

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14971 OF 2017

Manish Ishwarlal Jain,
Age : 48 years, Occu. Business,
R/o Johari Bajar,
Jalgaon, Dist. Jalgaon
Through Power of Attorney Holder
Ishwar Bhagwan Warade,
Age : 52 years, Occu. Business
R/o Johari Bajar,
Jalgaon, Dist. Jalgaon

.. Petitioner

Versus

- 1] The State of Maharashtra
Through the Secretary,
Ministry of Urban Development
Mantralaya, Mumbai – 32
 - 2] Director of Town Planning,
Maharashtra State, Pune
 - 3] Deputy Director of Town Planning,
Nasik Division, Nasik
 - 4] Assistant Director, Town Planning,
Jalgaon
 - 5] District Collector,
Jalgaon, Dist. Jalgaon
 - 6] North Maharashtra University,
Through its Vice Chancellor / Registrar
University Campus, Jalgaon
- .. Respondents

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Mr. A.P. Bhandari, Advocate for petitioner
Mr. S.S. Dande, AGP for respondent - State
Mr. Y.B. Bolkar, Advocate h/f. Mr. A.B. Girase, Advocate for
respondent no. 6
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.

DATE : 17-06-2019

ORAL JUDGMENT (*PER - SUNIL P. DESHMUKH, J.*) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. Writ petition has been moved seeking writ of mandamus or writ in the nature of mandamus to release and de-reserve an area of 89.10 *Are* land bearing *gat* no. 296 at village Bambhori (Bk), taluka and district - Jalgaon situated within area limits of Jalgaon municipal corporation and to permit petitioner to develop said piece of the land, as if it had not been reserved with further mandamus to the government authorities to issue notification in terms of section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the MRTP Act**").

3. Succinctly stated, there is no dispute that petitioner is owner of land bearing *gat* no. 296 Bambhori falling within area limits of Jalgaon municipal corporation.

4. A part of said landed property owned by petitioner, to be precise an area of 89.10 *Are* came to be reserved under changes those occurred in 2002-2003 to the regional development plan which had been approved in 1992.

5. Since reservation as above, no further progress had taken place. Petitioner around 2013, had moved respondent no. 6 – University, seeking no objection to develop said reserved land and it appears that respondent no. 6 even had mooted such proposal with the government. However, according to learned counsel for respondent no. 6, subsequently said proposal had been withdrawn under a resolution and that no communication had been received from the state government with respect to the proposal.

6. For quite long time thereafter, no progress to acquire reserved land had taken place and petitioner had issued a notice dated 02-09-2015 to respondent no. 6 pursuant to section 127 of the Maharashtra Regional and Town Planning Act, 1966. Thereupon, on 28-04-2016, it appears that respondent no. 6 had submitted a proposal to district collector, Jalgaon requesting for acquisition of the land. Said proposal of respondent no. 6 had been responded to by respondent no. 5 by issuing guidelines. There had been no further progress beyond payment of fees by respondent no. 6 for measurement and respondent no. 6 purportedly communicated petitioner that steps have been taken for acquisition of land and thus, the petition has been filed.

7. Learned counsel Mr. Bhandari submits that no step for acquisition, in-fact and in law, had ever been taken by respondents. Correspondence between respondent no. 5 and respondent no. 6 would not be "step" of acquisition, as required. He submits that there are lot of decisions in this respect.

He purports to draw attention to supreme court decision in the case of *Girnar Traders Vs. State of Maharashtra and others* reported in (2007)7 S.C.C. 555 and goes on to submit that observations from the same have been referred to and relied on in similar circumstances in a writ petition bearing no. 3626 of 2006 (*Shivram Kondaji Sathe Vs. State of Maharashtra*) decided by a division bench of this court on 09-02-2009 and submits, observations quoted therein on all fours would apply to the present facts and circumstances. He submits, it is not a case by respondents at all that any declaration under section 6 of the Land Acquisition Act, 1894 or for that matter, clause (c) of section 126 of the Maharashtra Regional and Town Planning Act, 1966 had ever been followed. No declaration under section 6 had taken place and mere application to the state government for acquisition would not amount to a "step" as observed by supreme court. He submits that supreme court has vividly referred to that steps towards acquisition would commence when the state government permits

acquisition and as a result thereof, publishes declaration under section 6 of the Land Acquisition Act, 1894. He submits that no such declaration is placed on record on behalf of respondents. He further purports to refer to paragraphs no. 59 to 82 therein and submits that those observations still hold good and there is no substance in the request made on behalf of respondent no. 6 under the present writ petition.

