

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6158 OF 2021
WITH
WRIT PETITION NO.6159 OF 2021
WITH
WRIT PETITION NO.6160 OF 2021

Indira Sadanand Shetty
Age: 72 years, Occ: Business,
R/o C-801, Marvel Cascada,
Balewadi, Pune:-411045

... Petitioner

vs.

1. The Urban Development Department
and Town Planning, The State of Maharashtra
Through its Principal Secretary, Having office
at Mantralaya, Mumbai 400 032
2. The Pune Municipal Corporation
Through its Commissioner,
Having its office at Pune Municipal
Corporation Building Shivajinagar,
Pune 411 005
3. The Special Land Acquisition Officer No.16,
having its office at PMC Regional Office,
3rd Floor, Tilak Road, Pune 411002
4. The State of Maharashtra

... Respondents

Mr Atul Damle, Senior Advocate with Mr Chetan R. Nagare, Advocate for petitioner.
Ms M. P. Thakur, Assistant Government Pleader for respondent Nos.1, 3 and 4 -
State in WP/6158/2021
Ms R. M. Shinde, Assistant Government Pleader for respondent Nos.1, 3 and 4 -
State in WP/6159/2021 and 6160/2021.
Mr Rhishikesh M. Pethe, Advocate for respondent No.2/Pune Municipal
Corporation.

CORAM : A. S. CHANDURKAR AND M. W CHANDWANI, JJ.
Arguments were heard on : February 22, 2023
Judgment is pronounced on : April 10, 2023

Common Judgment : (Per : A. S. Chandurkar, J.)

These three writ petitions can be conveniently decided by this common judgment since the petitioner has sought a declaration that the reservation of her respective lands stands lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966).

2. In Writ Petition No.6158/2021 land from Survey No.104/1 and 105/3 admeasuring 4107.94 sq. meters situated at village Baner, District Pune within the limits of Pune Municipal Corporation is owned by the petitioner. 896.3 sq. meters from the aforesaid land has been shown to be reserved under ST-1 (ST Terminal) for public purpose under the Development Plan of Pune city as per Notification dated 13/08/2008. The petitioner issued a notice under Section 127 of the Act of 1966 on 23/10/2018 stating therein that notwithstanding publication of the Development Plan on 13/08/2008, no steps to acquire the said land were taken. The petitioner therefore called upon the Pune Municipal Corporation (for short, Municipal Corporation) through its Municipal Commissioner to acquire the said land in accordance with law. The aforesaid notice was replied by the Municipal Corporation on 04/01/2019 stating therein that the appropriate Authority with regard to ST-1 reservation was the Maharashtra State Road Transport Corporation (MSRTC) and not the Pune Municipal Corporation. In addition it was stated that the petitioner could claim Transferable Development Right (TDR) in lieu of the land under reservation. In this backdrop the petitioner has filed this

writ petition seeking the declaration of the reservation having lapsed under Section 127 of the Act of 1966.

2. In Writ Petition No.6159/2021, the petitioner is concerned with land admeasuring 4000 sq. meters from Survey No.105/3 situated at village Baner District Pune. Under the Development Plan published on 13/08/2008 the said land is shown to be reserved as P-7 (Parking). On 23/10/2018, the petitioner issued notice under Section 127 of the Act of 1966 calling upon the Pune Municipal Corporation through its Municipal Commissioner to purchase the said land within a period of two years from receipt of the notice. On 04/01/2019 the Corporation issued a reply to the aforesaid notice stating therein that compensation in the form of Transferable Development Right would be admissible to the petitioner in lieu of compensation. The petitioner was called upon to submit a proposal in the prescribed format to the Corporation in that regard. Since no steps were taken thereafter by the Municipal Corporation, the petitioner has filed this writ petition seeking aforesaid declaration.

3. In Writ Petition No.6160/2021, the petitioner is concerned with land admeasuring 6647.48 sq. meters from Survey No.105/3 situated at village Baner, District Pune. Under the Development Plan published on 13/08/2008, the land is shown as reserved for PMT-1 (PMT-Terminal). Notice under Section 127 of the Act of 1966 was issued by the petitioner on 23/10/2018 to

the Pune Municipal Corporation through its Municipal Commissioner. The same has been replied by the Municipal Corporation on 04/01/2019 offering Transferable Development Rights in lieu of compensation to the petitioner. Since no further steps have been taken by the Municipal Corporation, this writ petition has been filed seeking declaration as regards lapsing of the reservation.

