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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9840 OF 2018

Farrokh Nariman Cooper
Age - 73 yrs., Occ. - Business,
May fair, Homai Cooper Road,
Sadar Bazar, Satara

.. Petitioner

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai.

2. The District Collector, Satara.

3. The Satara Municipal Council,
Through the Chief Officer.

4. Dy. Director General of Meteorology,
Regional Meteorological Centre, Colaba,
Mumbai - 400005.

.. Respondents

-
- Mr. Vijay Killedar for the Petitioner.
 - Ms. M.P. Thakur, AGP for the State.
 - Ms. Sonali Pawar i/by Vaidehi Deshmukh for Respondent No.4.
-

CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.

DATE : 11 AUGUST, 2021

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

. The Petitioner is the owner of the land bearing CTS No.458, admeasuring 0 HR 94 R (approximately 11260 sq. mtrs.) land situated at Sadar Bazar, Satara within the Municipal limits of Satara Municipal Council (for short "**the said land**").

2. The Petitioner has filed the above petition for the following reliefs:

"c) That this Hon'ble Court be pleased issue a Writ of Mandamus and/or a Writ, order or direction in the nature of Mandamus and thereby be pleased to declare that the Reservation No.212 of the land bearing CTS No.458, at Sadar Bazar, Satara situated within the Municipal limits of Satara Municipal Council, is lapsed by virtue of operation of the Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

d) That this Hon'ble Court be pleased to issue a Writ of Mandamus and/or a Writ, order or direction in the nature of Mandamus and thereby be pleased to direct the Respondent No.1 to notify the lapsing of reservation of the land bearing CTS No.458, at Sadar Bazar, Satara situated within the Municipal limits of Satara Municipal Council by passing statutory order published in Official Gazette, within stipulated period as may be specified by the Hon'ble High Court."

3. Briefly stated the facts are as under:-

3.1. As set out hereinabove, the Petitioner is the owner of the said land. The development plan of Satara (2nd Revision) came into force w.e.f. 01.11.2001 vide notification issued by the Urban Development Department bearing TPS-1900/66/C.R-19/2000/UD-13, dated 15.09.2001. Thereafter the excluded part of the development plan of Satara (2nd Revision) was sanctioned by the State Government vide Urban Development Department Notification No. TPS-1900/66/C.R-19/2000/UD-13, dated 18.08.2005 w.e.f. 15.10.2005.

3.2. In the said final development plan of Satara, the said land has been reserved as Site No.212 for the purpose of "Observatory Building and Staff Quarters" for the benefit of the Appropriate Authority i.e. the Indian Meteorology Department, Government of India (Respondent No.4).

3.3. According to the Petitioner, the Respondent No.3 Satara Municipal Council (for short "**the Council**") and the Respondent No.4 (for short "**the Appropriate Authority**") failed to acquire the said land which was kept under the reservation as stated above.

3.4. The Petitioner therefore issued a "Purchase Notice" dated 07.02.2017 resorting to the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**the said Act**") to the Respondent No.3 - Council and requested the Municipal Council to take appropriate steps for acquisition of the said land of the Petitioner. All the necessary documents were submitted to the Council along with the purchase notice. The purchase notice was served upon all the respondents to the present petition.

3.5. After serving the purchase notice on 07.02.2017 under Section 127 of the said Act, the Petitioner waited for the statutory period of two years during which no steps in regard to the acquisition

of the said land were taken by the Respondent No.3 - Council.

3.6. The Petitioner therefore filed the above Writ Petition seeking a declaration that the reservation qua the Petitioner's said land has lapsed and for issuance of a Notification in the official gazette notifying lapsing of the reservation of the said land.

4. The Assistant Director, Town Planning, Satara has filed his Affidavit dated 29.07.2021 wherein he has, *inter alia*, stated that the validity of the purchase notice served by the Petitioner and the subsequent action taken by the Appropriate Authority needs to be ascertained from the office records of the said authority and thereafter the Court may pass suitable orders as it may deem fit and proper.

5. The Respondent No.3 - Council has been duly served a copy of the petition as per the bailiff report but has chosen not to appear or file its Affidavit-in-Reply.

