

WRIT PETITION NO. 7119 OF 2016

... PETITIONER

...VERSUS..

- ## ... RESPONDENTS

Shri G. K. Mundhada, Advocate for the petitioner.
Shri J. Y. Ghurde, A.G.P. for the Respondent no. 1 and 4.
Shri J. B. Kasat, Advocate for Respondent nos. 2 and 3.

**CORAM :- A. S. CHANDURKAR AND
AMIT B. BORKAR, JJ.**

DATED :- 17.03.2020

ORAL JUDGMENT (PER : AMIT B. BORKAR, J.):-

1. The petitioner in this petition is seeking declaration that the reservation over the property owned by the petitioner has lapsed under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (in short 'the M.R.T.P. Act') and the petitioner is free to develop the land, in the manner permissible to the adjacent land as per the Development Plan.

2. The facts which are relevant for the purpose of deciding the issue involved in the present petition are as under :-

3. The petitioner is owner of Survey No. 73, Sub-division No. 2A, total area admeasuring 0 H 60 R of Village Rahatgaon, Tah. and Dist. Amravati (hereinafter referred to as 'the property in dispute'). On 25.02.1993, the revised Development Plan E. P. of City of Amravati was sanctioned by the State Government and the same was published. In the said revised Development Plan, the property in dispute was reserved for primary School, having Reservation Site No. 96, and open space vide Reservation Site No. 97. The period of 10 years expired on 25.02.2003. The petitioner, therefore, on 16.11.2014 issued notice as contemplated by under Section 127 of the M.R.T.P. Act, which was served personally in the office of respondent nos. 2 and 3. The said notice was acknowledged by respondent nos. 2 and 3 on 17.11.2014. The period of one year,

which was prescribed on the date of issuance of notice, expired on 17.11.2015. The amendment in Section 127 of the M.R.T.P. Act thereby increasing the period of 12 months to 24 months came into force from 31.12.2015. Even on expiry of the amended period of notice of 24 months on 17.11.2016, no steps as contemplated by Section 126(2) of the M.R.T.P. Act read with Section 19 of the Right to Fair Compensation and Transparency in Rehabilitation and Resettlement Act, 2003 were taken and therefore, on 19.12.2016, the petitioner filed the present petition.

4. During the pendency of the present petition, second revised Development Plan was published on 06.12.2018. The property in dispute was again reserved for the purpose of public amenities vide Reservation No. 29. The petitioner, therefore, amended the petition on 16.04.2019 and the prayer for relief, in respect of new reservation for public amenities vide Reservation No. 29 was added to the prayer.

5. Respondent nos. 2 and 3 i.e. the Municipal Corporation and the Planning Authority filed their reply on 18.07.2017 and submitted that the notice served by the petitioner on 17.11.2014 is not under his signature, but sent through his lawyer. It is further submitted that on 31.07.2015, the proposal for acquisition was

forwarded to the Collector, Amravati for acquisition of the land in dispute. Respondent no. 4-Collector, Amravati by communication dated 03.11.2015 requested respondent nos. 2 and 3 to deposit minimum amount of ₹ 22,57,088/- before issuance of Notification under Section 19 of the said Act. Due to non-availability of fund under budget for land acquisition, respondent nos. 2 and 3 could not deposit the said amount. It is further submitted that by communication dated 10.05.2016, the petitioner showed its willingness to deposit T.D.R.. Hence, respondent nos. 2 and 3 prayed for dismissal of the petition.

6. This Court on 04.09.2017 issued Rule in the present petition and hearing was expedited.

7. We have heard learned counsel Shri G.K. Mundada for the petitioner and Shri J. B. Kasat for respondent nos. 2 and 3. From the record, following are the undisputed facts:-

(i) The period of 10 years is passed after the property in dispute was reserved for open space in the revised Development Plan.

(ii) After period of 10 years, there is valid service of notice as contemplated by Section 127(1) of the M.R.T.P. Act.

(iii) The period of 12 months from the date of receipt of notice under Section 127(1) of the M.R.T.P. Act has elapsed.

(iv) No steps for acquisition of property in dispute are taken by the respondents.

