

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2661 OF 2021

Shri Sakharam Mahadev Jadhav,)
 since deceased his legal heirs)
 Shri. Kailash Sakharam Jadhav)
 Age – 57 years, Occ : Business,)
 R/at- 171, Aristocrak (G) Co-operative HSG,)
 Flat No.103, Lullanagar, Pune City, Pure – 411 040.) ...Petitioner

Versus

1.State of Maharashtra,)
 [Summons to be served on the Learned Government)
 Pleader appearing for State of Maharashtra)
 under Order XXVII, Rule 4, of the Code of Civil)
 Procedure, 1908].)

2.The Urban Development Department,)
 Through its Principal Secretary,)
 State of Maharashtra,)
 Mantralaya, Mumbai – 32.)
 [Summons to be served on the Learned)
 Government Pleader appearing for)
 State of Maharashtra under Order XXVII,)
 Rule 4, of the Code of Civil Procedure, 1908].)

3.The District Collector, Thane.)
 [Summons to be served on the Learned)
 Government Pleader appearing for)
 State of Maharashtra under Order XXVII,)
 Rule 4, of the Code of Civil Procedure, 1908].)

4.The Kulgaon-Badlapur Municipal Council,)
 Kulgaon (E), Tal – Ambarnath,)
 Dist : Thane – 421 503.)

5.The Chief Officer,)
 Kulgaon-Badlapur Municipal Council,)
 Tal – Ambarnath, Dist : Thane – 421 503.)

6.Metropolitan Commissioner M.M.R.D.A.,)
 Bandra-Kurla Complex,)
 Bandra (E), Mumbai – 400 051.)...Respondents

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Mr. Tanaji Mhatugade for the Petitioner.

Mr. A.A. Kumbhakoni, Advocate General alongwith Mr. P.P. Kakade, GP and Mr. P.G. Sawant, AGP for the State.

Mr. D.P. Adsule for Respondent No.4.

Mr. Akshay Shinde for Respondent No.6.

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**CORAM : S.J. KATHAWALLA AND
 MILIND N. JADHAV, JJ.**

DATED : AUGUST 11, 2021.

JUDGMENT (PER : S.J. KATHAWALLA & MILIND N. JADHAV, JJ.) :

1. The Petitioner – Sakharam Mahadev Jadhav is the owner of lands bearing Survey No.69/1 and 69/2/1 situated at Village : Belavali, Taluka : Ambarnath, District : Thane, which is presently located within the jurisdiction of Kulgaon-Badlapur Municipal Council, i.e. Respondent No.4 ('the said Lands').

2. The Petitioner has filed the above Writ Petition inter-alia seeking the following reliefs :

“(a) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ, direction and order under Article 226 or the Constitution of India, 1950, directing the Respondent No. 1 and 2 to issue notification of Lapsation by declaring that the Reservation No. 5 “Public Offices and Staff Quarters” and Reservation No.6 “Truck Terminal” stands lapsed in respect of Petitioners land bearing Survey No. 69/1 and 69/2/1, situated at village

Belavali, Tal – Ambarnath, Dist – Thane.

(b) That during the pendency of present Writ Petition this Honourable Court be please to direct the Respondent No.4 and 5 to issue the building permission to the Petitioner in respect of the Petitioners land bearing Survey No. 69/1 and 69/2/1, situated at village Belavali, Tal – Ambarnath, Dist – Thane.”

3. The facts and circumstances giving rise to the present Writ Petition are briefly set out hereunder :

3.1 As set out hereinabove, the Petitioner is the owner of the said Lands. The draft development plan of Respondent No.4 – Kulgaon-Badlapur Municipal Counsel was sanctioned by the Government of Maharashtra on 25th July, 2005 which came into force on and from 12th August, 2005.

3.2 In the said Development Plan, the land bearing Survey No.69/2/1, admeasuring 1 Hectar 75 Acre was shown as reserved vide Reservation No.5 for “Public Offices and Staff Quarters” and the land bearing Survey No.69/1 admeasuring 1 Hectar 96 Acre was shown as reserved vide Reservation No.6 for “Truck Terminal”.

3.3 On 28th August, 2012, the Petitioner was served a Purchase Notice under Section 49(1) of the Maharashtra Regional and Town Planning Act, 1966 (‘the MRTPA Act’).

3.4 By an Order dated 26th February, 2013, Respondent No.2 – Urban Development Department, State of Maharashtra, rejected the said Purchase Notice dated 28th August, 2012.

3.5 Being aggrieved by the Rejection Order dated 26th February, 2013, passed by the Respondent No.2, the Petitioner filed Writ Petition No.8209 of 2013 and prayed for setting aside the said Rejection Order.

3.6 By an Order passed by this Court dated 19th September, 2017, the said Writ Petition No.8209 of 2013 was disposed off. By the said Order the impugned Rejection Order dated 26th February, 2013 passed by Respondent No.2 rejecting the Purchase Notice was quashed and set aside and the matter was remanded back to the Respondent No.2 for being decided afresh within a period of three months.