6. On behalf of Respondent No.4, Mr. Bishwombhar working as Scientist 'E' in the Regional Meteorological Centre, India Meteorological Department, Ministry of Earth Sciences, Government of India has filed his Affidavit dated 11.11.2019 wherein in paragraph Nos. 3 to 6 it is stated as under.

"3. The Town Planning Office informed vide letter dated 30.09.1998 that approximately 0.94 H (9400 sq.mtr) land under CTS 458 had been reserved for construction of meteorological observatory and staff quarters at Satara by reservation No. 212. I crave leave to refer to and rely upon the correspondence exchanged, when produced.

4. Based on the requirement, State of Maharashtra was requested to reserve land measuring 1130.23 sq. mtr only for setting up of observatory and construction of staff quarters. Reminding letters were sent to the Respondent No 1, 2 & 3 to handover the land measuring 1130.23 sq. mtr. I crave leave to refer to and rely upon the documents in this regard, when produced.

5. The Respondent no 4 has already sent documents to the Respondents no.1, 2 and 3 to acquire land, since as per office procedures for any land requirements Respondent no. 4 approaches the State Governments and not to the land owners. In the past also for any land requirements of Respondent no. 4 for setting up observatories at different places like Solapur, Harnai etc, the land acquisition was carried out by the State Governments and handed over to IMD (respondent no. 4).

6. That at present the land is in possession of State of Maharashtra and prayer as made in the present Writ Petition is regarding denotification of land. The said denotification is to be caused by State of Maharashtra. And thus, there is no cause of action attributable towards Respondents No 4."

6.1. It appears that Respondent No.4 - Appropriate Authority has requested the State of Maharashtra to reserve land admeasuring 1130.23 sq. mtrs for setting up of the Observatory and construction of staff quarters and thereafter reminder letters have been sent to the Council to hand over the said land. It is further seen that the Appropriate Authority has relied upon the State Government for acquisition of the said land but admittedly no steps have been taken

either by the Appropriate Authority or the State Government and its functionaries to acquire the said land within the statutory prescribed time period of two years as contemplated by the provisions of Section 127 of the said Act. Thus, *prima facie*, it is seen that no steps have been taken by the Respondents to acquire the said land within the aforementioned statutory period from the date of service of the purchase notice.

7. The learned Advocate for the Petitioner has taken us through the facts in the present case which are already set out in paragraph No.3 hereinabove. He submitted that the development plan under which the said land belonging to the Petitioner was reserved came into force w.e.f. 15.10.2005. He submitted that since the said land was not acquired within 10 years from the date on which the final development plan of Satara came into force, the Petitioner served a statutory purchase notice dated 07.02.2017 under Section 127(1) of the said Act to the Respondent No.3 - Council. The Council admittedly failed to acquire the said land within the statutory period of two years. In such circumstances, as provided under Section 127 of the said Act, the reservation on the said land is deemed to have been lapsed and the said land stood released from the reservation and became available to the Petitioner for the purpose of development.

8. The learned Advocate for the Petitioner relied upon the decisions of the Supreme Court and the Bombay High Court in the matters of *Girnar Traders & Anr. Vs. The State of Maharashtra & Ors.*¹, *Vansada Agricultures Pvt. Ltd., Nashik and Ors. Vs. Nashik Municipal Corporation and Ors.*², *Bombay Salesian Society Vs. State of Maharashtra and Ors.*³ and *Mohandas and Ors. Vs. State of Maharashtra and Ors.*⁴.

9. From a perusal of the pleadings it appears in the present case that Respondent No.4 - Appropriate Authority had issued reminder letters to the Respondent Nos.1 to 3 to hand over the said land after completing acquisition. The said land is yet to be acquired and save and except the reference to the aforementioned letters which are referred to in paragraph No.4 of the Affidavit-in-Reply dated 11.11.2019, no steps whatsoever as contemplated under the provisions of Section 127 of the said Act have been taken by the Respondents for acquisition of the said land.

