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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
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WRIT PETITION NO.1839 OF 2011

Jehanara H. Rehman & Anr. ...Petitioners
V/s.
Director of Town Planning & Ors. ...Respondents

WITH
WRIT PETITION NO.4617 OF 2010

Jay Ambika Co-op. Hsg. Soc. Ltd. ...Petitioner
V/s.
Malegaon Municipal Corporation, Malegaon & Ors. ...Respondents

Mr.C.G. Gavnekar, Senior Advocate with Mr.Ashutosh Gavnekar and
Mr.Rohit Parab for the Petitioners in WP No.1839 of 2011.

Mr.Sandesh D. Patil with Mr.Chintan Shah for the Petitioner in WP
No.4617 of 2010.

Mr.S.S. Patwardhan with Mr.Akshay Hardas for Respondent No.6 in
WP No.1839 of 2010 and for Respondent No.1 in WP No.4617 of
2010.

Mr.Y.D. Patil, AGP for the Respondent – State in both the Writ
Petitions.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.
DATE : 17TH AUGUST, 2023.

P.C. :-

1. Mr.Gavnekar, learned Senior Advocate for the Petitioners
in Writ Petition No.1839 of 2011 submits that since the revised

development plan is referable to only final development plan and as the final development plan includes the revised plan, the period of ten years which is required to be reckoned for the purpose of Section 127 of the Maharashtra Regional And Town Planning Act, 1966 (MRTP Act), must be counted from the date on which final development plan under Section 121 of the MRTP Act was sanctioned and as such, a notice under Section 127 of the MRTP Act given in the present case on 11th May, 2010 would have to be considered as having been given after the expiry of the period of ten years from the sanction of the first development plan, which occurred in the year 1970. Mr.Patwardhan however disagrees. He relies upon the law laid down in this regard by the Apex Court in the case of **Prafulla C. Dave & Ors. vs. Municipal Commissioner and Ors.(2015) 11 SCC 90.**

2. Mr.Sandesh Patil, learned counsel for the Petitioners in Writ Petition No.4617 of 2010 submits that the issue involved in this Petition is identical to the issue involved in Writ Petition No.1839 of 2011 and fairly states that it is covered by the case of **Prafulla C. Dave & Ors.** (supra).

3. The points for consideration in the case of **Prafulla C. Dave & Ors.** (supra) is referred to in the first paragraph of the judgment, which is reproduced as under :-

“7... whether, the plan first prepared and notified

under Section 21 of the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act") is the final development plan and the plan prepared under Section 38 is only a revision of the final development plan proposed under Section 21 of the MRTP Act and as such, the notice contemplated under Section 127 (2) of the MRTP Act and the period prescribed is from the publication of the development plan first notified under Section 21 and not the revised development plan under Section 38 ?”

4. Answering the point, the Apex Court observed in paragraph 21 that upon expiry of the period of ten years from the sanction of the final development plan, the land owner or the person interested in the land is mandated by the statute i.e. MRTP Act to take certain positive steps, like issuance of a notice under Section 127 of the MRTP Act and that there must occur a corresponding failure on the part of the authority to take requisite steps, as demanded in the notice in order to avoid lapsing of reservation on the land, which is the subject matter of the notice. It further observed that if the land owner fails to give such a notice upon expiry of the period of ten years and sits over his right which accrues to him after lapse of the period of ten years on account of the planning authority or appropriate authority not acquiring the land in question or failing to take step of acquisition of the land and meanwhile, the final

development plan is revised under Section 38 of the MRTP Act, the whole issue gets a fresh lease of life of another ten years and in such a case, the land owner or the person interested in the land loses his right to issue notice under Section 127 of the MRTP Act, calling upon the planning authority or the appropriate authority or the development authority to acquire the land in terms of Section 126 of the MRTP Act or at least take step of acquisition of land as contemplated in law. The relevant observations of the Apex Court appearing in paragraph 21 are reproduced as under :-

“ ... If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in **Municipal Corporation of Greater Bombay Page 212 vs. Dr. Hakimwadi Tenants' Association** (1988 Supp SCC 55) in the following terms :

“10. ...If there is no such notice by the owner or any

person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise.”

5. In the present cases undisputed facts indicate that the final development plan was sanctioned in the year 1970, which was revised for the first time on 1st April, 1986, and then it received second revision on 28th January, 2010 under Section 38 of the MRTP Act. They further show that the lands which are the subject matter of both the Writ Petition were reserved for the public purpose of secondary school and play ground and primary school respectively. In both these cases, the purchase notices under Section 127 of the MRTP Act have been issued after sanction of the second revision of the development plan about which also there is no dispute. That being so, the issue involved in both the Writ Petitions is squarely covered by the law laid down by the Apex Court in case of **Prafulla C. Dave & Ors.** (supra) and accordingly we find that no indefeasible right whatsoever has accrued to the Petitioners in both the Petitions to seek declaration regarding deemed lapsing of their respective lands in terms of the provisions made under Section 127 of the MRTP

Act. There is no merit in both the Petitions. Both the Petitions stand dismissed.

6. We however grant liberty to these Petitioners to take out appropriate proceedings in terms of the provisions made in MRTP Act, 1966.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)