3.7 Thereafter, Respondent No.4 – Kulgaon-Badlapur Municipal Council submitted its Report to Respondent No.2. After considering the said Report submitted by Respondent No.4 and after hearing the Petitioner, Respondent No.2 by its Order dated 22nd February, 2018 confirmed the said Purchase Notice.

3.8 On 8th February, 2019, Respondent No.4 made an application to the Collector, Thane, for acquisition of the said Lands covered by both the aforesaid reservations alongwith all the requisite documents.

3.9 The Petitioner by his Letter dated 26th February, 2019, made a representation to the Respondent No.3 – District Collector, Thane and made a request for a copy of the notice of acquisition published in the Government Gazette under Government Declaration, if any.

3.10 On 11th April, 2019, the Sub-Divisional Officer informed the Petitioner

that a proposal for acquisition of the lands in issue made by the Chief Officer of Respondent No.4 – Municipal Council to the Collector, Thane, has been received and that the Collector Thane, has forwarded the same to the Office of the Sub-Divisional Officer, which has received the same on 29th March, 2019.

3.11 By Letter dated 11th February, 2020, Respondent No.5 – Chief Officer, Kulgaon-Badlapur Municipal Council, informed the Petitioner about the confirmation of notice issued by the Petitioner under Section 49(4) of the MRTP Act and further informed that the proposal for acquisition of the said Lands had been submitted to the Office of the Collector, Thane, within the prescribed time. The Petitioner was also informed that the reservations on the property in issue continued and therefore the building permission sought by the Petitioner is rejected. The Petitioner thereafter filed the above Writ Petition seeking reliefs, which are reproduced in Paragraph 2 hereinabove.

4. The Learned Advocate appearing for the Petitioner has submitted that since no effective steps have been taken for a period of one year from the date of confirmation of the Purchase Notice, the reservations have lapsed and the said Lands stand released from such reservations and the Petitioner is entitled to receive permission for development of the said Lands.

5. The Learned Advocate General appearing for the State has submitted that the Petitioner appears to be confused with regard to the applicability of the

provisions of the MRTP Act. He submitted that in the present case, the Purchase Notice was admittedly confirmed on 22nd February, 2018. On 8th February, 2019, Respondent No.4 – Kulgaon-Badlapur Municipal Council made an application to the Collector, Thane, for acquisition of the said Land covered by both the aforesaid resolutions alongwith all the requisite documents. Such application being made within one year from the date of confirmation of the Purchase Notice, the question of reservation of the said Lands having lapsed, or the Petitioners being entitled to the reliefs as sought in the Writ Petition does not arise and the Writ Petition deserves to be dismissed.

6. The Learned Advocate General has relied on the decision of the Supreme Court in the case of ***Prakash R. Gupta vs. Lonavala Municipal Council and others***¹. In that case, admittedly, the land was not acquired within ten years from the date on which the final regional plan or final development plan came into force and no proceedings for acquisition of such land under the Land Acquisition Act were commenced within the aforesaid period of ten years. After the said period of ten years, the appellant, who was the owner of the land, served a notice on Respondent No.1 as required by Section 127 calling upon the said authority to acquire the said land within six months or take steps within that period, but neither was the land acquired within the further period of six months nor were any steps taken to acquire it. This

¹ (2009) 1 SCC 514

Court by its Judgment and Order dated 9th November, 2001 in Writ Petition No.2945 of 2001 took a view that in view of Section 49 of the Act, there is no lapse of the reservation. The Supreme Court whilst disagreeing with the said view held that, “*in our opinion, the scheme contemplated by Section 49 is totally different from that contemplated by Section 127. In Section 49, there is no period of ten years as mentioned in Section 127. In Section 49, the owner has to satisfy one of the three conditions mentioned therein which is not so in Section 127. Thus, reference to Section 49 by the High Court was, in our opinion, totally misconceived and uncalled for*”. The Supreme Court therefore, allowed the appeal and set aside the impugned Judgment of this Court and directed the land in question to be released forthwith in favour of the appellant.

7. The Learned Advocate General also relied on the decision of the Supreme Court in the case of *Chhabildas vs. State of Maharashtra and others*², wherein it is held that, “*even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7)*”.

8. The Learned Advocate General therefore submitted that since within one year from the date of confirmation of the Purchase Notice, the appropriate

² (2018) 2 SCC 784

authority has made an application to the Collector to acquire the said Lands in respect of which the Purchase Notice has been confirmed and since thereafter the Petitioner has not followed the drill of Section 126(4) and Section 127 of the MRTP Act, it cannot be said that the reservation of the said Lands has lapsed, and the above Writ Petition deserves to be dismissed.

9. We have perused the relevant Sections of the Act, considered the submissions advanced by the Learned Advocate appearing for the Petitioner and the Learned Advocate General representing the State and the case law relied upon by him.