8. In the above backdrop, Shri Kasat, learned counsel for respondent nos. 2 and 3 submitted that, by communication dated 10.05.2016 the petitioner showed his willingness to accept the compensation in the form of T.D.R., which amount to waiver and acquiescence of his right to claim lapsing of reservation. We have considered the submissions and having gone through the communication dated 10.05.2016 and it appears that, the petitioner has showed his interest in accepting the compensation. The relevant part of paragraph no. 3 of the communication dated 10.05.2016 reads thus :-

“My client is further interested in your proposal for accepting compensation in the form of TDR. Please inform the details of calculation which you are ready to give as per the new D.C.R.. Please kindly inform as early as possible thanking you.”

9. After going through paragraph no. 3, it appears that the proposal of respondent nos. 2 and 3 was not accepted

unconditionally by the petitioner, but petitioner showed his interest in the compensation. The petitioner requested for details of calculations as per new D.C.R. and also requested to inform the said information as early as possible. From the record, it appears that there is no further communication by respondent nos. 2 and 3 to the petitioner in respect of payment of T.D.R. Therefore, it cannot be said that the petitioner has waived his right to claim relief of lapsing of reservation. Even otherwise also from the record it appears that the notice was issued to respondent no. 3 and the same was received on 17.11.2014. On the date of issuance of notice, period of 12 months was waiting period. Therefore, the reservation stood lapsed on 17.11.2015 which was before the date of communication dated 10.05.2016. Even otherwise also in reply filed by respondent nos. 2 and 3 there is no specific plea of waiver and acquiescence raised by respondent nos. 2 and 3 and therefore, in absence of specific pleadings, respondent nos. 2 and 3 are not entitled to raise such ground of waiver.

10. In view of undisputed facts of expiry of the period of 10 years, absence of any acquisition during the said period, service of valid notice under Section 127(1) of the M.R.T.P. Act and expiry of period of 12 months from the date of service of notice, the case of the petitioner is squarely covered by the judgment of the Hon'ble Apex

Court in the case of *Girnar Traders Vs. State of Maharashtra [(2011) 3 SCC 1]* and in the case of *Shrirampur Municipal Corporation Vs. Satyabhama Bhimji Dawkher [(2013) 5 SCC 627]*, the petitioner is entitled to relief of lapsing of reservation.

11. It appears that during the pendency of the present petition, the property in dispute was again reserved for public amenities vide Reservation No. 29 in second revised Development Plan under Section 26 of the M.R.T.P. Act. In so far as re-reservation of public amenities after lapse of reservation is concerned, the said issue is no longer *res-integra* in view of the judgment of this Court in the case of *Ashok Shriram Kulkarni Vs. State of Maharashtra (Writ Petition No. 11597/2012, decided on 22.03.2017)*. This Court in paragraph no. 24 has held as under :-

“[24] The contention of the respondents that the sanctioning of the revised development plan in 2012 has the effect of rendering purchase notice dated 09/09/1996 ineffective cannot be countenanced as action on the part of the petitioner in issuing the notice under Section 127 of the said Act and the expiry of period of six months within which time steps are to be taken is anterior in point of time to the preparation of the said plan.”

12. In view of the aforesaid judgment of the Division Bench, the petitioner is entitled to relief of lapsing of reservation in respect of the property in dispute.

13. We therefore pass the following order:-

(i) It is hereby declared that the reservation of public amenities, vide Reservation No. 29 affecting the land owned by the petitioner having Survey No. 73, Sub-division No. 2A, total area admeasuring 0 H 60 R of Village Rahatgaon, Tah. and Dist. Amravati has lapsed under Section 127 of Maharashtra Regional Town Planning Act, 1966 and the petitioner is free to develop the property in dispute, in the manner permissible to adjacent land as per the Development Plan.

(ii) The respondents are hereby directed to notify and publish in Official Gazette under Section 127(2) of Maharashtra Regional Town Planning Act, 1966, the lapsing of reservation of Public Amenities Reservation No. 29 affecting the land owned by the Petitioner having Survey No. 73, Sub-division No. 2A, total area admeasuring 0 H 60 R of Village Rahatgaon, Tah. And Dist. Amravati.

(iii) Rule is made absolute in the aforesaid terms with no orders as to costs.

JUDGE

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