

Sharayu Khot.

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

WRIT PETITION NO. 11888 OF 2013

WITH

CIVIL APPLICATION NO. 886 OF 2016

IN

WRIT PETITION NO. 11888 OF 2013

Smt. Ulka Vijay Mirajkar

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr Saurabh M. Railkar, i/by Gangadhar Janardan Sabnis, for the
Petitioner/Applicant.

Ms. Nisha Mehra, AGP, for the Respondent No. 1-State.

Mr. Murlidhar Laxman Patil, for the Respondents No. 2 and 3.

Sharayu
Khot
Advocate
High Court
Bombay
11/9/2018 11:58 AM

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

**Reserved on : 23 July 2018
Pronounced on : 17 September 2018**

JUDGMENT : *(Per Riyaz I. Chagla, J.)*

1. The parties were put to the notice on 12th February 2018 that an endeavour shall be made to decide this Petition finally at the stage of admission. This Petition is accordingly taken up for final disposal.

2. The Petitioner by the present Petition is challenging the reservation No. 180 dated 17th November 1993 in respect of the Survey No. 27 Hissa No. 10B/2/1/ area 1147 sq.meters at Nashik Road, Deolali (for short “*the subject land*”) as being ultra virus the Constitution of India and liable to be struck off. The Petitioner is also seeking declaration that the said reservation No. 180 dated 17th November 1993 in respect of the subject land has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “*the said Act*”).

3. The Petitioner claims to be the owner of the subject

land. The Petitioner has stated that the subject land originally belonged to one Manubai Ughade and two others and the subject land was shown in the Development Plan 1970 for the public purpose of playground and D.P. Road. The subject land came within the area of Nashik Municipal Corporation after its formation in the year 1982. The original owner had issued purchase notice on 19th July 1989 to the Nashik Municipal Corporation under Section 127 of the said Act. The Petitioner purchased the subject land under a Sale Deed dated 27th June 1989. The Development Plan dated 17th November 1993 had again shown the subject land as demarcated for public purpose of playground and D.P. Road. The Petitioner had also issued a purchase notice on 6th January 2006 to the Municipal Corporation under Section 127 of the said Act and which was duly served upon them. It is the Petitioner's contention that the purchase notice had been issued as the Nashik Municipal Corporation was not granting necessary sanctions and permissions to the Petitioner for development on the ground that the said land continued to be under reservation. The

Petitioner's have contended that upon expiry of the prescribed period under Section 127 of the said Act from issuance of the purchase notice, the reservation of the subject land had lapsed. The Petitioner being aggrieved by the impugned action of the Respondents in showing the subject land under reservation, although the reservation having lapsed, thereby depriving the Petitioner's right to use, convert and/or deal with the subject land, has filed this Petition.

4. The learned Counsel appearing for the Petitioner has submitted that the original owner as well as the Petitioner issued purchase notices under Section 127 of the said Act, which were duly served upon the Respondent No. 2-Corporation. He has submitted that the purchase notice dated 6th January 2006 issued by the Petitioner is the relevant purchase notice for the purpose of this Petition. He submits that the Respondent No. 2-Corporation despite being served the purchase notice and having acknowledged the purchase notice by replying to the same vide their letter dated 25th May 2006, has failed to take

the requisite steps for acquisition of the subject land. He submits that upon expiry of the prescribed period under Section 127 of the said Act from the issuance of the purchase notice, the reservation of the subject land has lapsed. He has submitted that the Respondents are bound to act strictly in accordance with the settled law and issue the necessary declaration that the reservation of the subject land has lapsed and that the subject land has become available to the Petitioners for development, as otherwise permissible in case of adjacent lands under the Development Plan.

5. The learned AGP for the Respondent No. 1 and the learned Counsel appearing for the Respondents No. 2 and 3 have supported the impugned action of the Respondents and submit that the subject land is under reservation. The learned Counsel appearing for the Respondents No. 2 and 3 has submitted that the purchase notice issued by the Petitioner on 6th January 2006 is neither valid nor a proper notice. He has submitted that the land mentioned in the purchase notice is for

