

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6027 of 2017

- | | | |
|----|----------------------------|--------------------------------|
| 1) | Dilip Yashwant Atre |] |
| | age 62, Occup. Chartered |] |
| | Accountant, |] |
| | |] |
| 2) | Smt. Meera Yashwant Atre | |
| | Age 87, Occup. Housewife, |] |
| | |] |
| 3) | Girish Yashwant Atre | |
| | age 53, Occup.business. |] |
| | |] |
| 4) | Kanchan Chandrashekhar |] |
| | Vingkar, age 64, Occup. |] |
| | Housewife, All R/o 2014/7, |] |
| | Prashanti Apartment, |] |
| | South Sadar Bazar, Solapur |] |
| | 413 003. |] |
| | | <u>....PETITIONERS.</u> |

Versus.

- | | | |
|----|----------------------------------|----------------------------|
| 1) | State of Maharashtra, |] |
| | through the Principal Secretary, |] |
| | Urban Development Department, |] |
| | Government of Maharashtra, |] |
| | Mantralaya, Mumbai-400 032. |] |
| 2) | The Solapur Municipal |] |
| | Corporation, Indrabhuvan, |] |
| | Solapur- 413 001. |] |
| 3) | The Municipal Commissioner, |] |
| | Solapur Municipal Corporation, |] |
| | Indrabhuvan, |] |
| | Solapur 413 001. |] |
| | | <u>RESPONDENTS.</u> |

Dr. Ramdas P. Sabban a/with Mr. Pravin Sabban for
the Petitioners.
Mr. Anand Shrikant Kulkarni for respondent Nos. 2 &
3.
Mrs. M.P. Thakur, AGP for State.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

RESERVED ON :- 20th MARCH, 2019.

PRONOUNCED ON :- 29th MARCH, 2019.

JUDGMENT [PER: B. P. COLABAWALLA, J.]

1. Rule. Respondents waive service. By consent of
parties, rule made returnable forthwith and heard finally.

2. By this writ petition, the petitioners seek a
declaration that the petitioners' land reserved under the
Development Plan of Solapur 1997-2017 for a Children's Play
Ground being reservation No.13/87, admeasuring 0-H 20-R,
situated at Survey No. 54/1C+5B, village Majrewadi, Tal. North
Solapur, District Solapur (for short **"the said property"**) has
lapsed as per the provisions of Section 127 of the Maharashtra
Regional and Town Planning Act, 1966 (for short **"the MRTP
Act"**). The consequential prayer sought is directing the

respondent Government to forthwith notify the lapsing of the said reservation in the Official Gazette as required under Section 127 (2) of the MRTP Act.

3. The brief facts that give rise to the present controversy are that the petitioners are the citizens of this country residing at Solapur and claiming to be the owners of the said property. Respondent No.1 is the State of Maharashtra through the Principal Secretary, Urban Development Department, Government of Maharashtra. Respondent No.2 is the Solapur Municipal Corporation who is the Planning Authority under the MRTP Act and Respondent No.3 is the Municipal Commissioner of the said Corporation.

4. The Government of Maharashtra vide its Notification dated 28th October, 2004 (Exhibit "A" to the petition) sanctioned the Draft Development Plan for Solapur for 1997-2017 which was brought into effect from 15th December, 2004. This Development Plan was submitted to the Government for its approval by the Solapur Municipal Corporation (respondent No.2 and which is the Planning

Authority). Under the said Development Plan, the said property of the petitioners was reserved for a Children's Play Ground. Due to this reservation, the petitioners were unable to sell the said land at the current market value which was drastically reduced. In these circumstances, the petitioners, as land owners, initially gave a purchase notice dated 24th November, 2009 to the Government under Section 49 of the MRTP Act. Thereafter, the Solapur Municipal Corporation (respondent No.2) passed a Resolution No. 110 dated 18th June, 2010 stating therein that it should purchase the said property and pay compensation within a period of six months or release the same from reservation. Despite this, no further action was taken.

5. In these circumstances, the petitioners, as the land owners, served a notice dated 26th June, 2015 (Exhibit "C" to the petition) on respondent No.2 as the Planning Authority as provided under Section 127 of the MRTP Act. In reply to the aforesaid notice, respondent No.2 vide its letter dated NIL July, 2017 intimated to the petitioners to remove the encumbrances on the said property (of the Bank of

Maharashtra, Navi Peth Branch, Solapur and Cosmos Co-operative Bank Ltd.) without which respondent No.2 cannot proceed further with the said notice.