10. We have perused the Writ Petition and the Affidavits filed by the Respondents. We have considered the facts of the present case, the submissions made by the learned Advocates for the parties and the

1 2007 (7) SCC 555

2 2015 (2) ALL M.R.31

3 2020 (1) Bom. C.R. 235

4 2020 (3) All M.R.641

case law relied upon by the Advocate for the Petitioner.

11. 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 MRTP 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 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 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.]”

12. In the present case, it is an admitted fact that the Respondent No.3 - Council failed and neglected to take any steps for acquisition of the said land pursuant to its reservation in the final development plan of Satara w.e.f. 15.10.2005. Thereafter though the Petitioner issued the purchase notice dated 07.02.2017, the Respondent No.3 - Council failed to take any steps towards commencement of the acquisition of the said land.

13. In its recent Judgment in the case of *Mohandas vs. State of Maharashtra*⁵, the Supreme Court has referred to and discussed several Judgments which have interpreted/analysed Section 127 of the said Act. Referring to the question posed in the Judgment of the Supreme Court in the case of *Girnar Traders vs. State of Maharashtra and others* (supra), as to what is required to be done by the Authority on receipt of a notice under Section 127 of the said Act from the owner of the land, the Supreme Court (majority view) has concluded that the steps towards acquisition would really commence when the State Government permits acquisition, and as a result thereof, publishes the declaration under Section 6 of the Act. The relevant paragraph Nos. 16 and 17 of the Judgment in the Mohandas case are reproduced hereunder :

"16. In *Girnar Traders v. State of Maharashtra and others*, (2007) 7 SCC 555 ; [2007 ALL SCR 2232], the

5 2020 (3) ALL MR 641 (S.C.)

majority view was that a literal interpretation of Section 127 of the Act would result in injustice. The question, which was posed, actually was what is required to be done by the Authority on receipt of a notice under Section 127 of the Act from the owner of land subjected to restrictions by way of a Development Plan, *inter alia*. The dissenting Judge, P.K. Balasubramaniam, J., took the view that all that is required to be done when a notice is issued under Section 127 of the Act was that the Authority under the Act was to make an application for acquisition under the Land Acquisition Act and nothing more. The learned Judge went on to hold that the Authority cannot set in motion proceeding under the Land Acquisition Act while acting under Section 126(1) of the Act. The majority view, however, was that resorting to the plain meaning of the words would cause palpable injustice. The Court took the view as follows:

“54. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

(Emphasis supplied)

17. Thus, it was concluded that the steps towards acquisition would really commence when the State Government permits acquisition, and as a result thereof, publishes the declaration under Section 6 of the Act.”

14. Applying the ratio of the aforesaid case to the facts and circumstances in the present case, we are satisfied that no steps / action have been initiated or taken by the Respondent No.3 - Council or the Respondent No.4 - Appropriate Authority for acquisition of the said land. Though the Respondent No.3 - Council is not represented before us, the Affidavit-in-Reply dated 29.07.2021 filed by the Assistant Director of Town Planning, Satara on behalf of the Respondent Nos.1 and 2 categorically states that the responsibility of acquiring the land under reservation and development of the site for the reserved purpose is of the Appropriate Authority. The deponent of the said Affidavit dated 29.07.2021 is the Assistant Director of Town Planning, Satara who is a responsible statutory Government Officer concerned with the process of acquisition of land in Satara. We are therefore, convinced that in the present case, Respondent No.3 i.e. the Satara Municipal Council not only failed to acquire the said land of the Petitioner reserved under the final development plan which came into force on 15.10.2005, but also failed to take steps towards commencement of acquisition within two years from the date of receipt of the purchase notice, resulting in lapsing of the said

reservation.

15. For the above reasons, we hold as follows:

- i. Upon expiry of the period of two years from the date of service of purchase notice on 07.02.2017, the reservation in respect of the said land belonging to the Petitioner is declared to have been lapsed;
- ii. Respondent No.1 shall issue a necessary Notification by publishing an order in the official gazette notifying that the reservation in respect of the said land of the Petitioner has lapsed;
- iii. The Writ Petition is accordingly disposed of with no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]

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