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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9003 OF 2021

Mr.Pundalik Sharanbasappa Patil] .. Petitioner

vs.

The State of Maharashtra]

Through Urban Development Dept.]

and Anr.] .. Respondents

Dr.Ramdas Sabban a/w Mr.Pravin Sabban, Mr.Shrikant Kompelli,
Ms.Arundhati Sabban for the Petitioner.

Mr.A.I. Patel, Addl. Government Pleader alongwith Mr.N.K. Rajpurohit –
AGP, Ms.K.N. Solunke, AGP for the Respondent No.1-State.

Smt.Geeta Shastri, for Respondent No.2-Corporation.

**CORAM : R.D. DHANUKA &
 M.G.SEWLIKAR, JJ.**

RESERVED ON : 28TH JUNE, 2022.
PRONOUNCED ON : 14TH JULY, 2022.

JUDGMENT : (PER : M.G.SEWLIKAR, J)

1] Rule. Rule is made returnable forthwith. With the consent of parties
taken up for final hearing at the stage of admission.

2] By this Petition, the Petitioner is seeking direction that the reservation earmarked by Respondent No.2- Corporation of the land of the Petitioner has lapsed and for consequential relief of release of land from reservations.

3] The facts in brief are that :

The Petitioner is the owner of land bearing Survey No.23/1/3/4 (New) Survey No.219 (old), situated at Village – Majarewadi, North Solapur, District-Solapur. This land was reserved under the Draft Development Plan of Solapur 1997-2017 which was brought into force with effect from 15th December, 2004 vide Government of Maharashtra Resolution dated 28th October, 2014.

4] This land is reserved/allotted/designated for (a) Parking under the Reservation No.13/65 – Area admeasuring o-H 16 Ares;(b) Shopping Center under Reservation No.13/63, area admeasuring o-H 24 Ares; (c) Vegetable Market under the Reservation No.13/64 area admeasuring o-H 21 Ares; (d) Play ground under the Reservation No.13/66, area admeasuring 1-H 09 Ares out of the land admeasuring area 1-H, 71-Ares, situated at Village – Majarewadi, North Solapur, District-Solapur.

5] Respondent Nos.1 and 2 did not acquire the land. Therefore, the Petitioner served four purchases notices under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act" for short) dated 14th March, 2019 on Government of Maharashtra and Municipal Corporation, Solapur (Respondent Nos.1 and 2 respectively). The Petitioner also served purchase notice under Section 49 of the MRTP Act on 14th March, 2019 on Respondent Nos.1 and 2.

6] Respondent Nos.1 and 2 neither responded to these notices nor did initiate acquisition proceedings within a period of ten years from the date on which the Draft Development Plan was brought into force. The Petitioner contends that since within a period of two years, the acquisition proceedings did not commence nor the land was acquired, the reservation has lapsed. The Petitioner, therefore, sought declaration to that effect.

7] Respondent No.1-the State of Maharashtra filed Affidavit in Reply contending therein that revision of Development Plan took place vide Resolution by Standing Committee of Respondent No.2 on 24th September, 2021. It is further averred in the Affidavit in Reply that Respondent No.2 is facing financial crunch and, therefore, could not acquire the land. It has further contended that there is provision in Unified Development Control and

Promotion Regulation 2020 (UDPCR) for alternate mode of acquisition of land, either by agreement or on the basis of granting of other rights including Transferable Development Rights (TDR) and or Accommodation Reservation and/or Reservation Credit Certificate (RCC). The Petitioner can avail the benefit under these regulations. Respondent No.1, has, therefore, prayed for dismissal of the Petition.

8] Respondent No.2 has filed its Affidavit in Reply raising more or less similar contentions.

9] We have heard Dr.Ramdas Sabban, learned counsel for the Petitioner, Mr.Samir Kumbhakoni for Respondent No.2 and Mr.A.I. Patel, Additional Government Pleader for Respondent No.1.

10] Dr.Ramdas Sabban submitted that in terms of Section 127 of the MRTP Act, if land is not acquired within a period of ten years from the date on which the development plan came into force, the owner may serve notice on the Planning Authority or on the Development Authority as the case may be. Admittedly, within a period of two years, acquisition proceedings were neither initiated nor the land was acquired, therefore, reservation has lapsed.

11] At this juncture, it would be apposite to look into the provisions of Section 127 of the MRTP Act. Section 127 of the MRTP Act reads thus :

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 twenty four 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] Section 127 of the MRTP Act contemplates that if the land is not acquired within a period of ten years, reservation shall lapse. It further contemplates that the owner or the person interested in the land, may serve notice alongwith documents showing his title or interest in the land and if within 24 months from the date of service of notice the land is not acquired or no steps are taken for acquisition, the reservation/ allotment/ designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation/allotment/designation.

13] Admittedly, declaration under Section 126(2) or (4) has not been published within a period of two years from the date on which Final Development Plan came into force. It is also not in dispute that acquisition proceedings were neither commenced nor land was acquired within two years from the date of service of purchase notice under Section 127 of the MRTP Act.

14] The learned counsel for Respondent Nos.1 and 2 submitted that the funds had to be diverted on account of pandemic Covid 19. Both of them submitted that owing to this, the land could not be acquired and Respondent Nos.1 and 2 would initiate acquisition proceedings very soon.

15] This submission cannot be accepted. Section 127 of the MRTP Act contemplates that if the proceedings for acquisition are not started or the land is not acquired within 24 months from the date of service of notice by the owner, the reservation shall lapse. Section 127 does not provide for extension of time on account of circumstances beyond the control of the State Government or the Municipal Corporation. Once the period of two years from the date of service of notice under Section 127 of the MRTP Act by the owner is over, the consequence mentioned of Section 127 follows and reservation gets lapsed. Similar view has been taken in **Writ Petition**

No. 6986 of 2021 in the case of Sanjay Vijay Ghodake vs. State of Maharashtra & Ors., to which one of us (M.G.Sewlikar, J) was a party.

Para 5, 6 and 7 read thus :

“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”.

16] In the case at hand also, the Petitioner is not ready to accept the TDR/RCC. Petitioner cannot be compelled to accept the TDR/RCC. Therefore, planning authority had no other option than to resort to acquisition proceedings. As indicated above, as acquisition proceedings have not commenced within a period of two years, reservation shall stand lapsed. The Petition, therefore, will have to be allowed. We, therefore, pass the following order :

- (i) Writ Petition is allowed.
- (ii) Reservation of land bearing Survey No.23/1/3/4 (New), Survey No.219(Old), situated at Village – Majarewadi, North Solapur, District-Solapur, reserved in Development Plan dated 6th July, 2019 stands lapsed.

(iii) The Notification shall be issued by the State Government under Section 127(2) of the MRTP Act, preferably within a period of six month from the date of passing of this order.

(iv) Rule is made absolute accordingly. No costs.

[M.G.SEWLIKAR, J]

[R.D.DHANUKA, J]