

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

WRIT PETITION NO. 2258 / 2021

* Laxmikant Kisanji Giradkar
Aged 46 years, occu: Agriculturist
R/o Sachin Lawns
Nagpur Road, Umred Dist. Nagpur.

..Petitioner

versus

1. The State of Maharashtra
Through the Secretary,
Urban Development Department
Mantralaya, Mumbai.

2) The Director of Town Planning
State of Maharashtra
Central Building, Pune 1.

3) Assistant Director of Town Planning
Government Administrative Building No.1
2nd Floor, Civil Lines, Nagpur -440001.

4) The Municipal Council (M.C.)/
Nagpur Parishad Through Its Chief officer
Umred, Tq.Umred Dist. Nagpur. . ..

Respondents

...

Mr.G. K.Mundhada, Advocate for Petitioner
Mr. A.M.Deshpande, AGP for respondents 1 to 3
Mr M.I. Dhattrak, Advocate for Respondent No.4

....

CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 12th August, 2022.

ORAL JUDGMENT: (Per : ANIL L.PANSARE, J.)

Rule. Rule made returnable forthwith. Heard finally.

2. By this petition, the petitioner is seeking the following substantive reliefs :-

(A) Declare that the reservation for RDPSN 49 for playground, RDPSN 50 for library, RDPSN 51 for shopping centre, on the land of petitioner of Survey No.31/1, total area admeasuring 4H 64R of village Belgaon, Tq. Umred, Dist. Nagpur in the development plan of Umred has lapsed under Section 127(1) of the Maharashtra Regional and Town Planning Act, 1966 and that the petitioner is free to develop the land owned by him in the manner permissible to adjacent land as per Development Plan.

(B) Direct the respondents to notify and publish in the official Gazette under section 127 sub-section (2) the lapsing of reserved for RDPSN 49 for playground, RDPSN 50 for library, RDPSN 51 for shopping centre, of Survey No.31/1, total area admeasuring 4H 64R of village Belgaon, Tq. Umred Dist. Nagpur has lapsed within a period of eight weeks or as may be specified by this Hon'ble Court.

3. We have considered rival submissions. The petitioner claims to be the owner of Survey No.31/1,

admeasuring 4 H 64R situated at village Belgaon, Tq. Umred Dist. Nagpur (hereinafter referred to as "the said property"). The land is situated within the limits of respondent no.4- Municipal Council, Umred. According to petitioner, the development plan of the city of Umred was sanctioned by the State Government and was published, and came into force vide notification dated 8th July 2003. In the revised development plan, the property in issue has been reserved for RDPSN 49 for playground, RDPSN 50 for library and RDPSN 51 for shopping centre. Though the said property has been reserved for the aforesaid purposes, the respondents had not taken any steps to acquire the property.

4. The petitioner issued notice dated 23.01.2015 under section 127 of the Maharashtra Regional and Town Planning Act, 1966(hereinafter referred to as 'MRTP Act'), which was served upon the respondents on 27.1.2015. The respondent no.4 found certain defects viz. the notice is not accompanied with vakalatnama of the Advocate concerned,

original 7/123 extract has not been annexed, Government measurement sheet has not been annexed. The notice being defective, the respondent not 4 rejected to process further. The defects as communicated to the petitioner were, according to the petitioner, created difficulties. The petitioner through his Advocate conveyed to the respondent no.4 that with the purchase notice, what is required to be furnished is the document of title showing ownership over the property and that the photocopy of 7/12 extract was annexed with the notice. However, by way of abundant precaution, the petitioner has, vide second notice dated 12th Mach 2015 furnished the true copy of 7/12 extract, 8A extract, patwari map etc. It was further informed that section 157 of the Maharashtra Land Revenue Code provides that the 7/12 extract carries a presumption of correctness of entries in the record of rights and register of mutation. The respondent no.4, however, was not satisfied. It refuses to process the purchase notice on the count that the petitioner has not supplied title document and power of attorney and

accordingly rejected the notice u/s 127 of MRTP Act.

