

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1132 OF 2018

Neelam Kiran Shah And 3 Ors.	...	...Petitioners
V/S		
The State Of Maharashtra And 5 Ors.		...Respondents
...		
Mr.A.Y.Sakhare, Sr.Advocate with Mrs.Vidya Khatu for the Petitioners.		
Mr.G.W.Mattos, AGP for State.		
Mr.Girish Godbole, Sr.Advocate with Ms Trupti Puranik for MCGM.		

CORAM : A.A. SAYED &
SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 27 NOVEMBER 2019

P.C.:

1. Prayer Clauses (a) to (d) of the Petition read as follows:

“(a) That this Hon’ble Court be pleased to issue a writ of certiorari or any other writ in the nature of of certiorari calling for record and proceedings and impugned notification under No.C/ACQ/Desk-9/CR-727/16/SDO-WS/LAQ/SR 649/16 dated 29-12-2016 and after examining the legality, validity and propriety thereof be quashed and set aside the impugned notification dated 29-12-2016 in respect of the said land bearing CTS No.1217/E of village Dahisar.

(b) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or order or any other appropriate writ, directions or order under Article 226 of the Constitution of India directing the Respondents to forthwith withdraw and/or cancel the impugned Notification dated 29-12-2016 and declare that the

reservation on land bearing CTS No.1217/E of Village Dahisar under Development Plan of "R" ward under MRTP Act, 1966 has been lapsed and the said land stands dereserved and available to the Petitioners for redevelopment in accordance with law;

(c) That this Hon'ble Court be pleased to issue writ of mandamus or a writ in the nature of mandamus or order or any other appropriate writ, directions or order under Article 226 of the Constitution of India directing the Respondents to delete the said land from reservation in the Draft Development Plan for the year 2013/Final Development Plan to be sanctioned by the State Government with further direction to issue requisite notification under section 127(2) of MRTP Act, 1966.

(d) That this Hon'ble Court be pleased to issue writ of mandamus or order or any other appropriate writ directing the Respondents No.3 and 4 to grant the development permission on the said land as permissible in law."

2. The Development Plan for the subject plot for extension of playground came into force on 25-03-1991. Purchase Notice by the Petitioners under section 127 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act' for short) was issued and served on the Respondent-Corporation on 05-01-2015. 12 months for the Respondent-Corporation to take effective steps for acquisition of the subject plot would come to an end on 04-01-2016, but before that the Amendment to section

127 of the MRTP Act came into force on 29-08-2015 replacing the words “12 months” by “24 months”. The Declaration/Notification under section 19 of the Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act 2013 (‘New Land Acquisition Act of 2013’ for short) has been issued on 29-12-2016 and published on 01-01-2017 in the newspapers.

3. The issue raised in the Petition is squarely covered by the judgment dated 03-09-2019 of the Full Bench of this Court in **Shri Vishwas Bajirao Patil v/s. The State of Maharashtra & Ors. (Writ Petition No.12767 of 2015)**, wherein the Full Bench on a reference has answered the following question framed in paragraph 1:

“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?”

The said question has been answered in paragraph 26 of the judgment, which reads as under:

“26. We thus answer the reference by holding that 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.”

(emphasis supplied)

4. In view of the above, the contention of the Petitioners that the reservation has lapsed cannot be accepted as the Respondent-Corporation had taken effective steps by issuing and publishing the Declaration/Notification under section 19 of the New Land Acquisition Act of 2013 within 2 years from the service of purchase notice under section 127 (as amended).

5. The Petition is dismissed. It is expected of the Respondents to expedite the process of acquisition.

(ANUJA PRABHUDESSAI,J.)

(A.A.SAYED, J.)