

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 615 OF 2017***

Parvatibai Shankar Durge & Ors.

Petitioners

Versus

State of Maharashtra & Ors.

Respondents

Mr.V.A.Shastry, for the Petitioners.

Mrs. M.P.Thakur, AGP, for the State.

Mr. A.A.Garge for respondent No.3.

CORAM : RANJIT MORE &

SMT. SADHANA S.JADHAV,JJ.

DATE :11th April, 2018.

P.C. :

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

2. The petition is filed seeking a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or direction under Article 226 of the Constitution of India for declaration that the land bearing Survey No.3 Hissa No.2 admeasuring 2015 sq. mtrs. situated at Village Nangargaon, Taluka Maval, within Municipal limits of respondent No.3 – Lonavala Municipal Council (hereinafter referred to as “the said land”) is

released from reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "the said Act").

3. The petitioner claims to be owner of the said land. The revised development plan of respondent No.3 – Lonavala Municipal Council was sanctioned by the Government on 20.1.1978 and the same came into force from 1.2.1978. In this plan, the said land is reserved for primary school and playground under Reservation No.56.

4. Since no steps for acquisition are taken within a period of 10 years, from 1.2.1978, the petitioner served notice dated 25.2.1988 under Section 127 of the said Act on Respondent No.3, calling upon them as well as the Appropriate Authority to acquire the said land. It is the case of the petitioner that no action is taken by Respondent No.3 within stipulated period and, therefore, subject reservation in the said land has lapsed.

5. On behalf of respondent No.3, Sachin Marutrao Pawar, Chief Officer of Lonavala Municipal Council has filed an affidavit dated 20.3.2018. Perusal of the same makes it clear that after expiry of period of one year from the date of Section 127 notice,

the petitioner had applied for permission to develop the said land twice and it was rejected. The affidavit further shows that though the proposals were made to the Collector by Respondent No.3 for acquisition of the said land, the Land Acquisition Officer insisted that respondent No.3 should deposit 50% of the compensation amount. Admittedly, this amount was not deposited by Respondent No.3 with the Collector and, therefore, no steps, much less issuance of the notification under Section 126 read with Section 6 of the Land Acquisition Act are taken by the Collector to acquire the land.

6. The issue involved in the present petition is considered by the Apex Court in **Shrirampur Municipal Council vs. Satyabhamabai Bhimaji Dawkher**[(2013) 5 SCC 627] . The Apex Court made the following observations in paras 42, 43 and 46 which are reproduced herein below :-

"42. We are further of the view that the majority in Girnar Traders 92) Vs. State of Maharashtra, 2008(1) Bom.C.R. 454 (S.C.) : (2007) 7 S.C.C.555 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 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 300-A of the Constitution.

46. As a sequel to the above discussion, we hold that the majority judgment in Girnar traders vs. State of Maharashtra, 2008 (1) Bom. C.R. 454 (S.C.) : (2007) 7 S.C.C. 555 lays down correct law and does not require reconsideration by a larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are accordingly dismissed."

Reading the above observations of the Apex Court makes it clear that the steps towards acquisition would really commence when the State Government takes active steps for acquisition of the particular piece of land which leads to publication of the declaration under section 6 of the old Land Acquisition Act.

7. Admittedly, no declaration under Section 6 of the old Land Acquisition Act is issued. The reservation of the said land is, therefore, lapsed.

8. The petition is allowed. The reservation No. 56 for the

purpose of “primary school and play ground” stands lapsed and the said land has become available to the owner of the said land for the purpose of development.

9. The State Government is directed to issue notification under Section 127 (2) of the M.R.T.P. Act within a period of six months from today.

10. Rule made absolute in the above terms and the petition is disposed of.

[SMT. SADHANA S.JADHAV, J.]

[RANJIT MORE, J.]