

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5385 OF 2021

M/s. Aakash Buildcorp LLP
Vs.
The State of Maharashtra & Ors.

...Petitioner.
...Respondents

Mr. Pravin Samdani, Senior Advocate with Samit Shukla with Ms.Saloni Shah, Ms.Sayali Diwadkar i/b. DSK Legal, for the Petitioner.
Mr. A. I. Patel, Addl. Govt. Pleader with Mrs. N. M. Mehra, AGP for the State-Respondent No.1.
Mr. Mandar Limaye, for Respondent No.2.
Mr. Rui Rodrigues with Mr. N. R. Bubna, for Respondent No.7.

**CORAM : S.V. GANGAPURWALA &
ARIF S. DOCTOR, JJ.**

DATE : NOVEMBER 23, 2022.

PC.:

1. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.
2. Shorn of necessary details, the facts necessary to decide the matter in issue are spelt out as under:-
3. The Revised Development Plan for City of Thane was published on 22 November, 1999. The lands bearing survey nos.133/1A, 133/1B and 136/16A situated as Village Kolshet, Taluka and District Thane are reserved for post and telegraph office in the said revised development plan vide Reservation No.Post office/V/1. The petitioner issued two

notices purportedly under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”) on 07 April, 2017 and 13 April, 2017. The said notices are served upon the planning authority and the appropriate authority.

4. No steps for acquisition are initiated inter-alia the declaration under Section 126 of the MRTP Act read with Section 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has not been issued till date.

5. The petitioner seeks a declaration that the reservation on the said land stands lapsed.

6. We have heard Mr. Samdani, learned senior counsel for the petitioner, Mr. Bubna, learned counsel for the appropriate authority and Mr. Limaye, learned counsel for the respondent-Corporation.

7. Mr. Bubna, learned counsel for the appropriate authority submits that no notice was issued by the petitioner under Section 127 of the MRTP Act for land bearing Survey No.136/16A situated at Village Kolshet, Taluka and District Thane. The petitioner is not the owner of the subject property though in the notice he claimed to be the owner. According to the learned counsel, as no notice is issued under Section 127 of the MRTP Act for land bearing Survey No.136/16A, the entire

notice has to fail. There cannot be a part deletion of reservation.

8. Per contra, Mr. Samdani, learned senior counsel submits that the respondent/appropriate authority understood the notice of the petitioner to have been issued even for the land bearing Survey No.136/16A in view of the communication on their behalf. The learned senior counsel relies on the judgment of the Division Bench of this Court in case of *Smt. Murdevi Surendra Upadhye and Others Vs. State of Maharashtra and Others*, 2015 SCC OnLine Bom 646. The learned senior counsel further submits that the petitioner had entered into a registered development agreement with the erstwhile owner on or before 16 October, 2016 and the petitioner is an interested party. The factum of the development agreement being executed in favour of the petitioner by the erstwhile owner is not disputed by the respondents.

9. The date of issuance of the revised development plan, the date of service of notice under Section 127 of the MRTP Act upon the respondents is undisputed. The bone of contention is that the notice did not refer to the land bearing Survey No.136/16A.

10. Perusal of notice under Section 127 of the MRTP Act issued by the petitioner it is manifest that the notice refers to land bearing Survey No. 133/1A and 133/1B, however, does not refer to the land bearing Survey

No.136/16A. In the light of that, the notice under Section 127 of the MRTP Act will have to be construed with regard to the survey numbers specified in the notice. As such, we are not inclined to accept the submission of learned senior counsel for the petitioner that the respondents had understood the notice also for the land bearing Survey No.136/16A. The judgment of the Division Bench of this Court in *Smt. Murdevi Surendra Upadhye and Others Vs. State of Maharashtra and Others* (supra) may not be of much avail to the petitioner in as much as in the said case, the objection of the respondent was that the notice ought to have been served in the name of State of Maharashtra. The said objection was not raised at any point of time. The petitioner therein had also filed a writ petition earlier on the basis of the same notice and a reply was filed to the said petition by the respondent therein stating that after receipt of the purchase notice, the steps were already taken by them.

11. In the present matter, the notice will have to be construed with regard to the survey numbers. We are inclined to observe this for one more reason. In the notice, separate area has been specified for separate survey numbers and area for survey no.136/16A is not specified nor survey no.136/16A is referred to in the notice.

12. It is trite that Section 127 of the MRTP Act is a fetter on the power

of eminent domain. The respondents have to take steps for acquisition within a period of two years from the date of service of notice under Section 127 of the MRTP Act. The steps for acquisition would be issuance of declaration under Section 126 of the MRTP Act read with Section 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Admittedly, the same has not been issued as yet. In the light of the judgment of the Apex Court in *Girnar Traders vs. State of Maharashtra*, (2007) 7 SCC 555, the reservation on land bearing Survey No.133/1A and 133/1B situated at Kolshet stands lapsed.

13. The State Government shall issue a notification under Section 126(1) of the MRTP Act, preferably within 6 months.

14. Rule is accordingly made absolute in the above terms. No costs.

15. Needless to state that it is for the petitioner to take appropriate steps in regard to land bearing Survey No.136/16A.

(ARIF S. DOCTOR, J.)

(S.V. GANGAPURWALA, J.)