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

WRIT PETITION NO. 11766 OF 2015

Estate Co-operative Housing Society Ltd.

Thru. Secretary, Rajendra Bunge, R/o.
Ramlila, Uday Colony, Panchvati, Nashik.

...Petitioner

Versus

1. State of Maharashtra and Ors.

Thru. The Secretary, Urban Development
Department, Mantralaya, Mumbai.

...Respondents

Mr. G.S. Godbole, i/b Mr. Akshay Petkar, for the Petitioner.
Mrs. R.A. Salunkhe, AGP for Respondent Nos. 1 and 2.
Mr. Shekhar Jagtap, i/b. J. Shekhar and Co. for Respondent No.3.

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

JUDGMENT RESERVED ON **15TH JUNE, 2018**

JUDGMENT PRONOUNCED ON **3RD JULY, 2018**

O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. Rule. Rule made returnable forthwith. Heard by consent.
2. The Petitioner by the present Petition has sought a declaration that reservation no. 359 with respect to land bearing survey nos. 750+750-755, Nashik Town Planning Scheme No.2, Final Plot No. 541 admeasuring 16,000 Sq. mtrs. (for short "the said land") which was reserved for the purpose of playground has

lapsed. The Petitioner has further sought a declaration against Respondent No.1, State Government to forthwith publish notification declaring that reservation no. 359 in respect of the said land for the purpose of a playground has lapsed.

3. The Petitioner is a society registered under Maharashtra Co-Operative Societies Act, 1960. In the Draft Development Plan of Nashik published in the year 1980, land admeasuring 20,000 Sq. mtrs. i.e. from the land bearing Survey No. 750+751+755, Nashik Town Planning Scheme No.2 and Final Plot No. 541 was reserved under reservation no. 359 for the purpose of a playground. On 28th June, 1993 notification under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the said Act") was passed sanctioning Final Development Plan in respect of the land admeasuring 20,000 Sq. mtrs. for a playground bearing reservation No. 359. A portion admeasuring 16,000 Sq. mtrs. out of the area of 20,000 sq. mtrs. is the said land which is the subject matter of the present Petition. Thereafter on 24th October, 2002, the application of the Petitioner for relocation of the Development Plan reservation was approved by the Assistant Director, Town Planning subject to certain conditions and this was informed to the Secretary of the Petitioner society by a letter

dated 22nd September, 2004. By another letter dated 8th November, 2004 addressed by the Executive Engineer, Town Planning to the Petitioner, the Petitioner was informed that the draft plans, final plans and construction permissions for land bearing survey nos. 750+751+755 being final plot no. 541 were stayed as the land under reservation was being considered by the office of the Collect, Nashik for acquisition. The Petitioner applied to the Secretary, Urban Development Department (UDD), State Government – Respondent No.1 by its letter dated 28th March, 2008 requesting for relocation of the reservation no.359 (playground) and 365 (Primary School). The Section Officer, State Government by letter dated 26th September, 2009 informed the Municipal Commissioner, Nashik Municipal Corporation that the application for relocation of reservation No. 359 (playground) and 365 (Primary School) was being approved pursuant to application dated 28th March, 2008 preferred by the Petitioner subject to conditions provided in the said letter. Since the conditions imposed by the UDD, State Government was not agreeable to the Petitioner, a letter dated 27th October, 2009 was addressed by the Petitioner to the Secretary, UDD to remove the said condition No.6 made applicable by letter dated 26th September, 2009 for relocation of reservation Nos. 359 and 365. The condition No.6

provided for the affected land to be transferred to the Nashik Municipal Corporation without any cost in exchange of TDR. The Petitioner applied to the Secretary, UDD by letter dated 19th July, 2011 to approve relocation of the reservations without imposing the condition and agreed to develop the 15 mtrs. road prior to developing the said land owned by the Petitioner. The Petitioner further agreed to deposit the amount required for construction of the DP road.

4. The Respondent No.1 - Nashik Municipal Corporation issued an order 26th December, 2011 approving the relocation of the reservation No. 359 and 365. However, this was subject to conditions in the order. The order recorded that the Petitioner had deposited Rs.44,74,764/- in the treasury as expenses towards construction of the DP road. By a purchase notice dated 3rd April, 2013, the Petitioner called upon the Commissioner, Nashik Municipal Corporation to either acquire the said land under reservation or declare the reservation as lapsed under Section 127 of the said Act. The purchase notice was duly served upon the Commissioner. The Petitioner inadvertently issued another purchase notice dated 12th June, 2015 to the Commissioner, Nashik Municipal Corporation. The reservation of the said land

had already lapsed by virtue of the earlier notice dated 3rd April, 2013. This purchase notice was later cancelled by the Petitioner, by their letter dated 13th July, 2015. Correspondence was also exchanged by the Petitioner with the Nashik Municipal Corporation with respect to the reservation of the said land. The Petitioner was called upon to forward documents establishing their ownership of the said land. Respondent No.3 had offered that if the Petitioner transferred the said land to the Corporation, an equivalent TDR would be transferred to them as per the order of the Commissioner and applicable building rules. By a letter dated 18th August, 2015, the Petitioner requested Respondent No.1 to issue a notification to the effect that the reservation of the said land had lapsed. Thereafter, no action has been taken and hence this Petition.

