

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

WRIT PETITION NO.2293 OF 2018
WITH
INTERIM APPLICATION NO.1 OF 2019
IN
WRIT PETITION NO. 2293 OF 2018

Atmaram Krishna Sawant

.. Petitioner

v/s.

Shaikh Abubakar Hassan & Ors.

..Respondents

Mr. Suhas Deokar a/w. Atmaram Patade for the Petitioner.

Mr. Mahesh Rawool for the Applicant in IA/1/2019.

Mr. Nilkant Bhadrashete a/w. Priyanka Bhadrashete for the Respondent No.1.

Mr.I.A.Patel, Addl. G.P. with Mr. R.S.Pawar AGP for the Respondent Nos. 3 to 5.

**CORAM : A.A.SAYED &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : 19th DECEMBER, 2019.**

P.C.

1. The Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and/or any other Order in the nature of Writ of Certiorari and quash the notices of acquisition dated 18.04.2016 and 12.08.2016 (respectively) issued by the Respondents and declare that the suit lands are free of all sorts of reservation. The Petitioner has also prayed that the Award dated 30.11.2017, which was passed during the pendency of the Petition, be quashed and set aside.

2. The Petitioner claims to be the owner in possession of the property under Survey No.41, Hissa No.1, and Survey No. 42, Hissa Nos.5 and 6 situated within the local limits of Sawantwadi Municipal Council. The said property shall be hereinafter referred to as 'the subject land'.

3. The subject land was reserved for playground by Reservation No.20 (re-numbered as Reservation No.37) in the Final Development Plan, which was published / notified in the Official Gazette of the State of Maharashtra on 01.04.1989. Since the Respondent did not take steps for acquisition of the subject land, the Petitioner issued a Purchase Notice dated 20.01.2015 under Section 127 of the MRTP Act.

4. The Respondents issued Notice dated 18.04.2016 under Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (Land Acquisition Act, 2013), calling for objections for acquisition of part of the subject land. The Petitioner claims that Notice under Section 21 was issued on 12.08.2016 and subsequently an Award dated 30.11.2016 was declared under Section 23 of the Land Acquisition Act, 2013 in respect of part of the subject land. The Petition proceeds on the basis that the reservation has lapsed since the Respondent Council had failed to take effective steps for acquisition of the subject land within a period of 12 months from the date of receipt of the Purchase

Notice dated 20.01.2015.

5. Section 127 of the MRTP Act deals with lapsing of reservation. Section 127(1) provides that if the land reserved, allotted or designated for any purpose specified in final Regional Plan or Development Plan is not acquired by agreement within 10 years, or acquisition proceedings are not commenced within the said period of 10 years, the owner or the person interested in such land may serve a purchase notice on the concerned authority. As provided under this provision, as it stood prior to 2015 amendment, reservation, allotment or designation is deemed to have lapsed if the concerned Authority fails to acquire or take steps for acquisition of the land within 12 months from the date of service of such notice. The aforesaid period of 12 months has been increased to 24 months by an amending Act (Mah. Act No.42 of 2015) , w.e.f. 29.08.2015.

6. The question whether the rights of the noticee would be governed by the statute as it stood prior to the amendment or by the statute as amended on 29.8.2015 is no longer res integra in view of the decision of the Full Court in In ***Vishwas Bajirao Patil vs. State of Maharashtra & Ors. 2019(5) Mh.L.J. 831.*** In the said case the Development Plan was notified on 18.12.1999. The 10 year period had expired on 17.12.2009 and notice under Section 127 was issued on 17.11.2014. The amendment, which enlarged the period from 12 months to 24 months, had come in force before the 12 months period had come to an end. The question which was referred to the Full Bench was :

“Whether the provision of Sub-Section (1) of section 127 of the Maharashtra Regional and Town Planning Act, 1966 as amended, which enlarges the period of 12 months to 24 months for a Planning/Development/ Appropriate Authority to take effective steps for acquisition of the reserved land would apply to a notice under Sub-Section (1) of Section 127 served on the concerned Authority before the amended provisions came into force? ”

7. The Full Bench has answered the reference in the following terms :

“26. ... the amendment is prospective but no right is vested in the person having proprietary interest in the land upon serving the notice. The right would have vested upon expiry of one year of the notice had the statute not been amended on 29th August, 2015, and thus as on the date of the amendment, i.e. 29th August, 2015 there was no vested right in favour of the noticee. The rights of the noticee would be governed by the statute as amended on 29th August, 2015.”

8. The present Petition is squarely covered by the judgment of the full Bench. In the present Petition the Purchase Notice was served on the Petitioner on 20.01.2015. One year period would have come to an end on 19.01.2016. The amendment to Section 127(1) came into force before expiry of 12 months i.e. on 29/08/2015. As on the date of the amendment, i.e. 29.08.2015 no vested right accrued in favour of the Petitioner. Hence in view of the ratio laid down by the Full Bench of this Court in **Vishwas Bajirao Patil** (supra), the rights of the noticee would be governed by the

statute as amended on 29.08.2015. The Notification was issued within the period of 24 months as prescribed by the amended provision. Hence, the contention of the Petitioner that the reservation has lapsed cannot be accepted.

9. Under the circumstances and in view of the discussion supra, the Petition is dismissed. The Interim Application No.1 of 2019 to stand disposed of in view of dismissal of the Writ Petition.

(ANUJA PRABHUDESSAI, J.)

(A.A.SAYED, J.)