the entire land bearing Survey No. 27/18B/2/1 rather than the subject land which belongs to the Petitioner. He has submitted that in respect of the entire land mentioned in the purchase notice, the Respondents had taken various steps towards the acquisition of the land and that these steps have been taken prior to the issuance of the purchase notice. He has relied upon the Affidavit in Reply of Shri. Bhaskar Udhhavrao More, Estate Manager in Respondent No. 2-Corporation filed on behalf of Respondents No. 2 and 3, wherein the various steps alleged to be taken towards the acquisition of the land have been set out. It is stated in the said Affidavit by the Deponent that the Respondent No. 2-Corporation had made all possible efforts towards the acquisition of the subject land and that there appear to be obvious collusion between the Petitioner and the LAQ Officer/survey officer, TILR/ADTP, Nashik District and it was because of this the subject land had till date not been acquired. It is submitted that the LAQ Officer instead of issuing a declaration under Section 6 of the Bombay Land Requisition Act, 1948, had proceeded for measurement of the said entire

land and for submission of the map which went on for many years. It is submitted that it is failure of the LAQ Officer and the City Survey Officer to take prompt steps to acquire the lands, as the same are required for public purpose. It is further submitted that there is gross delay in filing the present Petition, as the subject purchase notice had been issued on 6th January 2006 under Section 127 of the said Act and this Petition has being filed in 2013 despite several steps towards the acquisition of the subject land having been taken by the Respondent No. 2-Corporation. The Affidavit refers to the new revised Development Plan sanctioned by the Government of Maharashtra on 9th January 2017 and wherein the reservation for playground continues on the subject land. The learned Counsel accordingly, submits that the Petitioner is not entitled for the relief in the Petition, as the reservation of the subject land had not lapsed.

6. We have considered the submissions. The purchase notice issued by the Petitioner on 6th January 2006, although

mentioning the entire land viz. Survey No. 27/18B/2/1 is a proper and valid purchase notice. The purchase notice has been acknowledged and replied to by the Respondent No. 2-Corporation and in the Reply, the subject land has been clearly mentioned. In the Reply to the purchase notice which is dated 25th May 2006, the Respondent No. 2-Corporation has stated that steps had been taken towards the acquisition of the entire land. However, in the Affidavit in Reply on behalf of the Respondents No. 2 and 3, it has been stated that the declaration/notification under Section 6 of the Land Acquisition Act, 1894 had not been issued and that only measurement of the subject land had been proceeded with. From the said Affidavit, it appears that the Respondents No. 2 and 3 have claimed that they had taken all possible steps towards the acquisition of the subject land, but it was due to alleged collusion between the Petitioner and the LAQ Officer/Officer TILR/ADTP, Nashik District that acquisition of the subject land had not been taken by issuance of the declaration under Section 6 of the Land Acquisition Act, 1894. It appears from the Affidavit in Rejoinder

of the Petitioner that there have been no steps taken towards the acquisition of the subject land pursuant to the purchase notice issued by the Petitioner under Section 127 of the said Act and it was only for the first time on 19th November 2010 that the Respondent No. 2-Corporation sent a letter to the Collector for issuing notification under Section 6 of the Land Acquisition Act, 1894. The notification has till date not been issued.

7. The Supreme Court in the case of ***Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Ors.***¹ has observed 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

¹ 2013(5) Mh.L.J. (S.C.) 492 : (2013)5 SCC 627

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 126 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."

8. It is apparent from the above decision that the steps contemplated in Sections 126 and 127 of the said Act for acquisition of the land shall be the publication of a declaration under Section 6 of the Land Acquisition Act, 1894. In the present case, admittedly a Section 6 Notification has not been

issued. Hence, advertent to the principles of law laid down by the Supreme Court in the aforesaid decision, it would be required to hold that reservation of the subject land in question has lapsed by operation of Section 127 of the said Act. Further, it is well settled that the subsequent reservation in a new revised Development Plan of 2017 cannot automatically revive the lapsed reservation.

9. We accordingly, pass the following order:-

- (i) We order and direct the Respondents to notify as expeditiously as possible and preferably within the period of six months from today, by order published in the Official Gazette as per Section 127(2) of the said Act that the reservation of the Petitioner's subject land viz. Survey No. 27 Hissa No. 10B/2/1/ area 1147 sq. meters at Nashik Road, Deolali has lapsed.

- (ii) We order and direct the Respondents to forthwith delete the Petitioner's subject land from the reservation as shown in the new revised Development Plan of 2017.
- (iii) We order and declare that the reservation of the Petitioner's subject land having lapsed, the subject land has become available to the Petitioner for the development as otherwise permissible in case of adjacent lands under the Development Plan.
- (iv) This Petition is disposed of in the above terms with no order as to costs.
- (v) Needless to state that the Civil Application filed in this Petition is also disposed of.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]