4. Shri Atul Damle, learned Senior Advocate for the petitioner in support of the prayers made in the writ petitions urged as under :

(a) As regards Writ Petition No.6158/2021 :

Referring to the provisions of Section 2(3) and 2(9A) of the Act of 1966, it was submitted that since the Pune Municipal Corporation has sought to offer Transferable Development Rights to the petitioner in lieu of compensation, the Pune Municipal Corporation itself was the appropriate Authority. The notice issued under Section 127 of the Act of 1996 was thus valid and in absence of any steps being taken towards acquiring the land that was shown to be reserved for public purpose, the reservation had lapsed. The stand taken by the Municipal Corporation that MSRTC was the appropriate Authority was not liable to be accepted in the light of the fact that the Pune Municipal Corporation itself had offered Transferable Development Rights to the petitioner. Further, except for offering Transferable Development Rights which in any event could not be thrust upon the land owner in

the light of the judgment of the Full Bench in *Shree Vinayak Builders And Developers, Nagpur vs. State of Maharashtra and ors. 2022(4) Mh.L.J. 739*, it was clear that the reservation in question has lapsed for failure to take any steps as required by law within a period of twenty four months.

(b) As regards Writ Petition No.6159/2021

In response to the notice issued by the petitioner under Section 127 of the Act of 1966, the Pune Municipal Corporation had offered Transferable Development Rights in lieu of compensation. Referring to the judgment of the Full Bench in *Shree Vinayak Builders and Developers, Nagpur* (supra), it was reiterated that mere offer of Transferable Development Rights would not result in suspending the reservation. Since no steps were taken by the Pune Municipal Corporation to acquire the land under reservation, the deeming effect under Section 127 of the Act of 1966 would operate. Further, deposit of certain amount with the Special Land Acquisition Officer by the Pune Municipal Corporation on 30/06/2022 would be of no avail since such steps were taken beyond the period of twenty four months from issuance of notice dated 23/10/2018 under Section 127 of the Act of 1966. The reservation had thus lapsed.

(c) As regards Writ Petition No.6160/2021

In this case too, except for offering Transferable Development Rights by the Pune Municipal Corporation, no steps towards

acquisition of the land in question were taken within the period of twenty four months of receiving the notice under Section 127 of the Act of 1966. Mere offer of Transferable Development Right was not sufficient to prevent lapsing of the reservation as held in *Shree Vinayak Builders and Developers*, Nagpur (supra). The petitioner was entitled for the declaration as sought in the writ petition.

It was thus submitted that all the writ petitions deserve to be allowed by declaring the reservations under Development Plan published on 13/08/2008 to have deemed to have lapsed under Section 127 of the Act of 1966.

5. Shri Rhishikesh Pethe, learned counsel appearing for the Municipal Corporation opposed the aforesaid submissions :

(a) As regards Writ Petition No.6158/2021

It was submitted that land admeasuring 896.3 sq. meters had been reserved for ST-1 which thus indicated that MSRTC was the appropriate Authority to whom notice under Section 127(1) of the Act of 1966 ought to have been issued. If the land was to be acquired, the compensation was to be paid by the appropriate Authority which was MSRTC and not the Pune Municipal Corporation. Since a notice under Section 127 of the Act of 1966 was issued only to the Pune Municipal Corporation which was not the appropriate Authority and

there was no notice issued to the MSRTC, the reservation would not be deemed to have lapsed. Merely because the Pune Municipal Corporation had sought to offer Transferable Development Rights, such act would not make the Pune Municipal Corporation the appropriate Authority. The notice issued under Section 127 of the Act of 1966 was therefore faulty and not liable to be acted upon.

(b) As regards Writ Petition No.6159/2021

Inviting attention to the affidavit in reply filed on behalf of the Municipal Corporation, it was submitted that Notification under Section 126(2) of the Act of 1966 came to be published on 23/10/2008 which infact had the effect of issuance of a Notification under Section 6 of the Land Acquisition Act, 1894. Since steps for acquiring the land in accordance with Section 126(2) of the Act of 1966 had been taken much prior to issuance of notice by the petitioner under Section 127 of the Act of 1966, the declaration of lapsing of the reservation could not be granted in view of the decision in *Girnar Traders vs. State of Maharashtra (2007) 7 SCC 555*. Infact, there was no question of issuing any notice under Section 127 of the Act of 1966 after Notification under Section 126(2) of the Act of 1966 had been issued. Further, an amount of Rs.5,99,67,950/- had been deposited by the Pune Municipal Corporation with the Special Land Acquisition Officer being the cost of acquisition. The aforesaid indicated that the Notification issued under Section 126(2) of the Act of 1966 was being

taken to its logical end. Hence no relief as sought by the petitioner in the writ petition could be granted.