10. Sections 49, 126 and 127 of the MRTP Act being relevant to deal with the submission of the Petitioner, are reproduced hereunder :

“Section 49 : Obligation to acquire land on refusal of permission or on grant of permission in certain cases

(1) Where –

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clause (a), (b), (c) or (d) claims—

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or]

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated,

the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as “the purchase notice”) requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act. (emphasis supplied)

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) [***]

[(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.]” (Emphasis supplied)

126. Acquisition of land required for public purposes specified in plans

(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, [any appropriate Authority may, except as otherwise provided in section 113-A] [acquire the land,-

(a) by an agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor’s interest to be determined by any of the said Authorities concerned [on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring

such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013],

and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections [or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], as the case may be, shall vest absolutely free form all encumbrances in the Planning Authority, Development authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 [and except as provided in section 113-A]) itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, [in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

(3) On publication of a declaration under the said [section 19], the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,-

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the

notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme:

Provided that, nothing in this sub-section shall affect the date for the purposes of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]

[(4) [Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration] is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional Town Planning [(Amendment) Act, 1993], the State Government may make a fresh declaration for acquiring the land [under the provisions of the Right of Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013], in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.]

127. Lapsing of reservation

[(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, alongwith 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 [twenty-four 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.]

11. From a reading of Section 49 of the MRTP Act, it is clear that the scheme of the said Section is to lay down the timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. Immediately upon the conditions specified in sub-section (1) being met, the owner or person affected may serve on the State Government, within such time and in such manner as is prescribed by regulations, a purchase notice requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of the MRTP Act, accompanied by documents set out in sub-clause (2) of the said Section. Upon receipt of the purchase notice, as per sub-section (3), the State Government is to forthwith call from the planning authority or the appropriate authority such report or records or both, as may be necessary, which the authorities shall then forward to the State Government as soon as possible, but not later than thirty days from the date of their requisition. As provided in sub-section (4),

if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions. Sub-section (5) provides that if the steps contemplated after service of purchase notice leads to a situation where the State Government does not pass any orders, the notice shall be deemed to have been confirmed at the expiration of that period. Sub-section (6) is deleted. Sub-section (7) of Section 49 provides that if within a period of one year from the date of confirmation of the purchase notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed and thereupon the land shall be deemed to be released from the reservation, designation, or as the case may be, allotment, indication or restriction 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.

12. In the instant case, as pointed out by the Learned Advocate General, the Appropriate Authority has within one year made an application to the Collector to acquire the said lands in respect of which the Purchase Notice has been confirmed as required under Section 126. Section 49(7) therefore stands satisfied.

13. In the case of *Chhabildas vs. State of Maharashtra and others* (supra), it

was argued that Section 49 abruptly ends with sub-section (7), after which there are no timelines indicated as to what is to happen after the appropriate authority makes an application to acquire the land within one year from the date of confirmation of the notice. The Supreme Court rejected the said argument on the ground that Section 49(1) itself states that the purchase notice must require the appropriate authority to purchase the interest in the land, “*in accordance with the provisions of this Act*” and therefore, once the appropriate authority makes the necessary application to acquire the land within time under Section 49(7), one has to move over to Sections 126 and 127 of the Act.

14. After considering the scheme of Sections 126 and 127 explained in the earlier decisions of the Supreme Court in *Girnar Traders vs. State of Maharashtra*³, which was reiterated by the Supreme Court in the case of *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher*⁴, the Supreme Court in paragraph 22 of its decision in Chabbildas (supra) held that, “*It is thus, clear that the scheme of Sections 126 and 127 would leave nobody in doubt, for the reason that if a period of 10 years has elapsed from the date of publication of the plan in question, and no steps for acquiring the land have been taken, then once a purchase notice is served under Section 127, steps to acquire the land must follow within a period of one year from the date of service of such notice, or else the land acquisition proceedings would lapse.*”

3 2007(7) SCC 555

4 2013(5) SCC 627

After considering the law on the subject, the Supreme Court in paragraph 23 of its Judgment summarized the legal position as under :

23. On a conspectus of the above authorities, the following position in law emerges:

23.1 In all section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

23.2 If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisition application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

23.3 If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

15. Since in the case of Chhabildas (*supra*), fifteen years had passed since the date of publication of the development plan and since ten years had passed since the date of the purchase notice issued under Section 49, in order to do complete justice in the matter, the Supreme Court exercising its power under Article 142 of the

Constitution of India, held that the reservation contained in the development plan as well as acquisition proposal in that case have lapsed. However, the Supreme Court made it clear that, *“in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed i.e. that after ten years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section”*.

16. In view of the above, admittedly the Appropriate Authority made the requisite application to the Collector to acquire the said lands, within one year from the date of confirmation of the Purchase Notice. The acquisition therefore cannot be said to have lapsed, and consequently the Petitioner will have to follow the drill of Section 127. No reliefs as prayed for by the Petitioner can therefore be granted and the above Writ Petition is disposed off as dismissed.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)