

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (WP) NO. 3898/2021

Chinmay Gurunath Parale
Age: 27 years; Occupation: Doctor
Residing at: R/10, 952B,
Adarsh Nagar, North Sadar Bazar,
Solapur – 413 003

..... PETITIONER

// VERSUS //

1. State of Maharashtra through,
The Secretary, Urban Development
Department, Having Office at
Mantralaya, Mumbai – 400 032
2. The Director of Town Planning,
Maharashtra State, Pune
Office at: Ground Floor,
Central Administrative Building
Pune – 411 001
3. The Solapur Municipal Corporation
Office at Indrabhuvan, Railway Lines,
Solapur – 413 001

..... RESPONDENT(S)

Mr. G.S. Godbole, Senior Advocate a/w Ms. Shruti Tulpule and Ms. Shon
D. Gadgil, Advocates for the petitioner.
Ms. R.M. Shinde, AGP for respondent nos. 1 and 2/State
Mr. Sameer A. Kumghakoni Advocate for respondent no. 3.

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

RESERVED ON : **25th JANUARY, 2023**
DELIVERED ON : **12th APRIL, 2023**

JUDGMENT : (PER:- M.W. CHANDWANI, J.)

Rule. Rule made returnable forthwith. Heard finally by consent.

2. The petition seeks to invoke the deeming fiction of lapsing of reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “**MRTP Act**”).

3. The land in question has been reserved for children's play park under reservation no.8/31 by respondent no.3 in development plan (hereinafter referred to as “**D.P Plan**”) published on 15.12.2004. The petitioner purchased the said land vide Sale Deed dated 30.12.2012. Since, for a period of more than 10 years, respondent no.3 did not take any step for acquisition of the petitioner's land, the petitioner served a notice dated 21.02.2018 under Section 127 of the MRTP Act to the respondent no.3 for purchase of petitioner's land covered under the reservation for children's play park. Respondent no. 3 did not respond to the said purchase notice. After waiting for a period of more than 2½ years, the petitioner issued another notice on 17.11.2020, asking respondent no.1 for notifying lapsing of reservation due to non-acquisition of the land by respondent no.3 for the purpose of development of children's play park within 24 months after the receipt of purchase notice issued by the petitioner. No steps were taken by any of the respondents, therefore, the present petition came to be filed.

4. We have heard learned Counsel Mr. Godbole appearing for the petitioner and learned Counsel for respondent no.3 Mr. Kumbhkoni. We have perused the record. The deeming fiction of lapsing reservation is contained in Section 127 of MRTP Act.

5. A bare reading of Section 127 of the MRTP Act makes it clear that reservation would lapse in case acquisition is not completed within ten years from the date on which a final regional plan or final development plan comes into force or if 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 for purchase on the Planning Authority, Development Authority, or as the case may be to the appropriate authority; and if within twenty four months from the date of the service of such notice, the land is not acquired or no steps 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 at the relevant time.

6. Learned Counsel Mr. Kumbhakoni appearing on behalf of respondent no.3 submits that the petitioner did not annex the

documents showing his title and interest in the land in question. He vehemently submits that if the documents showing title and interest of the petitioner in the said land have not been served on the Planning Authority along with purchase notice, the said notice will be vitiated. According to him, mandatory compliance mentioned in Section 127 of the MRTP Act i.e. submitting of documents showing title and interest in the land in question along with purchase notice, has not been complied by the petitioner, therefore, purchase notice dated 21.02.2018 issued by the petitioner is not a valid notice.

7. No doubt, Section 127 of the MRTP Act contemplates serving of document of title and interest in the property along with notice to the Planning Authority or Development Authority or Competent Authority, as the case may be. Object and purpose of supplying the copy showing the title and interest of the person is that the Corporation must know whether the person issuing notice has valid title or interest in the property or not, in case of acquisition of property. Another object appears to be that the Corporation must *prima facie* be satisfied that the notice served was by the owner of the affected land or a person interested in the land. Though the corporation must satisfy *prima facie* regarding ownership or interest in the property, Section 127 of the

MRTP Act does not contemplate an investigation into title by the Officer of the Planning Authority.

8. Having found the object of supplying the copy of document of title and interest enumerated under Section 127 of the MRTP Act, let's turn to the facts of the case in hand.

9. Letter dated 27.12.2017 by respondent no.3 addressed to the Principal Secretary, Urban Development Department and letter dated 27.12.2017 of respondent no.2 addressed to respondent no.3 depict that respondent no.3 is aware of the fact that the petitioner is the owner of the land under reservation for children's play park. Thus, the object of supplying copy of document of title and interest in the property in question to respondent no. 3 to enable it to acquire the property from its owner is fulfilled. In these peculiar circumstances, purchase notice served on respondent no.3 without annexing the document of title and interest in the property in question will not be fatal.