(c) As regards Writ Petition No.6160/2021

It was submitted that the Pune Municipal Corporation had offered Transferable Development Rights to the petitioner in lieu of compensation for the land under reservation. A proposal for acquiring the said land had been sent to the Collector on 20/01/2021. On account of the pandemic situation the normal functioning of the Municipal Corporation was affected thus requiring time to complete the necessary process. Reference was made to the aforesaid situation which was compared with force majeure. Since steps had been taken for acquiring the land under reservation, the declaration sought by the petitioner was not liable to be granted.

6. We have heard the learned counsel for the parties and with their assistance we have perused the documents on record. We have thereafter given due consideration to the rival submissions in the light of the various decisions relied upon by the learned counsel for the parties. The legal position vis-a-vis Section 127 of the Act of 1966 stands crystallized in view of the decisions in *Shrirampur Municipal Council vs. Satyabhamabai Bhimaji Dawkher and others*. **2013(5) Mh.L.J. 492** and *Kolhapur Municipal Corporation and others vs. Vasant Mahadev Patil (Dead) through LR's and others*. **2022(5) Mh.L.J. 262**. All earlier decisions have been considered in

the recent decision in the case of *Kolhapur Municipal Corporation and others* (supra). The word “steps” used in Section 127 of the Act of 1966 has been held to be steps of acquisition of the land and not steps for acquisition of land. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition. Steps towards acquisition would commence when the State Government permits the acquisition and as a result thereof publishes a declaration under Section 6 of the Land Acquisition Act, 1894 (for short, the Act of 1894). Publication of a declaration under Section 6(2) of the Act of 1894 can be said to be conclusive evidence that the land is needed for a public purpose and implies taking active steps for the acquisition of such land. In the light of aforesaid legal position, the facts of each case can be examined to determine whether the petitioner is entitled for the declaration as sought of the reservation having lapsed.

7. (a) As regards Writ Petition No.6158 of 2021.

Herein notice under Section 127 of the Act of 1966 came to be issued by the petitioner on 23/10/2018 and it was addressed to the Pune Municipal Corporation, the Municipal Commissioner, the Special Land Acquisition Officer and the State of Maharashtra through the Department of Urban Development and Town Planning. Land admeasuring 896.3 square meters has been shown to be reserved for ST-1. It is the specific case of the Pune Municipal Corporation that the

Maharashtra State Road Transport Corporation is the appropriate authority under Section 2(3) of the Act of 1966 to whom the purchase notice under Section 127 of the Act of 1966 ought to have been issued. On perusal of the relevant documents indicating reservation of Survey Nos.104/1 and 105/3, it becomes clear that the appropriate authority as per Section 2(3) of the Act of 1966 is the Maharashtra State Road Transport Corporation but it has not been issued any notice under Section 127 of the Act of 1966. It thus becomes clear that in absence of any notice being issued to the appropriate authority which is the Maharashtra State Road Transport Corporation, the declaration as sought by the petitioner of the reservation having lapsed cannot be granted.

It was urged by the learned Senior Advocate for the petitioner that the Pune Municipal Corporation had offered transferable development rights to the petitioner and therefore it should be treated as the planning authority. This contention of the petitioner cannot be accepted. Since the Pune Municipal Corporation is not the appropriate authority, the offer of transferable development rights by it would be of no consequence. Such offer of transferable development rights if made by the appropriate authority would have relevance. For that reason, we find that such offer made by the Pune Municipal Corporation has no legal effect insofar as the provisions of Section 127 of the Act of 1966 is concerned. For aforesaid reasons, we

find that in absence of any purchase notice under Section 127 of the Act of 1966 being issued to the appropriate authority, the declaration as prayed for by the petitioner of the reservation having deemed to have lapsed cannot be granted. We therefore find that no relief can be granted to the petitioner in Writ Petition No.6158 of 2021 except the liberty to issue a fresh purchase notice to the appropriate authority.

(b) As regards Writ Petition No.6159 of 2021.

Notice under Section 127 of the Act of 1966 was issued on 23/10/2018. The land in question is shown to be reserved for parking purposes vide P-7. In the reply to the aforesaid notice, the Pune Municipal Corporation has sought to offer compensation in the form of transferable development rights to the petitioner. In the affidavit in reply filed by the Pune Municipal Corporation reference is made to the Notification issued under Section 6 of the Act of 1894 on 23/10/2008. It is thus urged that since steps of acquisition were already taken in the matter, the provisions of Section 127 of the Act of 1966 were not attracted. In addition, it has been stated that the Pune Municipal Corporation had deposited an amount of Rs.5,99,67,950/- with the Special Land Acquisition Officer. From the aforesaid, it is sought to be demonstrated that the process of acquisition is underway. A perusal of the Notification dated 23/10/2008 indicates that the same has been issued under Section 126(4) of the Act of 1966 alongwith Section 6 of

the Act of 1894. It specifically refers to Survey No.105-part and the subject land admeasuring 4000 square meters is included therein. After this Notification was issued, the petitioner on 04/10/2010 issued a communication to the Pune Municipal Corporation expressing willingness to accept transferable development rights towards compensation.

