

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

959 WRIT PETITION NO.987 OF 2019

LEMKARAN PARASMAL SAMDARIYA AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. S. P. Salgare, h/f Mr. Niteen V. Gaware.

AGP for Respondent/State: Mr. S. P. Tiwari.

Adv. for Respondent No.3 : Mr. G. K. Naik Thigle, h/f Mr. D. D. Deshmukh.

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CORAM : **S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATE : 22nd September, 2021.

PER COURT :

. The land of the petitioners bearing Site No.31 is reserved for garden and Site No.30 for shopping complex and vegetable market in the development plan revised on 8th September, 1997. No steps for acquisition were taken. The petitioners issued notice on 20th July, 2016 under Section 127 of the Maharashtra Regional and Town Planning Act. For a period of one year, no steps were taken by the Planning Authority. It is the contention of the petitioners that the reservation stands lapsed. The Planning Authority on 12th September, 2017 issued fresh notification intending to reserve the land of the petitioners for Town Hall and Garden as Site Nos.24 and 23 respectively.

2 According to the learned counsel, once the reservation stood lapsed and the notice period was over, the Planning Authority could not have again reserved the land of the petitioners as it stood released from reservation.

3 Mr. Thigle, learned counsel for the Planning Authority does not dispute that no steps are taken for acquisition within the stipulated period. However, the land of the petitioners is again reserved in the revised development plan, for which the notification was issued on 12th September, 2017. As the same is again reserved, ten years would start running from the date of notification i.e. from 12th September, 2017. The learned counsel to buttress his submissions relies upon the judgment of the Apex Court in the case of *Prafulla C. Deve Vs. Municipal Commr.*, reported in, *(2015) 11 SCC 90*.

4 The factual matrix as narrated above, is not disputed. It is not disputed that within the period of one year from the date of issuance of notice the Planning Authority did not take steps for acquisition. No notification under Section 19 of the Right to Fair Compensation Act read with Section 126 of the Maharashtra Regional and Town Planning Act was issued. In view of the judgment of the Apex Court in the case of *Girnar Graders (3) Vs. State of Maharashtra*

and others, reported in, (2011) 3 Supreme Court Cases 1, the reservation stands lapsed.

5 The Planning Authority, it appears that after the lapse of notice period, on 12th September, 2017 issued a notification reserving the land of the petitioners again for Town Hall and Garden. The same would not be permissible as the land already stood lapsed from reservation. Reference can be had to the judgment of the Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors, dated 21st January, 2015 in Civil Appeal No.1086 of 2015. Paragraph 16 of the said judgment reads thus:

“16. It is also an undisputed fact that after 10 years, notice dated 4.9.2002 served by the appellant under Section 127 of the MRTP Act upon the respondent No.1 stating that if, the reserved land was needed for the notified purpose, Railway department may acquire the same by adopting acquisition proceedings, but if the same is not acquired, the clarification to that effect be issued. Thereafter, on 3.3.2003 the period of 6 months as prescribed under the provision of Section 127 of the MRTP Act, after issuance of the above notice by the appellant and served on the respondent No.1, was also lapsed long back. Therefore, the reservation of the land in favour of the Railway was deemed to be released under the above said provision of the MRTP Act. The respondent No. 2- Ministry of Railways informed the Urban Development Department of the State Government on 1.11.2004 stating

that there was no proposal for acquisition of the land in the Railways in the near future, is evident from the undisputed fact of the correspondence made between the Ministry of Railways and the Urban Development Department of the State Government, which would clearly go to show that the land reserved even after 10 years and on expiry of service of notice of 6 months there was no intention on the part of the State Government to acquire the reserved land for the purpose reserved in favour of the Railways department to form the Railway tracks between “Thane and Kurla”. In that view of the matter, the land reserved for the purpose under Section 127 of the MRTP Act, is lapsed and the appellant is entitled for developing the land as it likes. The State Government instead of clarifying to the notice issued by the appellant, has proceeded further to initiate proceedings under Section 37 of the MRTP Act, proposing the modification in the Development Plan by deleting Railway reservation and adding reservation for Development Plan Road. Section 37(1) of the MRTP Act, which deals with modification of Final Development Plan reads thus:-

“37. Modification of final Development Plan - (1)
Where a modification of any part of or any proposal made in, a final Development Plan is of such a nature that it will not change the character of such Development Plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to

any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government, shall issue the notice and thereupon, the provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority.”