10. We find support to our observations from the decision of Supreme Court in ***Municipal Corporation Greater Bombay Vs. Dr. Hakimwadi Tenants' Association and ors.*** reported in ***1988 (Supp) SCC 55***, where in paragraph 7, it has held as under:-

“7. According to the plain reading of Section 127 of the Act, it is manifest that the question whether the

reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by Section 127, is a mixed question of fact and law. It would therefore be difficult, if not well nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under Section 127 of the Act. The condition pre-requisite for the running of time under Section 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must *prima facie* be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, Section 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. Viewed in that perspective, the High Court rightly held that the Executive Engineer of the Municipal Corporation was not justified in addressing the letter dated July 29, 1977 by which he required respondents nos. 4-7, the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature and user of the tenements and the total area occupied by them at present. The Corporation had the requisite information in their records. The High Court was therefore right in reaching the conclusion that it did. In the present case, the Planning Authority was the Municipal Corporation of Greater Bombay. It cannot be doubted that the Municipal Corporation has access to all land records including the records pertaining to cadastral survey no. 176 of Tardeo. We are inclined to the view that the aforesaid letter dated July 28, 1977 addressed by the Executive Engineer was just an attempt to prevent the running of time and was of little or no consequence. As was rightly pointed out by respondents nos. 4-7 in their reply dated August 3, 1977, there was no question of the period of six months being reckoned from the date of the receipt from them of the information requisitioned. The

Municipal Corporation had been assessing the trust properties to property tax and issuing periodic bills and receipts therefor and obviously could not question the title or ownership of the trust. We are informed that the building being situate on Falkland Road, the occupants are mostly dancing girls and this is in the knowledge of the Corporation authorities. The rateable value of each tenement would also be known by an inspection of the assessment registers. We must accordingly uphold the finding arrived at by the High Court that the appellant having failed to take any steps, namely, of making an application to the State Government for acquiring the land under the Land Acquisition Act within a period of six months from the date of service of the purchase notice, the impugned notification issued by the State Government under Section 6 of the Land Acquisition Act making the requisite declaration that such land was required for a public purpose i.e. for a recreation ground was invalid, null and void.”

11. It will be also profitable to refer the decision of this Court in *Popat Kisan Mhaske and anr. Vs. Hon'ble Minister of Urban Development, Mumbai and ors.* reported in *2018(2) Mh.L.J. 435*, wherein it has been held that correspondence of the Municipal Corporation evidencing the title of the land in the name of the person who issued purchase notice and, therefore, non-issuance of requisite documents together with purchase notice cannot render invalid the purchase notice.

12. The correspondence of respondent no.3 referred to above speaks a lot about title and interest of the petitioner in land in question, which is sufficient for respondent no.3 to *prima facie* satisfy itself that

the notice is served by the owner of the affected land. The purchase notice dated 21.02.2018 issued by the petitioner cannot be said to be invalid for non-serving of the document of title and interest of the petitioner in affected land along with purchase notice.

13. The learned Counsel for respondent no.3 vehemently submits that the purchase notice issued by the petitioner is also defective on the ground that it does not describe the land/property in detail. According to him, the description of the land has not been mentioned in the notice and also the petitioner has incorrectly mentioned T.P. Scheme No.2 instead of T.P. Scheme No.3 in the purchase notice, therefore, the notice issued by the petitioner is not valid notice as contemplated under Section 127 of the MRTP Act.

14. According to the learned Counsel for respondent no.3, if the purchase notice does not describe the proper description of the property, it is not proper notice as required under Section 127 of the MRTP Act, therefore, the petition is liable to be dismissed. To buttress his submission, he seeks to rely on the following cases;

1. ***Shri Ramchandra Shankar Joshi and ors. Vs. The State of Maharashtra and ors.*** reported in ***2016(1) ALL MR 1***,
2. ***C.V. Shan and A.V. Bhat Vs. State of Maharashtra and ors.*** reported in ***2006(3) Bom.C.R. 216*** and

3. ***Shri Jeevan Mallapa Tonemare and anr. Vs. The Chief Officer, Kankavali Nagar Panchayat and Ors. reported in 2022(3) ALL MR 321.***

The common thread running through in all these decisions is as follows:

“The precondition for the land owner or the person interested to claim benefit under the provisions of Section 127 of the Act 1966 would be to give proper notice describing the land in sufficient clarity and intimating the concerned authority in clear terms.”

15. We have gone through the purchase notice dated 21.02.2018. It describes plot having CTS No.1608/13, Plot No.75 situated in Civil Lines, Solapur. We are of the opinion that this description is sufficient for respondent no.3 to identify the land for acquisition. So far as the mentioning of wrong town planning scheme number, under which the land of the petitioner was reserved, is concerned, let us state here that the Development Plan is the document of respondent no.3. Respondent no.3, who is the Planning Authority for Solapur City, is well aware of the T.P. Scheme under which the land of the petitioner is reserved for children's play park. Therefore, we do not find force in the argument of the learned Counsel for respondent no.3, particularly, when there is no requirement under Section 127 of the

MRTTP Act to mention town planning scheme number, rather, the notice very well describes the Reservation No.8/31 under which the land of the petitioner is reserved for children's play park. There is no ambiguity in the purchase notice issued by the petitioner when it describes land in sufficient clarity as held by the Co-ordinate Benches of this Court in the judgments in *Shri Ramchandra Shankar Joshi, C.V. Shan and A.V. Bhat* and *Shri Jeevan Mallapa Tonemare and anr.* (supra) relied by the respondent no.3. Thus, the purchase notice issued by the petitioner met the sufficient compliance as contemplated under Section 127 of the MRTTP Act.

