

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4526 of 2016

Sushila Dattatray LokhandePetitioner
versus
The State of Maharashtra and ors.Respondents

Mr. Dhairyasheel Sutar, advocate for the petitioner.
Mrs. M. P. Thakur, AGP for the State.
Mr. Gajanan Mahadev Savagave , advocate for the respondent No.3.

**CORAM : RANJIT MORE &
SMT.SADHANA JADHAV, JJ.**

DATE : 16th APRIL, 2018.

P. C. :

Rule. Rule made returnable forthwith and, by consent, the matter is heard finally.

2. Heard learned counsel and learned AGP appearing for the respective parties. Perused the affidavits-in-reply filed on behalf of the respondent No.3 as well as respondent Nos.4 and 5 respectively.

3. The petition invoking jurisdiction of this Court under Article 226 of the Constitution of India is filed seeking direction to declare that the reservation No.66 in development plan of 1985 of the respondent No.3 in land bearing CTS No.731 total admeasuring at 53.36 sq.meters is deemed to have been lapsed and the petitioner is at liberty to develop the said land as permissible in the case of adjacent land

under the sanctioned development plan. The petitioner is further seeking direction to quash and set-aside the declaration dated 15th November, 2016, published in local newspaper on 30th November, 2016 under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the "2013 Act") in respect of acquisition of the above referred land.

4. Admittedly, the revised development plan of the respondent No.3-Municipal Council was sanctioned and came into operation on 18th May, 1985 and, in this plan, the land bearing CTS No.731 total admeasuring at 53.36 sq.meters in respect of which the petitioner claims to be the owner, came to be reserved for shopping centre under reservation No.66. There is also no dispute that for a period of 10 years from commencement of the said revised development plan, the respondent No.3 has not acquired this land either by resorting to the provisions of the Land Acquisition Act, 1894 (for short "the 1894 Act") or by negotiations.

5. In that view of the matter, the petitioner issued a purchase notice dated 15th September, 2014, under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 to the respondent No.3 who is the planning authority. There is also no dispute that this

notice was received by the respondent No.3. Despite receipt of this notice, no steps were taken by the respondent No.3 for acquisition within the period of twelve months from the date of receipt of the said notice and, therefore, the petitioner has approached this Court for declaration that the subject reservation has lapsed as stated hereinabove. During the pendency of the petition, the respondent Nos.4 and 5 issued declaration under Section 19 of the 2013 Act and, therefore, the petition was amended and the said declaration was also challenged.

6. The period of ten years from coming into operation of the revised development plan has admittedly expired. The purchase notice was given after the expiry of this period and receipt of the said notice by the respondent No.3 is also not in dispute. Therefore, in terms of the decision of the Apex Court in **Shrirampur Municipal Council, Shrirampur versus Satyabhamabai Bhimaji Dawkher and ors. (2013) 5 SCC 627**, we have to see whether the respondent No.3 has taken steps for acquisition of the subject land within a period of twelve months from the date of receipt of the subject notice.

7. The Apex Court in **Shrirampur Municipal Council, Shrirampur (supra)** held that the majority judgment in **Girnar Traders (2) versus State of Maharashtra (2007) 7 SCC 555** lays down correct law and does not require consideration by a larger Bench. The Apex

Court, in *Girnar Traders (2) (supra)* by majority, observed that the steps towards acquisition would really commence when the State Government takes active steps for the acquisition of a particular piece of land which leads to publication of declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the MRTP Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

8. If the observation of the Apex Court referred above is applied to the facts and circumstances of the present case, then, we find that within a period of twelve months from the receipt of purchase notice under Section 127 of the MRTP Act, the respondent Nos.3 to 5 have not taken any steps for acquisition of the subject land. It is true that the respondent No.5, thereafter on 15th November-2016, issued notification under Section 19 of the 2013 Act to acquire the subject land. However, this was done after expiry of the mandatory period of one year. By that time, rights were already accrued to the petitioner and, therefore, this notification has no relevance and it cannot be construed as steps towards acquisition as contemplated under Section 127 of the MRTP Act.

9. In the above facts and circumstances, we allow the petition. Rule is, accordingly, made absolute in terms of prayer clauses (a) and a(1).

10. The respondent No.1 is directed to issue consequent notification under Section 127(2) of the MRTP Act expeditiously and, in any case, within a period of six months from the date of receipt of this order.

11. The writ petition is disposed of.

(SMT. SADHANA JADHAV, J.)

[RANJIT MORE, J.]