By a careful reading of the provisions of Sections 127 and 37(1) of the MRTTP Act, which are extracted as above abundantly make it clear that the State Government is not empowered to delete the reservation of the land involved in this case from Railway use and to modify the same for Development Plan Road in the Development Plan after expiry of 10 years and 6 months notice period was over as the appellant has acquired the valuable statutory right upon the land and the reservation of the same for the proposed formation of Railway track was lapsed long back. Further the respondent No. 2 vide its letter dated 1.11.2004 has stated that there is no proposal for acquisition of land for the purpose of which it was reserved.

Section 127 of the MRTTP Act, which fell for consideration before the three Judge Bench of this Court in the case of *Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher & Ors.*, (2013) 5 SCC 627 wherein the contention of the appellant that the majority judgment in the case of *Girnar Traders (2) v. State of Maharashtra*, (2007) 7 SCC 555 need to be considered by larger Bench as the same is contrary to Section 127 and *Municipal Corpn. of Greater Bombay v. Hakimwadi Tenants' Assn.*, (1988) Supp SCC 55 case, was rejected. The Court

opined that the same is not contrary to Section 127 of the MRTP Act and further held that there is no conflict between the judgments of the two-Judge Bench in *Hakimwadi Tenants' Assn.* (supra) and the majority judgment in *Gimnar Traders (2)* (supra) case. Further, the three Judge Bench judgment in *Shrirampur Municipal Council, Shrirampur* (supra) at paras 45 and 46 supported the observation of Constitution Bench in *Gimnar Traders (3)* v. *State of Maharashtra, (2011) 3 SSC 1* case relating to Section 127 of the MRTP Act, which read thus:-

“45. In our view, the observations contained in para 133 of *Gimnar Traders (3)* unequivocally support the majority judgment in *Gimnar Traders (2)*.

46. As a sequel to the above discussion, we hold that the majority judgment in *Gimnar Traders (2)* lays down correct law and does not require reconsideration by a larger Bench...”

From the above, it is clear that the majority view in *Gimnar Traders (2)* (supra) is held to be good law. Therefore, the case of *Gimnar Traders (2)* (supra) is binding precedent under Article 141 of the Constitution of India upon the respondent No.1. The relevant paragraph 133 from *Gimnar Traders (3)* is extracted hereunder :-

“133. However, in terms of Section 127 of the MRTP Act, if any land reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final

development plan comes into force or if a declaration under sub-section (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of 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 the land would become available to the owner for the purposes of development. The defaults, their consequences and even exceptions thereto have been specifically stated in the State Act. For a period of 11 years, the land would remain under reservation or designation, as the case may be, in terms of Section 127 of the MRTP Act (10 years + notice period)."

In view of the above said statement of law declared by this Court in the cases referred to supra, after adverting to the judgment of majority view in *Girnar Traders (2)* case (supra) is accepted in *Shrirampur Municipal Council, Shrirampur* (supra), wherein it is held that the *Girnar Traders (2)* (supra) case is not conflicting with the *Hakimwadi Tenants' Asson.* case (supra), the statement of law laid down in the above referred cases are aptly applicable to the fact situation. Therefore, we have to hold that the impugned notification is bad in law and liable to quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTP Act and interpretation of the above said provision made in the case of *Girnar Traders (2)* (supra), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has

not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months notice served upon the State Government.”

6 The facts of the present case are identical.

7 In light of the above, the reservation stands lapsed.

8 One of the land of the petitioners at Site No.31 is reserved for garden. Garden and open spaces act as lungs of the city. Reference can be had to the judgment of the Apex Court in case of *Municipal Corporation of Greater Mumbai and others Vs. Hiranman Sitaram Deorukhar and others*, reported in, *(2019) 14 Supreme Court Cases 411*. The Planning Authority is required to take steps to acquire

the said property and maintain the garden. At the same time the right to property of the petitioners cannot be negated eternally. The right to property though is not a fundamental right, still subsist as constitutional right and nowadays it has been brought within the contour of human rights. The balance will have to be struck in maintenance of ecology and environment and the ownership rights of the petitioners.

9 In light of the above, we pass the following order:

ORDER

- I. The land of the petitioners reserved as Site No.31 as garden and Site No.30 for shopping complex stands released from reservation. The subsequent reservation also shall not apply to the petitioners' land. However, the petitioners shall not use the land reserved as Site No.31 for garden in the development plan of 1997 for a period of one year and shall maintain it as it is.
- II. The Planning Authority may take steps to acquire the property.
- III. If the Planning Authority does not take steps to acquire the property, then the petitioners would

be entitled to use the land as an adjacent user.

IV. Thereafter, the State Government shall issue notification under Section 127(2) of the Maharashtra Regional and Town Planning Act within a period of six months.

IV. The writ petition is accordingly allowed in above terms. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

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