

Sharayu Khot.

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

WRIT PETITION NO. 283 OF 2014

Salim Nizam Sanadi & Ors.

...Petitioners

Versus

**Municipal Corporation,
Sangli, Miraj and Kupwad City
Municipal Corporation, Sangli & Ors.**

...Respondents

Mr. Rahimtulla Maheboob Momin, for the Petitioners.

Mr. Sudhir Prabhu, for the Respondent No. 1.

Mr. M.M. Pabale, AGP, for the Respondents No. 2 and 3.

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

Reserved on : 23 April 2018

Pronounced on : 5 June 2018

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

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

2. The Petitioners by the present Petition are seeking directions against the Respondents for removal of reservation on the land property S.No. 949/A/4/1 admeasuring area H 0.022.50 R situated in the municipal limits of Sangli Miraj Kupwad City Municipal Corporation within the boundaries of the Miraj City (for short "*the said land*") as having lapsed under Section 127 of the Maharashtra Region and Town Planning Act, 1966 (for short "*the said Act*"). The Petitioners have also sought consequential relief including cancellation of the Mutation Entry (M.E. No. 22082) and setting aside of the order dated 14 June 2013 by which the Respondents have rejected the Petitioners' layout plan of the property.

3. The Petitioners are the owners and occupiers of the said land. The Revenue record of the said land was bearing the names of the Petitioners who were recorded as the owners. M.E. No. 22082 dated 26 October 1995 came to be effected whereby the Petitioners' said land came to be shown as reserved by the Miraj Municipal Council (now Sangli Miraj Kupwada City

Municipal Corporation). The entry was effected by the order dated 11 October 1995 issued by the Chief Officer of the Miraj Municipal Council. In the year 1998, the present Sangli Miraj Kupwada City Municipal Corporation was formed and Miraj Municipal Council became part of it.

4. It is the Petitioners' case that after 1995 till date Respondent No. 1 neither acquired the said land nor paid compensation to the Petitioners. A purchase notice was issued by the Petitioners on 27 March 2012 and served upon Respondent No. 1 under Section 127 of the said Act on the same date requesting Respondent No. 1 to acquire the said land within the statutory period. However, till date there has been no response to the purchase notice. The Petitioners by an application dated 20 March 2012 informed the Respondent No.1 that the reservation was not necessary. The Petitioners state that the reservation of the said land has lapsed after expiry of the prescribed period from the service of the purchase notice under Section 127 of the said Act. The Petitioners had submitted a

layout plan of the property for sanction from Respondent No. 1 on 9 May 2013. However, this was rejected by the letter addressed by Respondent No. 1 on 14 June 2013 stating there was a reservation of primary school and playground on the eastern side of the said land. Being aggrieved by the inaction on the part of the Respondents to notify the lapsing of reservation on the said land and the impugned order dated 14 June 2013 rejecting the laying plan of the Petitioners, the Petitioners have filed the present Petition.

5. The Respondent No. 1 has filed Affidavits in Reply through one Shri. Prakash Ganpatrao Bhukte dated 31 December 2014 and one Shri. Vivek Hari Pendse affirmed on 18 April 2018. The Affidavit dated 18 April 2018 states that a notification had been issued by Respondent No. 3 on 4 April 2012 sanctioning the Revised Development Plan and the said land was again reserved for public purpose for primary school and playground under Reservation Site 378. It is stated that since the Revised Development Plan was sanctioned on 4 April

2012, the purchase notice dated 27 March 2012 is of no effect.

6. The learned Counsel appearing for the Petitioners has submitted that the reservation on the said land had been effected in the year 1995 and after 1995, Respondent No. 1 has taken no steps to acquire the said land and/or pay compensation to the Petitioners. He has submitted that the Petitioners have issued a legal and valid purchase notice dated 27 March 2012 to the Respondent No. 1 under Section 127 of the said Act. The Respondents have failed to acquire the said land within the prescribed period of 12 months from the service of the purchase notice. He has thus, submitted that the reservation on the said land has lapsed. He has submitted that Respondent No. 1 to whom the purchase notice has been served as well as the Application dated 20 March 2012 informing the Respondent No.1 as to how the reservation was not necessary has not been responded to till date. He has submitted that the Respondent No. 1 had wrongfully rejected the submitted layout plan of the said land which had been submitted by the Petitioners for

sanction on 9 May 2013 by the impugned order dated 14 June 2013. He has referred to the letter issued by Respondent No. 1 dated 25 November 2013 wherein it is stated that the reservation on the said land of primary school and playground subsists. He has submitted that since the purchase notice had been issued after the lapse of ten years of the reservation, the subsequent sanction of the Revised Development Plan would make no difference to the purchase notice which had been legally and validly issued, particularly since no steps were taken by the Respondents within the prescribed period of 12 months for acquiring the said land. He has placed reliance on a decision of this Court in *Uday Madhavrao Patwardhan & Ors. Vs. Sangli Miraj Kupwada City Municipal Corporation, Sangli & Ors.*¹

