

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11452 OF 2018

M/s Trimurty Enterprises,
A registered Partnership Firm,
Through its Partner,
Mrs. Sugandha w/o. Laxman Pethe,
Age : 82 Years, Occu. Business,
R/o. 16, Patliputra, Deshpande Puram,
Karve Road, Pune

...Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai-32
2. The Director of Town Planning Department
Maharashtra State, Pune.
3. Aurangabad Municipal Corporation,
Through its Municipal Commissioner,
4. Assistant Director of Town Planning,
Municipal Corporation, Aurangabad,
Aurangabad.
5. The District Collector,
Aurangabad.

...Respondents

Mr. D.P. Palodkar, Advocate for Petitioner
Mr. S.K. Tambe, Assistant Government Pleader for
Respondent Nos. 1, 2 and 5
Mr. S.G. Chapalgaonkar, Advocate for Respondent No. 3

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATE : 11th APRIL, 2019

ORAL JUDGMENT [PER S. V. GANGAPURWALA, J.]

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at admission stage.

2. The part of the land of the petitioner bearing Survey No. 26/3/2 is reserved for play ground and primary school as reservation site Nos. 144 and 145 totally admeasuring 8154 sq.mtrs. The development Plan of Aurangabad is revised on 18.04.2001. The petitioner issued notice U/s. 127 of the Maharashtra Regional Town Planning Act, 1966 (for short MRTP Act) on 13.06.2011. The Municipal Corporation in the year 2011 rejected the said notice. The petitioner filed Writ Petition No. 9356/2011 challenging the rejection of the notice U/s. 127 of the MRTP Act. The petition was premature as the notice period had not lapsed, this Court under order dated 05.05.2012 observed that the effect of the notice as well as legality can be considered only after lapse of 12 months. It appears that the petitioner on 14.06.2012 filed an application seeking development permission. The same is not considered. Hence, the present Writ Petition.

3. Mr. Palodkar, the learned Counsel for the petitioner submits that the consequences upon the steps not being taken for acquisition upon service of notice U/s. 127 of the MRTP Act are axiomatic. Upon the lapse of the period stipulated U/s. 127 of the

MRTTP Act after service of the purchase notice, the reservation stands lapsed. The learned Counsel submits that the respondents have not published any Notification U/s. 126 of the MRTTP Act read with Section 19 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and as such, reservation stands lapsed. The reliance is placed by the learned Counsel for the petitioner on the Judgment of the Apex Court in the case of ***Girnar Traders Vs. State of Maharashtra and Ors. reported in (2007) 7 SCC 555.***

4. Mr. Chapalgaonkar, the learned Counsel for the respondent Municipal Corporation submits that the reservation for play ground and for primary school under reservation site Nos. 144 and 145 are distinct and separate. Site No. 144 is reserved for primary school and site No. 145 is reserved for play ground. Area admeasuring 41 R is reserved for play ground. Mr. Chapalgaonkar, the learned Counsel for the Corporation further submits that the reservation for the play ground cannot lapse even after the service of notice U/s. 127 of the MRTTP Act. The learned Counsel refers to the Judgment of the Apex Court in case of ***Municipal Corporation of Greater Mumbai Vs. Hiranman Sitaram Deorukhar in Civil Appeal No. 11258/2017 (Arising out of SLP(C) NO. 30524 of 2014) decided on August 24, 2017.***

5. The learned Counsel further submits that the land for primary school and playground would be required by the Municipal Corporation.

6. The Apex Court in a case of *Municipal Corporation, Greater Bombay Vs. Hiranman Sitaram referred supra* has observed as under :-

8. The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanization. It is in the public interest to avoid unnecessary conversion of open spaces land' to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection.

7. It has been further observed by the Apex Court in the aforesaid Judgment that the legislative intent behind provision of the MRTP Act, by inaction of the planning authority could not be permitted to become a statutory mockery. The authorities were bound to act with circumspection and timely steps ought to have

been taken to issue the requisite declaration as per the development plan. The Judgment of the Apex Court in case of *Municipal Corporation, Greater Bombay Vs. Hiranman* has been considered by the Division Bench of this Court in case of ***Satish Prakash Rohra and Anr. Vs. Municipal Corporation, Greater Mumbai and Ors. Writ Petition No. 2093/2015 decided on August 2, 2018.*** This Court considered the provision of Section 127 of the MRTP Act and the Judgment of the Apex Court in case of *Municipal Corporation, Greater Bombay (supra)* and observed that the reservation upon the expiry of the period stipulated in the notice U/s. 127 of the MRTP Act would axiomatically lapse, if no steps for acquisition are taken within the stipulated period. However, in view of the Judgment of the Apex Court gave liberty to the Planning Authority to acquire the property within a period of one year.

8. The consequences upon the inaction of the planning authority in taking steps for acquisition of the land reserved for any purpose specified in the plan within the period stipulated in Section 127 of the MRTP Act, after service of notice is axiomatic. The reservation, allotment or designation is deemed to have lapsed and the land is available to the owner for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.

9. The provision of Section 127 of the MRTP Act is fetter on the power of eminent domain. The right to property though is not a fundamental right still is a constitutional right. Nowadays, right to property is brought within the contour of Human right. The balance will have to be struck between the individual right and the rights of the public at large. Play ground is meant for use and enjoyment of the general public viz. for whole society and the community at large. Open spaces, playgrounds, gardens are the lungs of the city. They are necessary for maintaining the environmental and ecological balance. The principle of *Salus populi suprema lex* can be referred to. Balance has to be struck between the rights of the petitioner vis a vis. the necessity to have open land.

10. The reservation site No. 145 for the play ground stands lapsed. However, the petitioner shall not perform any activity on the said land for the period of one year. The Municipal Corporation is entitled to acquire the said land under the provisions of the statute within this period. If the Municipal Corporation fails to acquire the land within a period of one year, then the said land would be available to the petitioner for use in the same manner as the use of the adjacent land is permitted.

11. The reservation of primary school is concerned, admittedly, no steps for acquisition has been taken within a

stipulated period. In view of that, reservation for the primary school i.e. reservation site No. 144 stands lapsed. The petitioner is entitled to use the said available in the same manner as the use of the adjacent land is permitted.

12. The Rule is accordingly made absolute in above terms. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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