6. It is not in dispute that the said property and on which the reservation was clamped, has not been acquired either by agreement, or steps for its acquisition have not been commenced by publishing a declaration under sub-section (2) or sub-section (4) of Section 126 in the Official Gazette, within a period of ten years from the date on which the said Development Plan 1997-2017 came into force. In other words, it is not in dispute that no such acquisition has taken place from 15th December, 2004 (which is the date from which the Development Plan of 1997-2017 of Solapur was brought into force), till date. It is in these circumstances, that the said notice dated 26th June, 2015 was served by the petitioners on respondent No.2 being the Planning Authority and in this background the relief of lapsing of reservation is sought in the Writ Petition.

7. In this factual backdrop, the learned Counsel

appearing on behalf of the petitioners submitted that as per the provisions of Section 127 of the MRTP Act, if the said property was reserved under the said Development Plan and was not acquired by agreement or acquisition proceedings were not commenced by publishing a declaration under sub-section (2) or sub-section (4) of Section 126 within a period of ten years from 15th December, 2004 (the date on which the said Development Plan came into force), then the petitioners were entitled to serve a notice upon respondent No.2 to acquire the said property. If the said property was not acquired or no steps were commenced for its acquisition within a period of 12 months from the date of service of such notice, the reservation shall be deemed to have lapsed and the said property shall be deemed to be released from such reservation, was the submission. The learned Advocate appearing for the petitioners submitted that in the facts of the present case, admittedly, more than ten years have lapsed from the date when the said Development Plan of Solapur was brought into force. Neither the said property had been acquired by agreement or by publication of a declaration as contemplated under sub-section (2) or sub-section (4) of Section 126 of the

MRTTP Act. It was in these circumstances that the petitioners served the said notice dated 26th June, 2015 on respondent No.2 (the Planning Authority) for acquiring the said property. Despite service of this notice, the Planning Authority did not acquire the said property (as contemplated under section 127) within a period of 12 months from the date of service of such notice, and therefore, the reservation is deemed to have lapsed. Considering these facts, the learned Advocate submitted that the petitioners were entitled to the reliefs sought for in the writ petition.

8. On the other hand, the learned Advocate appearing on behalf of respondent Nos. 2 and 3 submitted that the legal provisions as set out in Section 127 of the Act regarding lapsing were not applicable as the said respondents had replied to the said notice and have shown their intention of acquisition of the said property by offering TDR or FSI in lieu of acquisition. In spite of this, the petitioners did not turn up for getting the TDR or FSI in lieu of acquisition and therefore on this ground alone the petition ought to be dismissed.

9. We have heard the learned Counsel for the parties at length and have perused the papers and proceedings in the writ petition. The entire controversy in this petition revolves around Section 127 of the MRTP Act which reads thus :

“127. Lapsing of reservations:-

- (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 twelve 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 of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.”**

10. Section 127 (1) stipulates that if any land reserved, allotted or designated for any purpose specified in any plan under the MRTP 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 a notice along with 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 calling upon them to acquire it. If within twelve 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 the adjacent land under the relevant Plan. In other words, what Section 127 (1) *inter alia* provides is that if any land is reserved for any purpose (in a final Regional plan, or final Development Plan) and the same is not acquired by agreement or no acquisition proceedings in relation thereto are commenced by publishing a declaration under Section 126

(2) or 126 (4), then the owner of the land would be entitled to give a notice to the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority asking them to acquire the said land. If the land is not acquired by the concerned authority within twelve months from the date of service of such notice, the reservation is deemed to have lapsed. Section 127 (2) of the MRTP Act stipulates that on the lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.

11. In the interpretation that we have taken with reference to Section 127, we are supported by a decision of the Supreme Court in the case of **Girnar Traders vs. State of Maharashtra [(2007) 7 SCC 555]**. Paragraphs 30, 31 and 32 of the said decision read thus:-

“30. Section 127 of the MRTP Act which requires consideration in the present case is a provision which provides, as is clear from its heading itself, for lapsing of reservation of the lands included in the development plan. The development authority for utilisation of the land for the purpose for which it is included in the plan has to take steps and do things within the period stipulated in a particular span of time, the land having been reserved curtailing the right of the owner or its user. Section 127 reads as under:-

“127. *Lapsing of reservations.*—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 proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the planning authority, development authority or as the case may be, appropriate authority to that effect; and if within six 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.”

31. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTTP Act or under the LA Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the

reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word “aforesaid” in the collocation of the words “no steps as aforesaid are commenced for its acquisition” obviously refers to the steps contemplated by Section 126 of the MRTP Act.

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.”