5. The third notice came to be issued by the petitioner mentioning therein that there is sufficient compliance. With the third notice he has annexed the vakalatnama, copy of decision pronounced by the High Court in writ petition No.2272/2010 as reported in 2013 Vol.5 All MR 1, wherein the Court held that the declaration u/s 6 of the Land Acquisition Act, 1894 should be issued within a period of 12 months from the date of receipt of notice by the authorities like the respondent no.4. The respondent no.4 vide communication dated 18.1.2016 called upon the petitioner to remain present in the office on 21.1.2016 and accept the compensation in the form of Transferable Development Rights (TDR). According to petitioner he did not attend as he was not keeping well.

6. The learned Advocate for the petitioner has contended that as per the amendment in Section 127 of the

MRTP Act, the period of 12 months has been enhanced to 24 months. The present petition has been filed after the respondents failed to process the notice in terms of provisions of MRTP Act so also the Land Acquisition Act. The reservation therefore stood lapsed and therefore, the petitioner is entitled for the reliefs claimed. He has also relied upon the judgment in the case of M/s Girnar Traders vs. State of Maharashtra : 2007 (7) SCC 555.

7. The learned counsel for the respondent no.4 has contended that the petitioner has suppressed the material facts. According to him, the petitioner has subsequently filed an application u/s 37 of the MRTP Act for deletion of reservation. The petitioner therefore dropped his claim u/s 127 of MRTP Act. He further contends that petitioner was offered compensation in the form of TDR against the acquisition of the land under reservation. The petitioner failed to attend the negotiations scheduled on 21.1.2016. He has relied upon the judgment in the case of Smt.Asha Sunil

Suresh Zawar vs. State of Maharashtra in writ petition No.5938/2020 wherein the coordinate bench at Aurangabad held that offering compensation in the form of TDR can be said to be a step taken to commence the acquisition proceedings and that the owner has no right to refuse the compensation of TDR offered by the respondents. The respondent no.4 has also submitted that the said decision is pending review.

8. The Division Bench at Nagpur in a Writ Petition has expressed its disagreement with the view taken by the Aurangabad bench and accordingly referred the questions for authoritative judgment to the larger bench.

9. The Full Bench was required to deal with the following three questions:-

(I) Whether the modes of acquisition provided under Section 126(1)(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 are at the choice of either of the parties or only of the acquiring authority?

(ii) If the planning authority has approved the request of the land owner for grant of monetary compensation or grant of TDR/FSI in lieu of compensation, can the land owner withdraw his request and thereby refuse or decline to surrender the land?

(iii) Can the grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation be treated as a step for acquisition of land and thereby commencing the proceedings for acquisition of the land?

Various provisions of law in respect of acquisition and lapsing of reservation were considered and the following answer has been rendered to the questions:-

(1) This Court holds that the acquisition under section 126(1)(a) and (b) of the Maharashtra Regional & Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring authority.

(2) Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.

(3) Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a

step for acquisition of land thereby commencing the proceedings for the acquisition of land unless it concludes the contract between the parties.”

The Full Bench has also observed in paragraph 42 that the view taken in the case of *Asha Zawar* (supra) does not represent the correct position of law, which reads as under :-

“42. In the case of *Asha Sunil Zawar* (supra) the Division Bench at Aurangabad has taken a view that offering compensation of TDR within 24 months from the date of receipt of purchase notice is the step to commence the acquisition of the reserved land, that the option of TDR does not rest with the land owner, that the land owner cannot insist upon planning authority to acquire the land only by adopting clause (c) of Section 126 of the MRTP Act. We have already clarified the law in this regard and the clarification given by us as above does not permit us to endorse the view taken in *Asha Sunil Zawar* (supra) and, therefore, we find that the view so taken therein does not represent the correct position of law.

10. The Full Bench judgment and the judgment rendered in *Girnar's* case (supra) would be squarely applicable to the facts of the present case inasmuch as the respondents authorities have failed to take steps for acquisition of land within 24 months of the date of

receipt of notice u/s 127 of the MRTP Act. The effective steps as are required for acquisition of land were not taken. The offer of respondent no.4 to compensate the petitioner through TDR is not sufficient to hold that the irreversible step for acquisition of property was taken. The step would be issuance of declaration u/s 6 of the Land Acquisition Act, 1894 read with section 126 (2) of the MRTP Act. The reservation would therefore be deemed to have lapsed in terms of Section 127 of the MRTP Act.

