

JPP

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

WRIT PETITION NO. 6986 OF 2021

Sanjay Vijay Ghodake

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Abhijit Kulkarni i/b. DD and Abhijit Associates for the
Petitioner

Mr. Jagdish G. Reddy for the Respondent No. 5

Mr. R.S. Pawar, AGP for the Respondent - State

***CORAM : S.V. GANGAPURWALA &
M.G. SEWLIKAR, JJ.***

DATE : 27 APRIL 2022

P.C. :-

Rule. Rule made returnable forthwith. By consent of parties the matter is taken up for final disposal.

2. Land of the Petitioner bearing Gat No. 1394/2 admeasuring 570 sq. mtrs. is reserved for the development plan road in the development plan published on 15th April 2002.

3. The Petitioner issued notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 on 14th February

This Order is corrected vide Speaking to Minutes order dated 6th May 2022

2018. The contention of the Petitioner is that the steps are not initiated for acquisition of land within two years from the date of service of notice under Section 127 of the M.R.T.P. Act. As such reservation stands lapsed.

4. The learned Counsel for the Planning Authority submits that the Planning Authority has passed a Resolution seeking funds from the Government for acquiring property. The Planning Authority has also shown its intention to award TDR to the Petitioner.

5. It is not disputed by the learned Counsel for the Planning Authority that as yet the declaration under Section 19 of the Right to Fair Compensation and Land Acquisition (Rehabilitation and Resettlement) Act 2013 r/w. Section 126 of M.R.T.P. Act, is not issued.

6. Section 127 is a fetter on the power of eminent domain. As far as the contention of the Planning Authority that it has offered the TDR to the Petitioner would not be of any avail. The Petitioner has not accepted the same. The Planning Authority is entitled to offer TDR/DRC only if the Petitioner surrenders the land on its own volition and not otherwise.

7. It is only if the owner of the land agrees on its own volition to accept the TDR/DRC, then only the acquisition can be by offering TDR. In case the parties are not agreeable, then the Planning Authority has no option but to resort to the acquisition proceedings.

8. As admittedly the declaration under Section 19 of the Act 2013 r/w. 126 of the M.R.T.P. Act is not issued within the stipulated period of two years till date, the reservation by operation of statute stands lapsed.

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

(i) Reservation of land Gat No.1394/2 admeasuring 570 sq.mtrs. reserved for development plan road in Development Plan dated 15th April 2002 stands lapsed.

(ii) The Notification shall be issued by the State Government under Section 127(2) of M.R.T.P. Act, preferably within a period of six months.

10. Rule made absolute accordingly. No costs.

(M.G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)

JYOTI
PRAKASH
PAWAR

Digitally signed by
JYOTI PRAKASH
PAWAR
Date: 2022.05.06
16:53:13 +0530

This Order is corrected vide Speaking to Minutes order dated 6th May 2022