5. The learned Counsel appearing for the Petitioner has submitted that a valid and proper notice has been issued on 3rd April, 2013 by the Petitioner under Section 127 of the said Act to the Commissioner, Nashik Municipal Corporation. He submits that the purchase notice was issued as the period of 10 years specified under Section 127 of the said Act for acquisition of the said land had expired on 28th June, 2003 since the notification for

reservation of the said land was issued on 28th June, 1993. He submits that the action contemplated under Section 126 of the said Act had not been taken by the Respondent and after the expiry of the prescribed period from service of the purchase notice, provided under Section 127 of the said Act, the reservation of the said land had lapsed. He has relied upon the judgment of the Supreme Court in the case of ***Shrirampur Municipal Council Vs. Satyabhamabai Bhimaji Dawkher***¹ in support of his submission that unless a declaration / Notification under Section 6 of the Land Acquisition Act, 1894 is issued no steps can be contemplated to have been taken after issuance of purchase notice under Section 127 of the said Act. He has submitted that Respondent No.3 – Corporation has admitted that they had been served with the purchase notice dated 3rd April, 2013 and this is clearly borne out from the correspondence exchanged by the Respondent No.3 - Corporation with the Respondent No.1 - State Government vide letter dated 29th March, 2016 obtained under the Right to Information Act, 2005. He has submitted that the subsequent purchase notice dated 12th June, 2015 had been inadvertently issued as by the earlier notice dated 3rd April, 2013, the reservation of the said land had already lapsed. He has

1 (2013) 5 Supreme Court Cases 627.

submitted that the reservation of the said land having lapsed, the Respondent No.1 be directed to publish a notification declaring the lapsing of reservation and that the Petitioner be directed to develop the said land as in the case of the adjacent lands.

6. The learned counsel appearing for the Respondent Nos. 1 and 2 and the learned counsel appearing for Respondent No.3 have supported the impugned action. Although they admit having received the purchase notice dated 3rd April, 2013, they have disputed lapsing of reservation of the said land. The learned counsel for the Respondent Nos. 1 and 2 relied upon the Affidavit in Reply filed on behalf of the Respondent Nos.1 and 2 dated 31st January, 2017 wherein it is stated that the Municipal Corporation had not forwarded a proposal to the Government to take appropriate decision on the Petitioner's application for de-reservation. The learned counsels appearing for the Respondents submitted that the Petition ought to be rejected as said land continues to be under reservation and that the subsequent purchase notice was cancelled.

7. We have considered the submissions. We find that a valid and proper purchase notice has been issued by the Petitioner to

the Commissioner, Nashik Municipal Corporation on 3rd April, 2013 under Section 127 of the said Act. The Respondents have failed to take steps to acquire the said land under reservation within the period prescribed under Section 127 of the said Act. We find that the statutory notice has been issued by the Petitioner after the expiry of the period of 10 years prescribed under Section 127 of the said Act as the notification sanctioning the final Development Plan which reserved the said land under reservation No. 359 for the purpose of playground had been issued on 28th June, 1993 and the prescribed period expired on 28th June, 2003. We find that the Respondent No.3 – Corporation had admitted that it had received with the statutory notice dated 3rd April, 2013 in their letter dated 29th March, 2016 to the Respondent No.1 wherein they had contended that the reservation of the said land had not lapsed and that the application for building permission of said land preferred by the Petitioner had been validly rejected by Respondent No.3. We find that this letter was obtained under the Right to Information Act, 2005. We find that the subsequent statutory notice dated 12th June, 2015 was inadvertently issued by the Petitioner as by that date the reservation of the said land had already lapsed by virtue of the first purchase notice. We have perused the Affidavit in Reply dated 31st January, 2017 filed on

behalf of the Respondent Nos. 1 and 2 by Shri Jayashreerani B. Surve, Assistant Director, Town Planning, Nashik who has not disputed that steps contemplated under Section 126 of the said Act for acquisition of the said land were not taken and that it is only due to the non submission of the proposal by Respondent No.3 to Respondent No.1 for de-reservation of the said land, that the said land had not been de-reserved. We find that the steps contemplated by the legislature for acquisition of the said land can only be by issuance of a declaration under Section 6 of the Land Acquisition Act, 1894 read with sub sections (2) and (4) of Section 126 of the said Act. The Supreme Court in the case of ***Shrirampur Municipal Council (Supra)*** has held in paragraph nos. 42 and 43 thus:-

42. We are further of the view that the majority in Girnar 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 utilised 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 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 the Section 6 notification has not been issued. Hence, advertent to the principles of law laid down by the Supreme Court in the above decision, it would be required to hold that the reservation of the said land had lapsed by operation of Section 127 of the said Act. Hence Writ Petition deserved to be allowed and accordingly we pass the following order:-

- (a) We order and direct Respondent No.1 to publish notification in the official gazette notifying lapsing of reservation of the Petitioner's said land viz. reservation No. 359 of Survey Nos. 750+750-755, Nashik Town Planning Scheme No.2, Final Plot No. 541 admeasuring 16,000 Sq. mtrs. for the purpose of playground as expeditiously as possible and in any event within a period of six months from the date of uploading of this order;
- (b) We order and direct that the Respondents to delete the Petitioner's said land from reservation as shown in the Development Plan;
- (c) We order and declare that upon the notification of lapsing of reservation being published as directed in (a) above, the said land shall become available to the Petitioner for development as otherwise permissible in the case of adjacent land under the sanctioned 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.)