16. The learned Counsel for respondent no.3 also objects the petition on the ground that the land which is reserved under Reservation No. 8/31 for children's play park is comprising of various city survey numbers and the owners of the lands of other survey numbers have not issued notice under Section 127 of the MRTTP Act and, therefore, the reservation cannot be deleted from the part of the property and, therefore, the writ petition is not maintainable which is filed by the only petitioner. We do not agree with the submission of the learned Counsel for respondent no.3. What is contemplated under Section 127 of the MRTTP Act is that, if no step has been taken for acquisition of the property/land under reservation within 24 months from the date of

issuance of purchase notice by the owner, the reservation from the said land will be lapsed. There is no requirement under law that the owners of piece or parcel of land covered under reservation must together issue purchase notice to the Planning Authority under Section 127 of the MRTP Act. Thus, the objection of respondent no.3 is without any basis. This Court in Writ Petition No. 3417/2019 (*Piyush s/o Pradeep Sejpal and ors. Vs. State of Maharashtra ors.*) while repelling the similar argument of the Planning Authority has held that even if area under the Reservation exceeds the land owned by the person, the said person would be entitled to a declaration of lapsing of reservation only with regard to land owned by him.

17. Having found the purchase notice issued by the petitioner is valid, we now briefly note the judicial pronouncements on the subject of deeming provision providing lapsing of reservation under section 127 of MRTP Act.

18. In the case of *Girnar Traders Vs. State of Maharashtra*³ reported in *(2007) 7 SCC 555* in paragraph no. 56, it is held that:-

“56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the Town Planning Scheme. The step taken under the Section within the time

stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.”

19. Thereafter, the Supreme Court and this Court, in plethora of judgments have held that if the authority failed to acquire the land under reservation within the prescribed period mentioned in section 127, which is presently twenty four months after valid notice, the reservation stands deleted by fiction of law enumerated under section 127 of MRTP Act.

20. Here, the land under set back was reserved for children' play park in DP on 15.12.2004 and the children' play park was not developed for more than 10 years. No steps, whatsoever, has been taken for acquisition of land of the petitioner covered under Reservation No. 8/31 for children's play park within 24 months after service of purchase notice as prescribed under Section 127 of the MRTP Act, rather till today.

Thus, the case in hand is qualified for deeming fiction of lapsing reservation.

21. This takes us to the sheet anchor argument of the learned Counsel for respondent no.3. It is contended on behalf of Solapur Municipal Corporation – respondent no.3 that no step has been taken for acquisition of the land of the petitioner covered under Reservation No.8/31 for children's play park, but the children's play park, being public amenity which are lungs of the city, a conditional order be passed giving opportunity to respondent no.3 to acquire the land for public purpose within a period of one year from today, as done in Writ Petition No. 6542/2021 (*Ramchandra Laxminarayan Soni and anr. Vs. State of Maharashtra and ors.*).

22. We have gone through the decision of the Division Bench of this Court in *Ramchandra Laxminarayan Soni* (supra) referred by the learned Counsel for respondent no.3. The Division Bench of this Court relying on a decision of the Supreme Court in *Municipal Corporation of Greater Mumbai and ors. Vs. Hiranman Sitaram Deorukhar and ors.* reported in *(2019) 14 SCC 411*, declared that the release of land of the petitioner from reservation with condition that the petitioner shall not use the land for any purpose for a period of one year and entitlement

was given to the Planning Authority to proceed for acquisition of the said land during the period of one year.

23. We may refer here that subsequent decision of the Supreme Court in *Laxmikant and ors. Vs. State of Maharashtra and ors.* reported in *(2022) 7 SCC 252*, while setting aside the direction of another Division Bench of this Court, to the land owner inspite of complying with the provisions of Section 127 of the MRTP Act not to use the land for one year with liberty to the Planning Authority to acquire the land, the Supreme Court has held that the direction issued in *Hiraman Sitaram Deorukhar and ors.* (supra) to Corporation to acquire the land in spite of all compliance made by the petitioner in the said case under Section 127 of the MRTP Act was given under Article 142 of the Constitution of India. The Supreme Court further held that such direction for acquisition of land within certain period issued in case of *Hiraman Sitaram Deorukhar* (supra) is not a law declared by the Supreme Court which is treated as a binding precedent for this Court and subordinate Courts in terms of Article 141 read with Article 144 of the Constitution of India. In view of this, the decision of the Division Bench of this Court in *Ramchandra Laxminarayan Soni* (supra) will not be helpful to the respondent no.3.

24. To sum up, we hold that the Reservation No.8/31 for children's play park over the land of the petitioner stands lapsed. Accordingly, the petition is allowed.

25. Rule is made absolute in the aforesaid terms with no order as to costs.

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(M.W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)