

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12734 OF 2019

1. Pradeep Narasimha Pimparkar & Ors.
Age 56, Occupation:
residing at Swapna, 560/23,
North Sadar Bazar,
Solapur 413003. .Petitioners

Vs.

1. The State of Maharashtra & Ors.
through its Principal Secretary,
Urban Development Department
having office at Mantralaya, Madam
Cama Road, Nariman Point, Mumbai
400021. .Respondents

Mr. G.S.Godbole a/w. Mr.Parag M.Tilak a/w.Ms.Deepashikha Godbole for
Petitioner.

Ms. M.P. Thakur AGP for Respondent No.1 & 3. /State .

Mr. Sandeep S.Ladda a/w. Mr.Adnan Ansari a/w. Mr.Sarvesh Dixit &
Mr.Adesh Jadhav for Respondent No.2 and 4/Corporation.

CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.

DATE : 24th JANUARY, 2023

ORAL JUDGMENT: (PER : SUNIL B.SHUKRE,J)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned Senior counsel for the petitioners, learned AGP for the State and Learned counsel for Solapur Municipal Corporation.

2. The lands involved in this petition, subjected to the reservation under the development plan of the year 2004 and situated within the limits of Solapur Municipal Corporation, are as under:-

- a) Area under DP Roads – 7148 sq.meters.
- b) Reservation No.15/27 – 2050 sq.meters
- c) Reservation No.15/28 – 1058 sq.meters
- d) Reservation No.15/29 - 6310 sq.meters
- e) Reservation No.15/30 – 400 Sq.meters.

The petitioners are seeking declaration that reservations imposed on the abovereferred lands have lapsed in terms of the provisions made in Section 127 of the Maharashtra Regional Town Planning Act, 1949 (for short 'MRTP Act'). The petitioners are also seeking a mandamus to the

State for issuance of notification under Section 127(2) of the MRTP Act. In respect of these lands, there are certain undisputed facts which can be summarised as below:

- a) Petitioners are the owners of the lands involved in the petition.
- b) The Petitioners issued purchase notice under Section 127 of MRTP Act and it was received by the Corporation as seen from the acknowledgment appearing on copy of purchase notice filed alongwith the petition, on 21/8/2017.
- c) Although, initially the stand of the Corporation was that some original documents like Original 6(D) documents, Original 7/12 extracts, Current Measurement Map and Original Part Development Plan were not annexed to the notice, lateron it was found that the original 7/12 extracts and original part plan were indeed annexed to the Purchase Notice and that there was no confusion about the exact situation of the lands in question as the Corporation had sanctioned lay out plan in respect of the three lands under reservation.
- d) No notification under Section 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (for short 'Act 2013') has been issued so far.

3. Now, it is the contention of the Corporation that some step towards acquisition of the land in question was taken and therefore, no declaration regarding deemed lapsing of the subject lands can be issued nor can it be said that issuance of notification regarding lapsing of the reservations in terms of Section 127(2) of the MRTP Act, is necessary. Learned Advocate, however, disputes the contention. He relies upon the well settled law, including the law laid down in the case of **Shrirampur Municipal Council Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others (2013) 5 Supreme Court Cases 627**.

4. Learned AGP for the State submits that no concrete proposal regarding acquisition of the lands in question has been received by the Government from the Corporation and therefore no notification as required under Section 19 of the Act, 2013 has been issued by the State Government so far.

5. In the case of **Shrirampur Municipal Council Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Others (2013) 5 Supreme Court Cases 627**, the law on the question involved in this petition has been spelt out clearly and in fact what is expressed therein is reiteration of what is

held by the Apex Court in the case of **Girnar Traders (2) Vs. State of Maharashtra (2007)7 SCC 555**. In Girnar (2), it has been held that step towards the acquisition would really commence when the State Government takes actual step for acquisition of particular piece of land and it is a step which leads to publication of the declaration under Section 6 of the Land Acquisition Act, 1894. The Land Acquisition Act, 1894 now has been repealed and has been substituted by the Act, 2013. Section 19 of the Act, 2013 being substantially similar to Section 6 of the land Acquisition Act, 1894, it can be said, by drawing support from Girnar (2), (supra) and Shirampur Municipal Council (supra) that step towards acquisition of land as contemplated under Section 126(2) of the MRTP Act is the issuance of the notification under Section 19 of the Act 2013.

6. In the present case, the undisputed facts stated above would show that this notification as required under Section 19 of the 2013 Act, has not been issued so far, even after lapsing of period of 2 years from the date of receipt of purchase notice by the Corporation and that would only mean that the deemed lapsing of reservation over the subject lands is complete in terms of Section 127 (1) of the MRTP Act .

7. The petitioners have filed on record copies of internal notings of Corporation and also a copy of the reply, sent by the Corporation to the petitioners. These documents indicate that the Corporation had earlier offered TDR to the petitioners but the offer was declined by them and this has made the Corporation not at ease. We are of the view that there is no reason for the Corporation to take such refusal on the part of the petitioners in a different way, for, it is now well settled law that land owner cannot be compelled to accept TDR or FSI in lieu of surrender of the land subjected to reservation. A useful reference in this regard may be made to the law laid down by the full Bench of this Court in the case of **Shree Vinayak Builders and Developers Vs. The State of Maharashtra & Ors.** in WP No.2231/2019 Decided on 25/7/2022 and in the case of **Mr.Pundalik Sharanbasappa Patil Vs. The State of Maharashtra Through Urban Development Dept and Anr.,** In WP No.9003/2021, decided on 14/7/2022 .

8. The discussion thus far made shows that there is merit in the case of the petitioners and this petition deserves to be allowed.

9. The Petition is allowed and it is declared that the reservations in

respect of lands involved in the petition have lapsed, and that the petitioners are free to enjoy and use the lands as per their wish, in accordance with law.

10. We direct the respondent No.1-State to issue notification as required under Section 127(2) of the MRTP Act, for lapsing of the reservations on the subject lands, as early as possible, preferably within a period of three months from the date of receipt of the order of this Court. We further direct respondent No.1-State to delete reservations on the subject lands from the Development Plan within three months from the date of receipt of this order.

11. Rule is made absolute in the above terms. No costs.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)