11. On the point of title documents having been not furnished by the Petitioners, the above rulings would address the said grievance as well. The Hon'ble Supreme Court has held that since the notice therein mentioned about 7/12 extract reflecting the ownership and/or interest of the Petitioners therein, the notice was valid. In the present case as well, the Petitioners have annexed 7/12 extract to the purchase notice, and therefore, there is sufficient compliance of a notice.

12. The learned Counsel for the Petitioner has also

relied upon the recent decision of the Hon'ble Supreme Court in the case of Laxmikant and Others V/s State of Maharashtra and others in Civil Appeal No.1965 of 2022 dated 23 March 2022. The challenge before the Supreme Court was to the order of the High Court of Bombay wherein the High Court held that reservation of the land in development plan stood lapsed, but the planning authority was given one year time to acquire the land. While setting aside the directions to acquire the land within one year, the Supreme Court has observed as under :

“7. This Court in Municipal Corporation of Greater Mumbai held that the authorities have been given a duty to act as a cestui que trust (beneficiary of the trust) with respect to public park and had thus directed to acquire land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of six months. Such direction was given under Article 142 of the Constitution of India keeping in view the facts of the case. Such direction and period for acquisition of land is not a law declared by this Court which is to be treated as binding precedent for this Court and the subordinate courts subordinate in terms of Article 141 read with Article 144 of the Constitution. Therefore, once the Act does not contemplate any further period for acquisition, the Court cannot grant additional period for acquisition of land. The land was reserved for a public purpose

way back in 2002. By such reservation, the land owner could not use the land for any other purpose for ten years. After the expiry of ten years, the land owner had served a notice calling upon the respondents to acquire the land but still the land was not acquired. The land owner cannot be deprived of the use of the land for years together. Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction cannot be kept open-ended for indefinite period. The Statute has provided a period of ten years to acquire the land under Section 126 of the Act. Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No.42 of 2015. Such time line is sacrosanct and has to be adhered to by the State or by the Authorities under the State.

8. The State or its functionaries cannot be directed to acquire the land as the acquisition is on its satisfaction that the land is required for a public purpose. If the State was inactive for long number of years, the Courts would not issue direction for acquisition of land, which is exercise of power of the State to invoke its rights of eminent domain.”

13. Thus the Supreme Court has held that since the land was reserved for public purposes, the land owner could not use the land for any other purpose for ten years in terms of the provisions of the MRTP Act. The Respondents – Authorities did not acquire the land even after issuance of notice under Section 127 of the MRTP Act. In the

circumstances, the land owner cannot be deprived of use of the land for years together. The said restrictions cannot be kept open ended for indefinite period. The time limit prescribed under Section 127 of the MRTP Act is sacrosanct and has to be adhered to by the State or the Authorities concerned.

14. In that sense, the authorities are/were duty bound to acquire the land either within ten years or in any case within twenty-four months of service of purchase notice under Section 127 of the MRTP Act. Instead, the respondent no. 4 has come up with the case that the petitioner has subsequently filed an Application u/s. 37 of the MRTP Act for deletion of the reservation and, therefore, has dropped his claim u/s.127 of the MRTP Act. Except for taking the aforesaid plea, the respondent no.4 has not taken any effective steps to acquire the land particularly when the residents of Umred town raised their objection for deletion of the reservation on the count that the acquisition of the land

is of utmost importance for the amenities in the form of playground, shopping centre and library to the residents of Umred town. The inaction on the part of the Respondent No.4 has, thus, rendered the residents of Umred town without aforesaid amenities. Having failed to act to the expectations of the residents and having failed to take necessary steps to purchase the land, the petitioner would become entitled for the reliefs as sought.

15. In view of the above, it is held that reservation for RDPSN 49 for playground, RDPSN 50 for library, RDPSN 51 for shopping centre, on the land of petitioner of Survey No.31/1, total area admeasuring 4H 64R of village Belgaon, Tq. Umred, Dist. Nagpur in the development plan of Umred have lapsed under Section 127 of the MRTP Act.

16. The Respondent No.1 shall within a period of eight weeks from production of this judgment issue notification declaring that the aforesaid reservations have lapsed.

17. The Petitioners are free to develop their lands in accordance with the development plan as applicable to the adjoining land.

18. The Wit Petition is allowed. Rule is made absolute in aforesaid terms. No costs.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

sahare