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

WRIT PETITION NO. 12999 OF 2017

Shri Ashok Karbhari Borade ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

WRIT PETITION NO. 13511 OF 2017

Shri Sunil Karbhari Borade ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. Pramod Naarayan Joshi, with Mr. Pratik B. Rahade, for the
Petitioners.

Mrs. R.A. Salunkhe, AGP for Respondent Nos.1, 3 & 4.

Mr. Murlidhar Laxman Patil for Respondent Nos. 2 and 5.

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

JUDGMENT RESERVED ON 17TH APRIL, 2018

JUDGMENT PRONOUNCED ON 7TH JUNE, 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 of
the parties.

2. Both Writ Petitions seek similar relief viz. declaring that reservation of the land belonging to the Petitioners to the extent of 2600 Sq. mtrs. situated at village Panchak Taluka, District Nashik within the territorial limits of Nashik Municipal Corporation from survey No. 65/3 has lapsed from reservation of Dispensary, 18 mtrs. D.P. Road, play ground, maternity home and shopping centre in Development Plan of 1993 ('the first Petition') and for declaring that reservation of land belonging to the Petitioner to the extent of area of 3537 Sq. mtrs. survey No. 36/A/1/1A situated at Village Panchak, Nashik has lapsed from reservation of the 60 Mtrs. and 12 Mtrs., D.P. Road as shown in Development Plan of 1993 of Nashik Municipal Corporation ('the second Petition'). These Petitions have claimed lapsing of reservation of the respective lands under Section 127 of the Maharashtra Regional and Town Planning Act (for short "the Act"). The Petitions further seek a direction against the Respondents to permit the Petitioners to develop respective lands as in the case of the adjacent lands by treating the reservation as lapsed. These Petitions are being disposed of by this common judgment.

3. For convenience and since the facts are similar, the facts in the first Petition have been adverted to. The Petitioner is the

Karta of a joint family whose members have been mentioned in paragraph 1 and which includes the Petitioner in the second Petition. This Petition has been filed on behalf of the members of the joint family. The Petitioner claims to be the owner of the said land, also described in paragraph 2 of the Petition. The Petitioner's land was shown to be reserved in the Development Plan of 1993, prepared and sanctioned by the Respondent No.2, Nashik Municipal Corporation. The land was shown to be reserved for the purpose of dispensary, 80 mtrs. Development Plan road, play ground, maternity home and shopping centre. It is the case of the Petitioner that for more than 10 years no proceedings for acquisition of the land belonging to the Petitioner was initiated, much less finalized by the Respondents. The Petitioner issued purchase notice under Section 127 of the Act calling upon the Respondents to take steps for acquisition of land. The purchase notice dated 29th October, 2013 was served on the Respondents on 31st October, 2013. It is the case of the Petitioner that after expiry of the prescribed period from service of the purchase notice under Section 127 of the Act, the reservation of the Petitioner's land lapsed. The Petitioner made various representations to the Respondent for issuance of Notification of lapsing of reservation under the Act but these representations were not entertained. The

purchase notice which was served on the concerned Respondents enclosed the material document viz. the 7/12 extract showing the land being owned by the Petitioner. The Assistant Director, Town Planning still asked the Petitioners to produce certain other documents mentioned in a letter dated 11th December, 2013. A similar letter dated 12th December, 2013 was issued by the Estate Manager of Respondent No.2 Corporation. The Petitioner had replied to this letter through his Advocate on 8th January, 2014 stating that the requirement of various documents was not a prerequisite for initiating acquisition proceedings and the material documents viz. 7/12 extract showing ownership and title of the Petitioner would itself be sufficient.

4. The Petitioner thereafter made an application for information under the Right to Information Act, 2005. The Petitioner received information from the office of the Respondent No.2 Corporation which stated that the Commissioner had sent a proposal for acquisition to the Collector, Nashik by a letter dated 17th December, 2014. This was after the statutory period of one year from the service of the purchase notice on the Respondent No.2 on 31st October, 2013 had lapsed. The Petitioner also learnt from information received from the Deputy Collector, (Acquisition)

No.2, Nashik under the Right to Information Act that there was no such proposal for acquisition pending in respect of the land belonging to the Petitioner. Being aggrieved by the inaction on the part of the Respondents in not notifying of the lapsing of reservation of the Petitioners land under Section 127 of the Act, the Petitioner has filed the present Petition.

5. A reply is filed on behalf of the Respondent No.2 by one Shri Akash Tikaram Bagul on 5th April, 2018, which states that the new DP plan has been approved on 9th January, 2017 in which reservation is changed to public amenity. It is stated that the new reservation for public amenity has taken into consideration the requirement of next 20 years and since the purpose of reservation has changed, it cannot be stated that the reservation has lapsed.

