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

WRIT PETITION NO. 11096 OF 2015

1. Mohammed Mainuddin Sirajuddin
Kokani, Age major, Occu. Agri.

2. Mohiuddin Sirajuddin Kokani,
Age Major, Occu. Agri,
Resideing of 2782, Kokanipura, Old ...**Petitioners**
Nashik, Nashik – 422 001.

Versus

1. The Nashik Municipal Corporation
Thru. The Commissioner,
Rajiv Gandhi Bhuvan, Nashik.

2. The Deputy Director,
Town Planning Department, Nashik
Municipal Corporation, Rajiv Gandhi
Bhuvan, Nashik.

3. State of Maharashtra. ...**Respondents**

Mr. Sandip Dilip Shinde, for the Petitioners.
Mr. Shekhar Jagtap, i/b J. Shekhar & Co. for Respondent
Nos. 1 and 2.
Mr. Manish M. Pabale, AGP for Respondent No.3.

CORAM: **A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 28TH FEBRUARY 2018.

JUDGMENT PRONOUNCED ON 26TH MARCH 2018.

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

1. Rule. Rule made returnable forthwith. Heard by consent of the parties.

2. The Petitioners by this Petition are seeking an order and direction from this Court directing the Respondents to remove the Petitioners lands bearing Survey No. 754/1 admn.3H-24R and survey No.754/2 admn. 3H-25R situated at Nashik (for short **“the said lands”**) from reservation for garden as the reservation has lapsed as per the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short **“the Act”**).

3. The Petitioners claim to be the owners of the said lands. Under the Town Planning Scheme No. 2 which was declared in the year 1994 and the Development Plan, the total area of 32,000 sq. mtrs. including the said lands was shown to be reserved for the purpose of garden. The Petitioners state that as the Respondents had not taken any steps for acquisition of the said lands for more than 10 years

from the date of the Development Plan, the Petitioners issued a Notice dated 1st August 2014 under Section 127 of the Act calling upon the Respondents to initiate acquisition proceedings within a period of one year from the date of the Notice.

4. The Respondents by correspondence dated 8th June 2015 and 19th June 2015 called upon the Petitioners to provide the requisite documents of title of the Petitioners in the said lands. The Petitioners claim to have fulfilled these requirements vide their letters dated 16th June 2015, 24th June 2015 and 2nd July 2015. The Respondents by their letter dated 7th June 2015 informed the Petitioners that they would be conducting a survey of the said lands to be acquired by them. The Petitioners initially informed the Respondents of their willingness for the said acquisition by letter dated 8th July 2015 and called upon the Respondent No.1 – Corporation to decide the compensation to be provided to the Petitioners under the Act. However, as the Respondents failed to initiate proceedings under the Act for acquisition of the said lands, the Petitioners claim that the

reservation had lapsed upon the expiry of one year from the date of issuance of the notice under Section 127 of the Act. The Petitioners claim to be aggrieved by the action of the Respondents as they have included the said reservation in the fresh Development Plan published by the Respondents in the year 2015. The Petitioners have thus filed the present Petition seeking direction from this Court that the reservation of the said lands have lapsed.

5. The learned counsel appearing for the Petitioners submit that the said lands are no longer under reservation for garden as the Respondents have failed to initiate the requisite steps for acquisition of the said lands under Section 127 of the Act within the stipulated period from the date of service of the purchase notice. He further submits that the Petitioners had produced requisite documents of title viz. 7/12 extracts pursuant to the Respondents calling upon the Petitioners to produce the same. He further submits that appropriate direction be issued by this Court to the Respondents to remove the said lands from reservation as

the same have lapsed by the operation of Section 127 of the Act.

6. The learned counsel appearing for the Respondent Nos. 1 and 2 and the learned AGP for Respondent No. 3 have supported the impugned action of the Respondents and have submitted that the Petitioners have failed to provide the requisite documents when called upon to do so by the Respondents. They further submit that the reservation of the said lands have not lapsed and that the Notice issued by the Petitioners is not a valid Notice as the Petitioners have failed to comply with the conditions imposed by the Respondents.

7. We have considered the submissions of the parties and we find that the Petitioners have issued a valid and proper Notice under Section 127 of the Act. We further find that the Respondents have failed to acquire or take any steps towards acquisition of the said lands under Section 126 read with Section 127 of the Act. The legislature while enacting section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for

acquisition of the land. On construction of section 126 which provides for acquisition of the land under the Act, it is apparent that the steps for acquisition of the land would be the issuance of a declaration under section 6 of the Land Acquisition Act. The Supreme Court in the case of ***Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dewkher, reported in 2013 (5) Mh.L.J. (S.C.) 492 : (2013) 5 SCC 627*** had observed as under:-

42. We are further of the view that the majority in Gimar Traders (2) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. 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 no 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 land owners 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 300 -A of the Constitution."

8. In the present case, admittedly a section 6 notification was not issued. Hence advertent to the principles of law laid down by the Supreme Court in the aforesaid decision it would be required to be held that reservation of the land in question had lapsed by operation of section 127 of the Act. We are of

the view that subsequent reservation in the Development Plan published by the Respondents in the year 2015 cannot automatically revive the lapsed reservation.

9. We find no merit in the submissions of the Respondents. We are of the view that the relevant document of title viz. 7/12 extract showing the Petitioners to be the owners of the said lands having been provided there has been sufficient compliance with the conditions imposed by the Respondents.

10. We accordingly pass the following order:-

- (a) We order and direct the Respondents to notify as expeditiously as possible and preferably within a period of six months from today, by order published in the Official Gazette as per Section 127(2) of the Act that the reservation of the Petitioners' lands viz. Survey No. 754/1 admeasuring 3 H – 24R and Survey No. 754/2

admeasuring 3H 25R situated at Nashik has lapsed.

- (b) We order and direct the Respondents to forthwith delete the Petitioners' lands from reservation as shown in the Development Plan in the year 2015.
- (c) We order and declare that the reservation of the Petitioners land having lapsed, the land has become available to the Petitioners for development as otherwise permissible in the case of adjacent lands under the development plan.
- (d) Rule is made absolute in the above terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)