

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6331 OF 2008

WITH

INTERIM APPLICATION NO.10057 OF 2022

1. Dr Ramrao Sopanrao Gondkar
Adult, Indian Inhabitant, residing at
 2. Sumanbai K Take
adult, Indian Inhabitant, residing
 3. Shri Namdeorao G Gadkh .. Petitioners
- Versus
1. Nasik Municipal Corporation for Greater
Mumbai, a statutory body constituted
under the Municipal Corporation Act
 2. The Collector, Nasik
 3. The Special Land Acquisition Officer.
 4. State of Maharashtra .. Respondents

WITH

CIVIL APPLICATION NO.1893 OF 2011

IN

WRIT PETITION NO.6331 OF 2008

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1. Dr Ramrao Sopanrao Gondkar
since deceased through his LRs
1(a) Smt. Lata Ramrao Gondkar
1(b) Shodhan Ramrao Gondkar
1(c) Shirin Nimin Adsul
1(d) Shalaka Haribhau Kawade
residing at Yeshodhan, Old Agra
Road, Nashik.
 2. Sumanbai K Take since deceased
through LRs
2A. Keshavrao Madhavrao Take
2B. Sharmila Pralhad Shinde
2C. Pramila Sitaram Labade
2D. Mitesh Keshavrao Take
residing at Shirasgaon, Tal.Shrirampur,
Dist-Ahmednagar.
 3. Shri Namdeorao G Gadkh
since deceased through his LRs
3a. Smt. Leelavati Namdo Gadakh
3b. Vilas Namdeorao Gadakh
residing at Chandori, Tal-Niphad,
District-Nashik.
3c. Sunila Bhaskarrao Gadakh
residing at Flat no.9, Vishakha Apts.,
Canada Corner, Nashik.
- .. Petitioners
- Versus

1. The Nasik Municipal Corporation
Nashik, through its Commissioner,
Nashik District, Nashik.
2. The Collector, Nashik
3. The Special Land Acquisition Officer.
4. State of Maharashtra .. Respondents

Mr. Pramod N. Joshi a/w Mr. Pratik Rahade for the petitioner/applicant.

Mr. R.S. Apte, Senior Advocate, a/w Mr. Vaibhav P.Patankar, Suresh S.Deshpande, i/b. Patankar & Associates for respondent no.1 Corporation.

Mr. A.I. Patel, Addl. Govt. Pleader a/w A.A. Alaspurkar, AGP, for the State.

CORAM : R.D. DHANUKA &

KAMAL KHATA, JJ.

RESERVED ON: 19TH SEPTEMBER, 2022

PRONOUNCED ON : 18TH OCTOBER, 2022

JUDGMENT: - [Per Kamal Khata, J.].

Rule. Respondents waive service. Rule is returnable forthwith.

2. The present petition is filed under Article 226 of the Constitution of India for a Writ of mandamus for a declaration that the reservation of the land belonging to the petitioner stood lapsed as no steps have been taken by the respondents within a period of 6 months from the date of Purchase Notice given to the respondent No. 1 under section 127 of the Maharashtra Regional Town Planning Act. (referred as “MRTP Act”).

3. The petitioners have also prayed for a declaration that the acquisition proceedings initiated by the respondents on the basis of the notification dated 16th June 2006 under Section 6 of the Land Acquisition Act stood lapsed, and consequently for return of possession of the land.

BRIEF FACTS:

4. The petitioners are the owners of the land bearing Survey no. 197/1K/B/1 & 2 admeasuring 81 Ares situated and abutting National Highway No.3, Bombay Agra Road, Nashik (referred as “*the writ land*”). The writ land had initially been notified in the Development Plan as “reserved for Stadium” and “60 ft. wide service road” under reserved No.294 on 28th June 1993.

5. It is the case of the petitioners that they could not develop their land on account of the reservation for a period of 10 years i.e. up to 28th June 2003 within which period the respondents had a statutory obligation to acquire the said land. Since, even after the expiry of the statutory period, the respondents failed to acquire or even take steps towards the acquisition, the petitioners through their Advocate issued a

Purchase Notice dated 5th December, 2003 under section 127 of MRTP Act calling upon the respondents to acquire the writ land.