12. In fact, in this very decision, the Supreme Court has very eloquently set out the spirit and purpose of Sections 126 and 127 of the MRTP Act. The Supreme Court has inter alia opined that the salutary principles laid down in Section 126 read with Section 127 are to safeguard a citizen against arbitrary and irrational executive action which, in fact, may not result in acquisition of the land for a longer period. When Section 126 and 127 of the MRTP Act are read conjointly, it is apparent that the legislative intent is to expeditiously acquire the land reserved and therefore various periods have been

prescribed for acquisition of the owner's property. It is in these circumstances that Section 127 permits inaction on the part of Acquiring Authority for a period of ten years for dereservation of the land. Not only that, it gives a further time to either acquire the land or take steps for acquisition of the land within a period of twelve months from the date of service of the notice by the land owner for dereservation. The Supreme Court opined that the underlying principle envisaged in Section 127 of the MRTP Act was either to utilize the land for the purpose for which it was reserved within a time bound programme, or left the owner to utilize the land for the purpose it was permissible under the Development Plan after dereservation. The Supreme Court opined that failure of the Authorities to take steps which result in actual commencement or acquisition of the 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 the 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, was the conclusion reached by the Supreme Court. The

relevant observations and conclusions of the Supreme Court on this issue have been very eloquently set out in several paragraphs which read thus:-

“36. It is contended by Shri Soli J. Sorabjee and Shri U.U. Lalit, learned Senior Counsel appearing for the appellants, that the intent and purpose of Section 127 of the MRTP Act is the acquisition of land within six months or the steps are taken for acquisition of the land within six months, which could only be when a declaration under Section 6 of the LA Act is published in the Official Gazette. It is submitted by the learned Senior Counsel that the words “if within six 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” are not susceptible of a literal construction and the words have to be given a meaning which safeguards a citizen against arbitrary and irrational executive action which, in fact, may not result in acquisition of the land for a long period to come. It cannot be doubted that the period of 10 years is a long period where the land of the owner is kept in reservation. Section 127 gives an opportunity to the owner for dereservation of the land if no steps are taken for acquisition by the authorities within a period of six months in spite of service of notice for dereservation after the period of 10 years has expired.

37. While interpreting the purpose of Section 127, this Court in Municipal Corpn. of Greater Bombay v. Dr. Hakimwadi Tenants' Assn. [1988 Supp SCC 55] has said: (SCC p. 63, para 11)

“11. ... It cannot be doubted that a period of 10 years is long enough. The development or the planning authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly

followed.”

The Court also said: (SCC p. 61, para 8)

“8. While the contention of learned counsel appearing for the appellant that the words ‘six months from the date of service of such notice’ in Section 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a development plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain.”

54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay case [1988 Supp SCC 55] . If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of

six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of “eminent domain”. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. 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 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.

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.

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for

acquisition are commenced.

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.

61. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4).”

13. In the facts of the present case, admittedly, ten

years have lapsed since the said Development Plan came into force. Despite this, admittedly, no steps have been taken for acquisition of the said property till date from the date of service of the said notice on respondent No.2 as contemplated under Section 127 (1) of the MRTP Act. As mentioned earlier, the said property has neither been acquired by an agreement nor any steps have been taken for commencement of its acquisition by publishing a declaration either under Section 126 (2) or Section 126 (4) of the MRTP Act. This is an admitted position. This being the case, as per the provisions of Section 127 (1) of the MRTP Act, the reservation clamped on the said property automatically lapses. In this factual scenario and considering that the reservation lapses, the State Government is duty bound under Section 127 (2) to notify the same by an order published in the Official Gazette and therefore the reliefs that are sought for in this writ petition ought to be granted.

14. In view of the foregoing discussion, rule is made absolute and the writ petition is allowed in terms of prayer clauses (a) and (b) which reads thus :

“(a) This Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order holding and declaring that the petitioner's lands designated / specified / reserved under the Development Plan of Solapur 1997-2017 for the Children's Play Ground, being reservation No. 13/87, - area admeasuring 0 H. 20 R situated at Survey No. 54/1C+5B, Village-Majrewadi, Tal. North Solapur, District Solapur, have lapsed as per the provisions under Section 127 of the Mahapalika Regional and Town Planning Act, 1966 and further that the lands are released from said reservations, allotment or designation and have become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the plan;

(b) This Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order directing the respondent Government to forthwith notify the lapsing of reservation of said lands by an order published in the Official Gazette as required under Section 127 (2) of the MRTP Act, 1966.”

15. The writ petition is accordingly disposed of. No order as to costs.

(B. P. COLABAWALLA, J) (S. C. DHARMADHIKARI, J)