

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7520 OF 2015

Shri Vinod Dadu Chougale and another.	...	Petitioners.
V/s.		
The State of Maharashtra and others.	...	Respondents.

Mr.Shrikrishna R. Ganbavale with Mr.Sagramsingh Yadav
for the petitioners.

Ms.R.A.Salunkhe, AGP for respondent Nos.1 and 2.

Mr.Shriniwas S. Patwardhan for respondent No.3.

CORAM : A.S.OKA AND PN.DESHMUKH, JJ.

DATE : 9th January 2018

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

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the third respondent. The learned AGP represents respondent Nos.1 and 2. By order dated 3rd May 2017, parties were put on notice that an endeavour will be made to decide the petition finally at the admission stage itself.

2. This petition under Article 226 of the Constitution of India relates to the land which is more particularly described in paragraph-3(i) of the petition. The said land is covered by Reservation No.303 under the Development Plan of the City of Kolhapur sanctioned in accordance with section 31 of the Maharashtra Regional Town Planning Act, 1966 (for short "MRTP Act"). The Development Plan was sanctioned vide notification dated 15th November 1999 with effect from 18th December 1999. The petitioners are claiming to be the owners of the said land. The petitioners are relying upon the notice a copy of which is annexed at Exh.C to the petition which is dated 19th September 2013. The said notice purporting to be a notice under section 127 of the MRTP Act was admittedly served to the third respondent which is a planning authority within the meaning of the MRTP Act. In the said notice, it was mentioned by the petitioner that though the said land was covered by Reservation No.303 for garden, from the year 1999, no steps have been taken by the third respondent for acquiring the said land and for payment of compensation. The petitioners called upon the third respondent to acquire the said land in accordance with the law of compulsory acquisition and pay compensation. The third respondent replied to the said notice vide letter dated 19th November 2013. It was mentioned that the petitioners have not produced 7/12 Extract or property card, zone certificate, survey map and documents under the Urban Land (Ceiling and Regulation) Act, 1976. The petitioners were called upon to produce the said documents failing which the purchase notice was to stand disposed of.

3. The petitioners responded by their letter dated 19th December 2013. Along with the said letter, the petitioners forwarded 7/12 Extract of the said land. The petitioners informed the third respondent that they were not possessing other documents as mentioned in the letter dated 19th November 2013 which are available with the Government. Response to the said letter by the third respondent was in the form of a letter dated 3rd April 2014. In the first paragraph of the said letter, the third respondent accepted that the purchase notice has been served upon the third respondent. The third respondent offered to provide TDR in respect of the said land provided the petitioners are willing to hand over the said land to the third respondent without any consideration. The petitioners responded by a letter dated 19th April 2014. The petitioners relied upon the aforesaid notice under section 127 of the MRTP Act dated 19th September 2013 and stated that if the third respondent is willing to pay compensation as per law of compulsory acquisition, the petitioners are willing to surrender the said land.

4. In the petition, it is contended that no steps were taken by the third respondent to acquire the said land within the statutory period and, therefore, the reservation on the said land shall be deemed to have lapsed.

5. The learned counsel appearing for the petitioners relied upon the decision of the Division Bench of this Court in the case of ***Jaika Vanijya Ltd. v. State of Maharashtra***¹ as well as another decision of the Division Bench to which one of us (A.S. Oka, J.) is party in the case of

1 2013 (4) Mh.L.J. 161

Shri Jignesh Amulakh Vora v. Nashik Municipal Corporation². He also relied upon the decision of the Apex Court in the case of ***Municipal Corporation of Greater Bombay v. Dr.Hakimwadi Tenants' Association and others***³.

6. The learned counsel appearing for the third respondent submitted that considering drastic consequences of the notice under section 127 of the MRTP Act, the same was required to be construed strictly. He submitted that notice at Exh.C is not in terms of section 127 in as much as it merely informs the third respondent that the said land has not been acquired and the third respondent was called upon to acquire the said land and to pay the compensation. The learned counsel submitted that the documents as required by section 127 as amended by the Maharashtra Act No.XVI of 2009 have not been furnished by the petitioners. He submitted that, therefore, the notice at Exh.C cannot be construed to be a notice under section 127 and the failure to take steps to acquire the said land will not attract consequences as provided in section 127 of the MRTP Act. The learned AGP supported the submissions of the learned counsel appearing for the third respondent.

7. We have given careful consideration to the submissions. Perusal of sub-section (1) of section 127 of the MRTP Act shows that it contemplates a notice to be served by the owner or any person interested in the land along with documents showing his title or interest in the said land on the Planning Authority, the Developing Authority or the

2 2015 SCC OnLine Bom 661

3 1988 (Supp) SCC 55

appropriate authority, as the case may be, to the effect that the reserved land is not acquired within a period of 10 years from the date on which the final development plan comes into force and even a declaration either under sub-section (2) or sub-section (4) of section 126 has not been published in the final gazette within the said period of 10 years.

8. In the present case, perusal of notice at Exh.C shows that it refers to the fact that the said land is under reservation from 1999 and that the same has not been acquired. The notice calls upon the third respondent to acquire the said land and to pay the compensation. It also mentions that the third respondent has passed a resolution to acquire the said land. In reply dated 19th November 2013, the Assistant Director of Town Planning has clearly referred to the said notice dated 19th September 2013 as the notice under section 127 of the MRTP Act. Moreover, along with letter dated 19th December 2013, 7/12 Extract in respect of the said land showing the name of the petitioners as Kabjedars was submitted by the petitioners to the third respondent. Therefore, the petitioners have substantially complied with the requirement of producing the documents showing title as held by the Division Bench of this Court in the case of ***Shri Jignesh Amulakh Vora v. Nashik Municipal Corporation*** (supra). The third respondent by a letter dated 3rd April 2014 has again referred to the notice dated 19th September 2013 as one under section 127 of the MRTP Act and offered to provide TDR to the petitioners on surrender of the said land free of cost.

9. The affidavit-in-reply of Shri Arunkumar Dattatray Gawali filed on behalf of the third respondent shows that even till the date of reply dated 31st January 2017, a declaration either under sub-section (2) or sub-section (4) of section 126 of the MRTP Act has not been published. Law on this aspect is well settled in the case of *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher*⁴. The Apex Court has laid down that the only method by which steps could be taken for acquisition is by publication of a declaration either under sub-section (2) or sub-section (4) of section 126 of the MRTP Act within the time stipulated under section 127, from the date of service of notice. Admittedly, such a step has not been taken by the third respondent even till today. Therefore, the consequences provided under section 127 must follow.

10. Accordingly, the petition must succeed and we pass the following order:

(i) We hold that the reservation imposed on the subject land described in paragraph- 3(i) of the writ petition provided under the second revised development plan sanctioned with effect from 18th December 1999 shall be deemed to have been lapsed and that the said land shall be deemed to have been released from the said reservation. The said land shall become available to the owners thereof for the purpose of development as otherwise permissible in case of adjacent land under the said sanctioned development plan;

4 2013 5 SCC 627

(ii) We direct the first respondent to issue a gazette notification declaring the lapsing of reservation in accordance with section 127 of the MRTP Act within a period of three months from today;

(iii) Rule is made absolute in the above terms with no order as to costs.

(PN.DESHMUKH, J.)

(A.S.OKA, J.)