8. On the other hand, learned counsel Mr. Bolkar holding for Mr. Girase, learned counsel for respondent no. 6 vehemently submits that land has been reserved for educational purpose i.e. for university and university is in dire need of the reserved land and while notice had been received at the end of respondent no. 6, it had accordingly moved the state government for acquisition and government had also given a positive inclination in this respect as would emerge from the response. He submits that ostensibly may be there is no declaration as yet, but looking at the purpose for which the land is reserved and is sought to be acquired being education, it should receive its due.

He submits that analogy can be drawn from the supreme court judgment in the case of *Municipal Corporation of Greater Mumbai V. Hiranman Sitaram Deorukhar* reported in 2017 SCC OnLine 1739. He submits that subject in said civil appeal had been reservation of open spaces and garden. Supreme court in said case had

considered protection of environment and reduction of the effects of urbanization should be given precedence over disabilities for movement for acquisition by authority. He submits that education is also quite important subject and the land is reserved for the same, similar treatment should be received in present petition as given by supreme court in the said case.

9. Thus, the position emerges that said land had come under reservation in 2003. For 10 years, there had been no movement for acquisition nor does it appear that even after notice pursuant to section 127 had been issued on behalf of petitioner, within a period of twenty four months, beyond correspondence between respondents no. 5 and 6, no further progress reaching the declaration has been made, as observed by supreme court in the *Girnar Trader's* case (supra) had taken place. Section 127 of the Maharashtra Regional and Town Planning Act, 1966 reads, thus,

“ 127. *Lapsing of reservation*

*(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is **not acquired by agreement within ten years** from the date on which a final Regional plan, or final Development plan comes into force or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if **within twenty-four months** from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon*

the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation or any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette. ”

10. In *Shivram Sathe Vs. State of Maharashtra and others*, judgment of supreme court in *Girnar Trader's case* (supra), is cited in paragraph no. 7 thereof, wherein it is observed, thus,

“ 57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. **Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.**

59. There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1)(c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

60. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different

steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority. ”

In paragraph no. 8 of *Shivram Sathe's* case (supra) it is observed, thus,

“ 8. From the above Paragraphs, it is crystal clear that the objection raised by the respondents cannot sustain in law. It has been specifically held by the Supreme Court that the step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It has been specifically held by the Supreme Court that “It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.”

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9. Considering the above mentioned fact situation, we allow the present petition in terms of prayer Clause (B), (C) and (D) which reads as under:

(B) To declare the reservation on the land of petitioners is lapsed i.e. the land is de-reserved.

(C) To direct the respondents to take effect to the dereservation of land in its records so as the petitioners will develop the land.

(D) To direct the respondents to permit the petitioners to develop the land in accordance with law.

No order as to the costs.

Rule made absolute in above terms.

Petition allowed. ”

11. Over and above this, the State government in its reply, does not make reference to any step of acquisition having been taken as referred to by supreme court and as contained in section 127 of MRTP Act. It further in paragraph no. 10 unequivocally refers to that respondent no. 6 had conveyed to respondent no.5 about proposal for acquisition. Affidavit of the government goes on to state that proposal had been moved within stipulated time. However, there is no reference to or any averment about step of acquisition had ever been taken thereafter.

12. Though learned counsel for respondent no.6 has submitted to take into account the decision of supreme court in the case of *Municipal Corporation of Greater Mumbai* (supra), it is difficult to draw analogy from the same to apply in the present facts and circumstances which are apart. Having regard to various decisions and the one in *Shivram Sathe Vs. State of Maharashtra and others*, statutory effect would follow.

13. After notice had been served by petitioner on

respondents pursuant to section 127 of MRTP Act, it appears that correspondence ensued between respondents no. 5 and 6 and reference to same has also been made in affidavit-in-reply on behalf of respondent no.5, yet, the same would not be said to qualify to be "steps", as referred to under section 127 of MRTP Act and aforesaid decisions. Section 127 refers to acquisition by agreement or by publication of declaration under sub-sections (2) or (4) of section 126 in official gazette as have been referred to in the decision by supreme court. Section 127 declares that if land is not acquired or no steps as aforesaid are commenced, the reservation shall be deemed to have lapsed. In view of aforesaid, by operation of law, reservation over the petitioner's land stands lapsed and the land stands released from reservation and would be available to the owner for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.

14. Thus, we deem it appropriate to allow the writ petition. Writ petition accordingly succeeds. Same is granted in terms of prayer clauses (B) and (C) and is disposed of.

15. Rule is made absolute accordingly.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/