

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.205 OF 2021

Jayantilal Himmatlal Oswal,)
Age : 64 years, Occupation : Business,)
R/of House No. 56/2, F-Ward, Lonawala,)
Taluka – Maval, District – Pune)...**Petitioner**

Versus

1. The State of Maharashtra,)
Through its Urban Development Department,)
Mantralaya, Mumbai)

2. Director of Town Planning,)
State of Maharashtra, Office at Commissioner of Pune,))
Pune)

3. Lonawala Municipal Council,)
Through its Chief Officer, Lonawala,)
Taluka – Maval, District – Pune)...**Respondents**

Mr.U.B.Nighot for the Petitioner.

Mr.S.B.Kalel, AGP for the State.

Mr.A.A.Garge for Respondent No. 3.

**CORAM : S.J. KATHAWALLA, &
SURENDRA P. TAVADE, JJ.**

DATE : 9TH APRIL, 2021

(THROUGH VIDEO CONFERENCING)

ORAL ORDER (PER S.J.KATHAWALLA, J.) :

1. The Petitioner is the owner of land more particularly set out / described hereinafter. Respondent No.1 is the State of Maharashtra, Respondent No.2 is the Director of Town Planning Authority and Respondent No. 3 is the Lonavala Municipal Council.

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

“(b) That by an appropriate writ, order and or direction it is declared that the reservation, designation or allotment provided under the development plan and revised development plan of Respondent No. 3 – Lonavala Municipal Council in respect of 390 Sq. Mtrs. Land from Survey No. 21, Hissa 1 B, Lonavala within the jurisdiction of Lonavala Municipal Council is lapsed and said land is available to Petitioner for the purpose of development or otherwise, as is permissible;

(c) That by an appropriate writ, order and or direction it is declared that the said reserved land i.e., 390 Sq. Mtrs. Land

from Survey No. 21, Hissa 1 B, Lonavala, within jurisdiction of Lonavala Municipal Council has been de-reserved under the provisions of Maharashtra Regional Town Planning Act as per the purchase notice dated 21.7.2018 for want of valid steps by Lonavala Municipal Council.;"

3. The facts and circumstances giving rise to the present petition are in brief set out hereunder :

3.1. Under a registered sale deed dated 17th October, 1986, the Petitioner and his brother purchased a plot of land ad-measuring 1945.46 Sq. Mtrs. bearing Survey No. 21, Hissa No. 1B alongwith a bungalow standing thereon, bearing municipal house No. 92, ward – G (**‘the said Land’**).

3.2. The development plan of the Lonavala Municipal Council was sanctioned by the Government of Maharashtra vide G.R. No. TPS/1876/940 dated 28th February, 1978.

3.3. By the said development plan, 390 Sq. Mtrs. and 204.53 Sq. Mtrs. from and out of the said land came to be reserved for the purpose of Play Ground for Primary School and for the purpose of development plan road, respectively.

3.4. Thereafter, the Development Plan underwent revision. However, as per the revised Development Plan sanctioned vide G.R. No. TPS. 1896/751/CR – 82/A/96/UD/ dated 29th June, 2005, and which came into force on 27th August, 2005 the above reservations were continued.

3.5. In the year 2006 the Petitioner and his brother transferred an area of 204.53 Sq. Mtrs. from their land in favour of Respondent No. 3 - Lonavala Municipal Council by executing a registered deed of transfer dated 31st July, 2006 against grant of FSI. Therefore, the ownership of the Petitioner and his brother was reduced to 1740.95 Sq. Mtrs. from the original holding i.e. 1945.46 Sq. Mtrs.

3.6. By a release deed dated 30th March, 2009 the brother of the Petitioner released and relinquished his share in the said land ad-measuring 1740.95 Sq. Mtrs. in favour of the Petitioner and the Petitioner became the absolute owner in respect of the said area ad-measuring 1740.95 Sq. Mtrs.

3.7. Out of his land ad-measuring 1704.93 Sq. Mtrs. the Petitioner by a sale deed dated 10th November, 2009, sold 57.49 Sq. Mtrs. of land to Shri Pradeep Ramkishore Gupta. The Petitioner therefore, on and from 10th November, 2009, till date holds / owns the said land ad-measuring 1683.46 Sq. Mtrs. in place of the original 1945.46 Sq. Mtrs.

3.8. According to the Petitioner, for the past 40 years i.e. from the year 1978 to 2018, the Respondent No.3 – Lonavala Municipal Council failed to acquire the said land which was kept under reservation for the purpose of Play Ground for Primary School.

3.9. The Petitioner therefore, issued a purchase notice dated 21st July, 2018 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (**‘the said Act’**) to the Respondent No.3 and requested the Respondent No. 3 - Lonavala

Municipal Council to take appropriate steps for acquisition of the said land of the Petitioner.

3.10. After serving the purchase notice on the Respondent No. 3 – Lonavala Municipal Council on 21st July, 2018 under Section 127 of the said Act, the Petitioner waited for the statutory period of two years i.e. till 20th July, 2020, during which no steps in regard to the acquisition of the said land were taken by the Respondent No.3 – Council.

3.11. The Petitioner is therefore, compelled to file the above Writ Petition seeking reliefs set out in paragraph 2 hereinabove.

4. Smt. Suvarna Ogale - acting chief officer of Respondent No.3 – Lonavala Municipal Council, has filed an Affidavit dated 23rd March, 2021 on behalf of Respondent No.3 stating as under :

4.1. It is true that the Petitioner had on 21st July, 2018 served a purchase notice on the Respondent No. 3 – Council under Section 127 of the MRTP Act.