We find that with the issuance of the Notification dated 23/10/2008 the process of acquisition by declaring the need of the aforesaid land for public purpose is clearly indicated. Issuance of such Notification under Section 6 of the Act of 1894 has the effect of indicating the public purpose for which the land is needed. When such Notification under Section 6 of the Act of 1894 is issued, there would be no occasion to invoke the provisions of Section 127 of the Act of 1966 to seek a declaration that the reservation has lapsed for failure to take steps of acquisition of the said land. Section 127(1) postulates attracting the deeming fiction only when no steps are taken to acquire such land. Once a declaration under Section 126 (2) or (4) is published in the Official Gazette, the deeming fiction would not operate. It is further to be noted that the appropriate authority has deposited an amount of Rs.5,99,67,950/- with the Special Land Acquisition Officer being the amount of compensation payable towards acquisition of land. Thus, what remains is taking further steps to facilitate passing of the final award. We, therefore, find that

the declaration under Section 126(4) of the Act of 1966 read with Notification under Section 6 of the Act of 1894 having been made on 23/10/2008, no declaration that the reservation of the aforesaid land has lapsed can be given. For aforesaid reasons, we find that no relief can be granted to the petitioner in Writ Petition No.6159 of 2021.

(c) As regards Writ Petition No.6160 of 2021.

Notice under Section 127 of the Act of 1966 came to be issued on 23/10/2018. The land herein is reserved for PMT-1 (PM-Terminal). In reply to the aforesaid notice Pune Municipal Corporation which is the appropriate authority has sought to offer transferable development rights to the petitioner in lieu of compensation. In the affidavit in reply filed by the Pune Municipal Corporation, it has been stated that on 20.01.2021 a proposal for acquiring the said land was sent to the Collector, Pune. The period of twenty-four months as contemplated by Section 127(1) came to an end on 22/10/2020. According to the Pune Municipal Corporation, in view of the pandemic situation from 22/03/2020, the normal functioning of the Pune Municipal Corporation was affected and hence further steps could not be taken for that reason. It was urged by the Pune Municipal Corporation that it was a situation of “force majeure”.

We however find that no steps for acquiring the aforesaid land have been taken within a period of twenty-four months from service of

the notice under Section 127(1) of the Act of 1966. The only step taken by the Pune Municipal Corporation is the sending of a proposal for acquiring the land on 20/01/2021. Even if the period from 22/03/2020 till sending of the proposal by the Pune Municipal Corporation to the Collector on 20/01/2021 is excluded, it is clear that till the writ petition was heard no steps as contemplated by Section 127(1) of the Act of 1966 were taken by the Pune Municipal Corporation/concerned authorities within the extended statutory period of twenty four months. We thus find that in the present case, the deeming fiction as contemplated by Section 127(1) of the Act of 1966 would be attracted. The petitioner therefore would be entitled to a declaration that the reservation affecting land admeasuring 6647.48 square meters from Survey No.105/3 would be attracted in the present case.

8. For aforesaid reasons, the following order is passed:
 - (a) Writ Petition No.6158 of 2021 stands dismissed since no notice under Section 127(1) of the Act of 1966 was issued to the appropriate authority. The petitioner is at liberty to issue a fresh purchase notice to the appropriate authority, if so advised. Rule is discharged with no order as to costs.
 - (b) Writ Petition No.6159 of 2021 stands dismissed since steps of acquisition are shown to have been taken even prior to issuance of

notice under Section 127 of the Act of 1966. Rule is discharged with no order as to costs.

- (c) Writ Petition No.6160 of 2021 is allowed. It is declared that the reservation for PMT-1 (PM-Terminal) affecting the land admeasuring 6647.48 square meters of Survey No.105/3 situated at village Baner, District Pune stands lapsed under Section 127 of the Act of 1966. The respondent No.1 shall issue necessary notification indicating the aforesaid within a period of eight weeks of receiving copy of the judgment. The petitioner is free to develop the subject land in the manner permissible for the adjoining land under the relevant plan. Rule is made absolute in aforesaid terms with no order as to costs.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita/Andurkar