6. The learned counsel appearing for the Petitioners in both Petitions has stated that the reservation of the Petitioners lands had lapsed since the Respondent had failed to take the mandatory step of publication of Notification under Section 6 of the Land Acquisition Act in respect of reservation of lands belonging to the Petitioners. He has submitted that the mere sending a proposal by the Commissioner of Respondent No.2 Corporation to the

Collector, Nashik for acquisition of the land cannot be regarded as a step taken by the Respondent No.2 in acquisition of the land. He has submitted that the purchase/statutory notices had been issued and served upon the Respondents and it was only after expiry of the statutory period of one year from the service of the statutory notice and lapsing of the reservation under section 127 of the Act that the Commissioner of Respondent No.2 had sent the proposal for acquisition of the land to the Collector, Nashik. He has submitted that inspite of several representations of the Petitioners, the Respondents had failed to issue Notification / declaration of lapsing of reservation under the Act. He has also submitted that the mere change in reservation in the new DP plan cannot revive the lapsed reservation. He has relied upon the judgment of the Supreme Court in ***Godrej and Boyce Manufacturing Company Ltd. Vs. State of Maharashtra and Ors.***¹ in support of the contention that it is not open for the Respondents to rely upon a modified Development Plan which adds a new reservation on the lands after the expiry of the prescribed period under Section 127 of the Act and lapsing of the reservation.

1 (2015) 11 SCC 554.

7. The learned counsel appearing for the Respondent Nos. 2 and 5 and the learned AGP for Respondent Nos. 1, 3 and 4 in both Petitions have supported the impugned action. The learned counsel for the Respondent No.2 & 5 has submitted that the reservation of the land had changed to public amenity in the new development plan approved on 9th January, 2017 in the first Petition. He has submitted that the Petition was filed on 1st November, 2017 on which date the new Development Plan had come into existence. He has submitted that the reservation for public amenity has taken into consideration the requirement for the next 20 years and the purpose of reservation having changed, the Petitioner cannot contend that the reservation had lapsed. Accordingly, this Petition is liable to be dismissed. He has also relied upon proposal which had been forwarded by the Respondent No.2 – Corporation to the Collector, Nashik and submitted that the proposal was pending for joint measurement of the land. He has submitted that since the proposal for acquisition of the land in the second Petition is for a 60 meter DP Road for connecting the area beyond the railway lines, the lapsing of the reservation would run contrary to public interest.

8. We have carefully considered the submissions. We find that the reservation of the said lands have lapsed upon expiry of the prescribed period from service of the purchase notice under Section 127 of the Act. A mere proposal for acquisition of the lands sent by Respondent No.2 - Corporation to the Collector, Nashik and that to after the lapsing of the reservation cannot revive the lapsed reservation. The Supreme Court in ***Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher***² at paragraph 42 held thus:

***“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.*”**

9. In the present case, admittedly the Section 6 Notification had not been issued. The statutory notice under Section 127 of the Act was issued to the Respondents and it is clear from the said decision of the Supreme Court that the mere forwarding of proposal for acquisition by the Respondent No.2 – Corporation to

² Civil Application No. 2733 of 2013 decided on 1st April, 2013.

the Collector, Nashik is not a step taken for acquisition of the lands.

10. We find that the Respondent No.2 – Corporation has contended in the first Petition that the reservation of the land having changed in the new DP, there can be no lapsing of the reservation. The Supreme Court in **Godrej and Boyce Manufacturing Co. Ltd. (Supra)**, in paragraph 95 has held thus:-

“... once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner / interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided Under Section 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the Appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan form deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months notice served upon the State Government”.

11. It is thus clear that the Respondents having not commenced proceedings to acquire the lands by issuing Notification under Section 6 of the Land Acquisition Act during the prescribed period

under Section 127 of the Act, the purpose for which the lands had been reserved has lapsed and it enures to the benefit of the Petitioners. It is now not open for the Respondents to issue notification changing the reservation of the said land in the new DP after the reservation has lapsed.

12. We note that after the submissions of the parties, the learned counsel appearing for the Petitioners in both Petitions has made a statement that for a period of six months, the Petitioners will not develop their lands by treating the reservation of the land as having lapsed to enable the concerned authorities to take recourse to acquisition proceedings. We accept the statement. Accordingly we pass the following order:-

- (a) We order and direct Respondent No.1 to notify the lapsing of reservation of the Petitioners lands by order to be published in the official gazette as per the requirement of Section 127 (2) of the Act which shall be done as expeditiously as possible and in any event, within a period of six months from today.

- (b) We order and direct the Respondents to delete the Petitioners' lands from reservation as shown in the Development Plan sanctioned on 9th January, 2017;
- (c) We order and declare that the Petitioners in both the Petitions have, upon the notification of lapsing of reservation being published as directed in (a) above, the right to develop the lands as otherwise permissible in the case of the adjacent lands under the sanctioned Development Plan;
- (d) We accept the statement of the learned counsel for the Petitioners in both the Petitions that for a period of six months they will not alienate or develop their respective lands as otherwise permissible in the case of adjacent lands under the Development Plan by treating the reservation of the lands as lapsed.
- (e) Rule is made absolute on the above terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)