7. The learned Counsel appearing for the Respondent No. 1 and the learned AGP appearing for the Respondents No. 2 and 3 have supported the action of the Respondents as well as the impugned order dated 14 June 2013 passed by the

¹ *Writ Petition No. 9168 of 2013 Dated 9 January 2015*

Respondent No. 1. The learned Counsel appearing for the Respondent No. 1 has submitted that the purchase notice dated 27 March 2012 is no longer valid since prior to the expiry of the prescribed period of 12 months from service of the purchase notice on 27 March 2012 under Section 127 of the said Act, the notification had been issued on 4 April 2012 sanctioning the Revised Development Plan and the said land stands again reserved for public purpose i.e. for primary school and playground under the Reservation Site 378.

8. He has relied upon judgment of this Court in ***Prafulla C. Dave & Ors. Vs. Municipal Corporation, Pune & Ors.***² in support of his contention that the prescribed period under Section 127 of the said Act will commence from the date of notification sanctioning the Revised Development Plan and when the notification is issued prior to the expiry of the prescribed period of 12 months from service of the purchase notice, the purchase notice is no longer valid. In the decision of this Court in ***Uday Madhavrao Patwardhan*** (*supra*), the

² 2008(3) Mh.L.J. 120

purchase notice had been issued on 26 September 2008 and after the prescribed period under Section 127 of the said Act had expired, the Revised Development Plan was sanctioned on 4 April 2012. It was in the facts of that case that this Court held that by the Revised Development Plan, the rights accrued by the Petitioner by virtue of the purchase notice which is sought to be taken away, cannot be permitted. He has submitted that the subsequent reservation of the said land under the Revised Development Plan subsists and has not lapsed. He has further submitted that the impugned order dated 14 June 2013 has validly rejected the layout Plan submitted by the Petitioners for sanction.

9. We have considered the submissions. We find that Respondent No. 3 by a notification issued on 4 April 2012 sanctioned the Revised Development Plan and the said land was again reserved for public purpose viz. for primary school and playground under Reservation Site No. 378. The purchase notice had been issued on 27 March 2012 by the Petitioners and served

on the Respondent No. 1 on that date itself and prior to the expiry of the prescribed period of 12 months from the service of the purchase notice, the notification sanctioning the Revised Development Plan had been issued. Therefore, the reservation of the said land continued to subsist when the Revised Development Plan again reserving the said land for a public purpose come into force. It is clear from the Judgment of this Court in ***Prafulla C. Dave*** (supra) that the notification sanctioning the Revised Development Plan has to be given effect to and the period under Section 127 of the said Act would commence from the date of the notification. This Court in paragraph 16 to 18 held thus:-

“16. If the petitioners arguments are to be accepted, it would mean that once a land was reserved and a plan notified under Section 21, even if the owners took no steps under Section 127 or Section 49 and thereafter there is a revised plan notified under Section 38, either having the same reservation or a different reservation, for the purpose of Section

127, the period of serving the notice would commence not from the notification of the revised development plan, but from the issuance of the final notification under Section 29(6) of the M.R.T.P. Act of the first plan. As we have already noted while preparing the plan under Section 38 the provisions of Section 31 are also made applicable as also Section 29.

Therefore, whether it has been initiated under Section 21 or the revision initiated under Section 38, by virtue of sub-Section (6) of Section 31, the plan as finally notified is a final development plan. The expression 'final development plan' in Section 127 has to be read in that context. If not so read, it would lead to defeating the scheme of the Act.