4.2. Since the Petitioner filed the above Writ Petition in December 2020, Respondent No. 3 wrote a letter dated 17th February, 2021 to their Advocate and requested him to seek an extension of 6 months from the Court on the ground that the issue is pending before the General Body of the Lonavala Municipal Council and since a nationwide lockdown was declared from 24th March, 2020 no decision could be taken.

4.3. In the present matter, the purchase notice under Section 127 of said Act

was issued on 21st July, 2018 and the statutory period of 2 years expired on 21st July, 2020 i.e. during the Pandemic.

4.4. The State of Maharashtra has issued a G.R. dated 4th June, 2020 under Section 154 of the MRTP Act, 1966 by which extension of 9 months has been granted for completion of development work and other stipulated work. Though the acquisition matters are not included in the said G.R., the Court may give benefit of the said G.R. dated 4th June, 2020 to the present Respondent No. 3 - Council.

5. The learned Advocate for the Petitioner took us through the facts in the present Petition which are already set out in paragraph 3 hereinabove. He pointed out that the development plan under which the said land belonging to the Petitioner was reserved, was sanctioned on 28th February, 1978. Since the said land was not acquired within 40 years from the date on which the development plan came into force, the Petitioner served a statutory notice dated 21st July, 2018 under Section 127(1) of the said Act, to the Respondent No.3 - Council. Respondent No.3 admittedly failed to acquire the said land within the statutory period of two years. In the circumstances, as provided under Section 127 of the Act, the reservation of the said land is deemed to have been lapsed and the said land stood released from the reservation and became available to the owner/Petitioner for the purpose of development. However, the Respondents failed to comply with the mandate provided in sub-Section 2 of Section 127 of the Act i.e. issuing a Notification in the official gazette notifying the lapsing of the reservation of the said land, thereby compelling the Petitioner to file the above

Writ Petition seeking the reliefs set out in paragraph 2 hereinabove. It is also submitted that admittedly the extension granted by the Government by G.R. dated 4th June, 2020 pertains to the development work and other stipulated work required to be carried out by the Applicants and does not apply to matters pertaining to acquisition. Therefore, the question of this Court granting the benefit of the extension to the Respondent No. 3 – Council does not arise. It is submitted that even otherwise the said extension admittedly came to an end on 4th March, 2021.

6. The learned Advocate appearing for the Respondent No. 1 – State has submitted to the Orders of this Court.

7. The learned Advocate appearing for the Respondent No. 3 has reiterated what is stated in the affidavit filed on behalf of the Respondent No. 3 - Council the contents of which are already set out in paragraph 4 hereinabove.

8. We have perused the Writ Petition as well as the affidavits filed by the parties. We have considered the facts of the present case, the submissions made by the learned Advocates for the parties and the case law relied upon by the Advocate for the Petitioner.

9. Chapter VII of the MRTP Act deals with “Land Acquisition”. Section 125 of the MRTP Act deals with “Compulsory acquisition of land needed for purpose of regional plan, development plan or town planning etc.” Section 126 of the MRTP Act deals with “Acquisition of land required for public purposes specified in plans.” Section 127 of the MRTP Act pertains to “Lapsing of reservations”. Section 127 of the

MRTTP Act is relevant for deciding the issues raised in the present Writ Petition and is therefore reproduced hereunder :

“127. Lapsing of reservations

[(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 subsection (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 twelve 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.]”

10. The Respondent No. 3 has not denied that the Respondent No.3 has not taken any steps for acquisition of the said land for a period of 40 years i.e. from 28th February, 1978 when the development plan of the Lonavala Municipal Council was sanctioned and under which 390 Sq. Mtrs. of the Petitioner’s Land was reserved for the purpose of Play Ground for Primary School and which reservation continued even under the revised development plan which came into force on 27th August, 2005. Though the Petitioner issued a purchase notice on 21st July, 2018, the Respondent No.3 failed to take any steps towards commencement of the acquisition. By the G.R. dated 4th June, 2020 issued by the State of Maharashtra under Section 154 of the MRTP Act, an extension of 9 months is granted only in respect of the permissions granted for development / construction work without recovering from the Applicants any tax or interest with regard to the extended period, and does not apply to the period prescribed in the provisions pertaining to acquisition. Therefore, the question of this Court granting benefit of the G.R. dated 4th June, 2020 to the Respondent No. 3 – Council, does not arise. In any event, even if it is assumed that the extension of 9

months granted under the said G.R. dated 4th June, 2020 applied to matters pertaining to acquisition, the said extension has lapsed on 4th March, 2021 by which time the Respondent No. 3 – Council has not taken any steps to acquire the Petitioner's land ad-measuring 390 Sq. Mtrs.

11. We are therefore, convinced that in the instant case, the Lonavala Municipal Council not only failed to acquire the land of the Petitioner reserved under the final development plan, which came into force from 28th February, 1978 and the revised development plan which came into force on 27th August, 2005, but also failed to take steps towards commencement of the acquisition within two years from the date of receipt of the purchase notice, resulting in lapsing of the said reservation.

12. For the above reasons we allow the Writ Petition in terms of prayer clauses (b) and (c) reproduced in paragraph 2 hereinabove. However, there shall be no Order as to costs.

13. The Writ Petition is accordingly disposed off.

(SURENDRA P. TAVADE, J.)

(S.J. KATHAWALLA, J.)