6. It is the case of the petitioners that no steps were taken for the purpose of acquisition of the said land within a period of 6 months from the receipt of such notice, and thus the reservation stood lapsed.

7. Being aggrieved by the inaction on the part of the respondents in not notifying the lapsing of reservation of the writ land under section 127 of the MRTP Act, even though the statutory period ended on 5th June 2004 and for various other reliefs, the petitioners filed the present Petition on 22nd July 2008.

8. A reply is filed by one Ramchandra B Pawar on behalf of respondents no.2 to 4 on 20th September 2008. It is the case of the Respondent that the statutory period of limitation for finalising the award is a period of 2 years under the Land Acquisition Act. There is no limitation for finalising the award under section 126 (4) of MRTP Act read with section 6 of Land Acquisition Act. According to the Respondents the land acquisition proceedings had been initiated within a period of 6 months of service of the Purchase Notice by communicating the land acquisition proposal bearing sr. no. 197p by the issuance of letter no. 426 of 2004 dated 24th May 2004 by the Nashik Municipal Corporation. It is the case of the Respondents that after the compliances were complied with from TILR, ADTP and ULC, a notification under section 6 of the Land Acquisition Act was published on 29th June 2006 and joint measurements maps were resubmitted by the Assistant Director

of Town Planning to, Taluka Inspector of Land Record by letter bearing No. ADTP-1798, dated 29th August 2007. Thereafter, draft award was prepared on 10th June 2008 and sent to the Collector Nasik for sanction on 17th June 2008. Subsequently, a rectification notification was published on 1st May 2008. Consequently, in view of the aforesaid facts, the petition deserves to be dismissed.

9. Mr. Joshi the learned counsel for the petitioners, drew our attention to the alleged steps taken by the respondents after the issuance of the Purchase Notice dated 5th December 2003. He submitted that a notice dated 19th July 2006 was addressed by the respondent No. 2 under Section 9 (1) calling upon the petitioners to claim compensation under section 90 of the MRTP Act. The petitioners' Advocate, by their letter dated 3rd August 2006 responded thereto and not only claimed the amount but contended that the reservation had lapsed. He submitted that the acquisition proceedings have not been completed even thereafter by the respondents.

10. The Learned counsel submitted that the respondents overlooked the petitioners' advocate's response and issued a corrigendum dated 24th April 2008 to the effect that '81 Ares' is to be read as '80 Ares'. The petitioners once again issued a final letter dated 24th June 2008 reiterating that the acquisition had lapsed.

11. The learned counsel relied on the judgement of ***Girnar Traders vs State of Maharashtra***¹ in support of his contentions that the

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reservation had lapsed since the Notification under Section 6 of the Land Acquisition Act or under Section 127 of the MRTP Act had not been issued within a period of six months from the date of the receiving of the Purchase Notice.

12. The learned counsel relied on the judgement of the Supreme Court in the case of ***Hindustan Oil Mills versus Special Deputy Collector, Nashik*** to substantiate his contention that the last notification would be the effective notification for considering the claim for compensation since the subsequent notification was such that would change the entire complexion of the matter and was not merely rectifying errors in the earlier notification. He accordingly submitted that date of the last notification would be relevant and consequently in the alternative, land not being returned to the Petitioners they would be entitled to compensation as per the Act of 2013. He submitted that inspite of several representations to the Respondents during the pendency of the petition showing willingness to even accept compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “Act of 2013”) the Respondents had failed to acquire the land.

