is accrued to the owner of the land after lapsing of reservation cannot be taken away by the Planning Authority by exercising power under section 38 of the MRTTP Act, by again reserving the land for the public purpose in the revised development plan. The issue is answered accordingly."*

12. In light of the above, the petition must succeed. Accordingly, the petition is allowed in terms of prayer clauses (a) and (b).

13. The subject land shall be deemed to have been released from reservation and shall become available to the petitioners for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant sanctioned Development Plan. We, accordingly, direct the State Government to issue a notification in accordance with sub-section (2) of Section 127 of the MRTP Act within a period of three months from the date of receipt of this order;

14. The writ petition stands disposed of.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]