

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

WRIT PETITION NO. 6245 OF 2016

Dungarmal Chandulal Oswal & Ors.

....Petitioners

Versus

The State of Maharashtra & Ors.

....Respondents

Mr. S.S. Patwardhan a/w. Mr. Rajesh A. More for the petitioners.

Mr. V.N. Sagare, AGP for the State.

Mr. R.S. Datar for Respondent No.3.

CORAM : RANJIT MORE AND

SMT. ANUJA PRABHUDESSAI, JJ.

DATE : 21st FEBRUARY, 2018

P.C. :

1. Heard Mr. S.S. Patwardhan, learned counsel for the petitioners, Mr. V.N. Sagare, learned AGP and Mr. R.S. Datar, learned counsel for respondent no.3.

2. By this petition, the petitioners are seeking direction to the Respondent Nos.1 and 3 to release petitioner's land Survey No.17/1 situated at Khopoli, Taluka Khalapur, District Raigad from its reservation / designation as 'Municipal Rest House' from revised Development Plan.

3. Admittedly, the petitioners are the owners of land Survey No.17/1 admeasuring about 1H 19A situated at Khopoli, Taluka Khalapur, District Raigad. The Development Plan of Respondent No.3

– Khopoli Municipal Council (KMC) came into force in the year 1973. The petitioner's area was reserved / designated as 'Municipal Rest House' in that Development Plan. The Respondent No.3 - KMC which is also the Planning Authority held that the Respondent No.2 acquired that land by passing an award dated 23rd September, 1986. The award, however, was challenged by the petitioner by filing Writ Petition No.6020 of 1986 before this Court on the ground that the notice is not given to the petitioners. This petition was disposed of by the Division Bench of this Court on 26th November, 1992. The Division Bench quashed and set aside the said award irrespective of the said petitioner's land. Thereafter, the Respondent No.3 prepared revised Draft Development Plan and the same was sent to the Government for approval and the Government approved the same and revised Draft Development Plan came into force on 29th October, 2004. In this revised Draft Development Plan, the petitioner's land was again shown to have been reserved for Municipal Rest House. The petitioners, after completion of the 10 years from the publication of the revised Development Plan, issued to the Respondent No.3 – KMC a notice dated 20th December, 2014 under Section 120 of the MRTP Act requesting the Respondent No.3 to acquire the said land area within the stipulated period of six months or else the land will become available to the petitioner for development. There is no dispute that this notice is issued to the Khopoli Municipal Council on 26th December, 2014. Despite receipt of this notice, Respondent No.3 – KMC has not acquired any land or taken steps as contemplated under Section 127 till today.

4. On behalf of the KMC, one Mr. Sanjay Govind Shinde, Chief Officer of Respondent No.3 has filed an affidavit dated 06th February, 2018. In paragraph 4 of the affidavit, he has made following averment :-

“The Municipal Council had already informed the Petitioner's legal advisor that Municipal Council was in need of the said plot of land under reservation and the Municipal Council was ready to compensate the Petitioners by offering requisite TDR. I say that however no response was received to the said offer made by the Municipal Council to the petitioner. I say that similarly by another letter of the even date i.e. 11th January, 2016 the Municipal Council requested the State Government not to act in pursuance of the said purchase notice issued by the Petitioners..... ”

5. It is not obligatory on the petitioners to accept the TDR in lieu of the compensation. It is the specific stand of the petitioners that in Khopoli ample land is available and therefore, they are not interested in accepting the TDR.

6. Merely offering TDR would not be in compliance of the provisions of section 127 of the MRTP Act. The question whether the lapse within a period of six months from the date of service of notice as stipulated in the MRTP Act and also as regards the consideration of three Judge Bench of the Supreme Court in ***Shrirampur Municipal Council, Shrirampur v/s. Satyabhambai Bhimaji Dawkher & Ors. in Civil Appeal No.2733 of 2013 AIR 2013 SC 3757 decided on 01st April, 2013.*** In paragraph 22, the Supreme Court observed thus :-

“ 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. ”

7. In the instant case, as stated earlier, Respondent No.3 - Khopoli Municipal Council has not taken steps within a period stipulated as one year from the date of receipt of the petitioner's notice, the offer of the Respondent No.3 – KMC to accept the TDR cannot be termed as taken steps as contemplated under section 127 of the MRTP Act. The subject reservation, therefore, stand lapse and the petitioners are entitled to do

the same in accordance with the law. The land Survey No.17/1 is available to the petitioners. We accordingly allow this petition in terms of prayer clauses (a) and (b).

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)