- 17. The owners may take no steps to get the land deserved if not acquired during the life time of the*

plan as notified. At the time the new plan was under consideration, the planning authority finding the land not developed and considering what is contained in Section 22 finds that a public purpose subsists or land is required for some other public purpose continues the reservation or provides for a different reservation to serve public purpose after hearing the objections filed or not taken by the land owner. The planning authority, development authority or appropriate authority as the case may be would have no time to take steps to acquire the land if the period to be counted is not the date of notification of the revised development plan but the plan as first notified after the Act came into force. The time cannot be read from the point of nature of reservation whether continued or not. What happens if the reservation is different or the reservation is for a different authority as specified

in Section 127, will the notice commence from the date of the first notified plan or the subsequent revised plan. A section cannot be read differently in the absence of express or implied language. It will have to be given one harmonious construction. In this context, we may reproduce the observation of the Supreme Court in K.L. Gupta (supra). This is what the Supreme Court observed and we quote from para 35:-

“...No one can be heard to say that the local authority after making up its mind to acquire land for a public purpose must do so within as short a period of time as possible. It would not be reasonable to place such a restriction on the power of the local authority which is out to create better living conditions for millions of people in a vast area. The finances of a local authority are not unlimited nor have they the power to

execute all schemes of proper utilisation of land set apart for public purposes as expeditiously as one would like. They can only do this by proceeding with their scheme gradually, by improving portions of the area at a time, obtaining money from persons whose lands had been improved and augmenting the same with their own resources so as to be able to take up the improvement work with regard to another area marked out for development. The period of ten years fixed at first cannot therefore be taken to be the ultimate length of time within which they had to complete their work. The legislature fixed upon this period as being reasonable one in the circumstance obtaining at the time when the statute was enacted. We cannot further overlook the fact that modifications to the final development

plan were not beyond the range of possibility.

We cannot therefore hold that the limit of time fixed under Section 4 read with Section 11(3) forms an unreasonable restriction on the rights of a person to hold his property."

18. *Legislature advisably has chosen to provide a time limit within which the steps have to be taken for acquisition. The same cannot be defeated by reading the plan notified under Section 38 as not a final development plan. We are of the opinion that the plan notified under Section 38 is also a final development plan as all the procedure for preparation and notification have to be taken de novo. The period, therefore, under Section 127 would commence from the date of the notification of the revised plan prepared under Section 38 and as notified under Section 31(6). Considering the above, the notice is premature."*

10. It is therefore, clear that from this Judgment that the notification sanctioning the Revised Development Plan is treated as final Development Plan and therefore, the prescribed period under Section 127 of the said Act would commence from the date of notification sanctioning the Revised Development Plan prepared under Section 38 of the said Act and notified under Section 31(6) of the said Act. In the present case, the subsequent reservation of the said land by the sanctioned Revised Development Plan would be the fresh starting point of the period prescribed under Section 127 of the said Act, particularly since the period had not expired from the service of the purchase notice. Therefore, in our view, since the period prescribed under Section 127 of the said Act from service of the purchase notice dated 27 March 2012 had not expired when the Revised Development Plan was sanctioned on 4 April 2012, the reservation of the said land has not lapsed.

11. The decision of this Court in ***Uday Madhavrao Patwardhan*** (supra) is distinguishable as in

paragraph 14 of the said decision, this Court held thus:-

“14. Therefore, the scenario which emerges is that the law laid down by the Division Bench in the case of Baburao Salokhe (supra) will squarely apply to this case. The revised D.P was sanctioned on 4th April 2012. Before the date of sanction of revised D.P., on the basis of the notice dated 26th September 2008, the reservation imposed under the original sanctioned D.P stood lapsed by operation of section 127. It is an admitted position that the reservation under the revised D.P is the same as the one under the sanctioned D.P which had lapsed. Therefore, by the revised D.P, the right accrued to the petitioner by virtue of the notice dated 26th September 2008 is sought to be taken away. It is not permissible to do so in view of the law laid down by the Apex Court and this Court. Therefore, the reservation of the said lands in the revised D.P

for “Housing for Dishoused & E.W.S. Housing” will have no legal effect.”

It is clear from the above decision that the reservation of the Development Plan was sanctioned after the expiry of the prescribed period from the service of the purchase notice under Section 127 of the said Act and by which time, the reservation of the land had already lapsed. In the present case, it is clear from the facts that the reservation of the said land had not lapsed, when the Revised Development Plan was sanctioned by issuance of a notification by the Respondent No. 3.

12. We accordingly, are of the considered view that the reservation of the said land has not lapsed under Section 127 of the said Act and that the impugned order dated 14 June 2013 is a valid order. Accordingly, the Writ Petition fails and is dismissed with no order as to costs.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]