13. The learned counsel relied upon the following judgements in support of his case:

a. ***Shrirampur Municipal Council, Shrirampur vs Satyabhamabai Bhimaji Dawkher and ors.***²

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(2013) 5 SCC 627

b. *Godrej and Boyce Manufacturing Company Ltd versus State of Maharashtra and others*³

c. *Shri Ashok Karbhari Borade versus State of Maharashtra*⁴

d. *Shree Vinayak Builders & Developers V/s The State of Maharashtra & Ors.*⁵

14. Mr. Apte learned counsel for the Respondents on the other hand submitted that the development plan was published on 26th August 1993 as Reservation no. 294 for Stadium and Road. Land acquisition was complete and compensation was paid. He submitted that although the Purchase notice was issued by the petitioner on 5th December 2003 and the notification was issued on 16th June 2006, the present petition was filed only on 22nd July 2008 and consequently there was gross delay coupled with intervening circumstances. It was submitted that there was no explanation for delay of 5 years in filing of the petition and on that ground alone, the petition deserves to be dismissed. The learned counsel drew our attention to the cause title of the petition and the notice issued to submit that only 2 owners out of the 5 persons in the petition claiming ownership had issued the purchase notice and consequently the same was invalid. He further submitted that there was no lapsing since a draft award was prepared on 10th June 2008 by the SLAO and sent to the Commissioner. He submitted that the acquiring body is the corporation

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2015 (11) SCC 554

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Writ petition No. 12999 of 2017

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Writ petition No. 2231 of 2019

and hence they had to deposit the money. He submitted that the respondents had taken adequate steps and therefore there was no lapsing.

15. Mr. Joshi in rejoinder relied upon the judgement in the case of Girnar (supra) and submitted that laches would not deprive the petitioner of his statutory right. With regard to the purchase notice he submitted that each of the owner had given the notice though the same were not annexed to the petition. It was submitted that there was no averment in the reply to the petition or in any affidavit filed during the pendency of the petition challenging the validity of the purchase notice as urged during final arguments and consequently the petitioners had no occasion to bring the same on record.

16. We have carefully considered the submissions. We find that the reservation of the writ land has lapsed upon the expiry of the prescribed period from service of the purchase notice under section 127 of the MRTP Act. A mere sending of draft award to the commissioner cannot be construed as steps taken to prevent or revive lapsing. This Court in the case of **Trilok Singh V/s MCGM & Ors.** Whilst advertng to the Supreme Court in the case of **Shrirampur Municipal Council, Shrirampur** (supra) after advertng to its earlier judgement in the case of **Girnar Traders** (supra) has reiterated that the steps towards acquisition can only be said to really commence when the State Government takes active steps for acquisition of the particular piece of land which leads to publication of declaration under section 6 of the Land Acquisition Act, 1894.

17. In the present case, admittedly the Section 6 Notification had not been issued. The statutory notice under section 127 of the MRTP Act was issued to the respondents and thereafter no steps as contemplated under section 126(1) (c) read with section 127 were taken before the expiry of the statutory period of six months. The mere sending of draft award to the commissioner cannot by any stretch be construed as a step for acquisition of the writ lands.

18. We are unable to agree with the submission of Mr. Apte that delay and laches would deprive the petitioners of their statutory rights. In this regard the Apex Court in the case of **Godrej and Boyce Manufacturing Company Limited** (supra) has held that statutory right accrued to the owners cannot be taken away by making an attempt to impose a fresh reservation.

19. In our view the arguments advanced by the learned senior counsel for the respondents are contrary to the principles laid down by the Supreme Court in case of **Girnar Traders** (supra) and **Shrirampur Municipal Council, Shrirampur** (supra) and reiterated by this Court in the case of **Trilok Singh V/s MCGM**. In our view considering the facts in the present case the petition does not suffer from delay and laches.

20. In our view there is no merit in the submissions made by the learned senior counsel for the respondents as catena of decisions of the Supreme Court referred to and reiterated by this Court in the case of **Trilok Singh V/s MCGM** (supra) are binding on this Court.

21. We accordingly pass the following orders:-

: ORDER :

- a. The Writ Petition deserves to be allowed and is accordingly allowed in terms of prayer clauses (a), (b) & (c).
- b. The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127 (2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today.
- c. If the petitioners submit fresh plans for building permission then the same be considered expeditiously.

22. Rule is accordingly made absolute. No order as to costs.

23. The parties to act on the authenticated copy of this judgment.

24. In view of disposal of the writ petition, all pending interim applications stand disposed off.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]