

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10465 OF 2019

1. **SHABNAM ALTAF PARDIWALA,**
402, Central View 29 Meghraj Sethi
Street Mumbai 400 008.
2. **ALI AKBAR ALTAF PARDIWALA,**
402, Central View 29 Meghraj Sethi
Street Mumbai 400 008.

...PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
through the Secretary,
Urban Development Department,
State of Maharashtra
Mantralaya Building
Mumbai 400001.
2. **DIRECTOR OF TOWN PLANNING,**
Maharashtra State
Central Office, Old Building
Pune 411001.
3. **LONAVALA MUNICIPAL
COUNCIL,**
through its Chief Officer
Lonavala Municipal Council
Lonavala 410401.

...RESPONDENTS

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WITH
WRIT PETITION NO. 10466 OF 2019

ALTAF ADAMALI PARDIWALA,
402, Central View 29 Meghraj Sethi Street
Mumbai 400 008.

...PETITIONER

~ VERSUS ~

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through the Secretary,
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- 3. LONAVALA MUNICIPAL COUNCIL,**
through its Chief Officer
Lonavala Municipal Council
Lonavala 410401.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER

Mr Vishal Kanade, *with Punita Arora, Puneet Arora, Janhavee Joshi, Manish Kurkeja, Richa Shukla i/b Arora & Co*

FOR RESPONDENT NO. 1 - STATE **Mr YD Patil, AGP.**

FOR RESPONDENT NO. Mr AA Garge.
3

CORAM : G.S.Patel &
Kamal Khata, JJ.

RESERVED ON : 30th October 2023

PRONOUNCED ON : 13th December 2023

ORAL JUDGMENT (Per Kamal Khata J):-

1. Rule. Respondents waive service. Rule made returnable forthwith.

2. These two Petitions under Article 226 of the Constitution of India seek a Writ of Mandamus to declare and publish in the Official Gazette the release of property from reservation on account of lapsing and to grant permission to the Petitioners to develop the property in accordance with law.

3. Writ Petition No 10465 of 2019 relates to Plot No.1 admeasuring about 1033.40 sq. mts. Writ Petition No. 10466 of 2019 relates to Plot No.2 admeasuring about 1100.34 sq. mts. Both have a common Survey No. 120/2, and are situate at H-Ward, Ryewood, Lonavala (“**the said property**”).

4. The Petitioners purchased the said property from the erstwhile owner, one Nomanbhai Adamali Bootwala (“**Bootwala**”). In view of the common background and facts these Petitions are being disposed of by a common order.

5. On 28th February 1978, a Development Plan for Lonavala was notified wherein the said property was reserved for 'shopping centre'.

6. The Respondent No. 1 published a Declaration of their intention to acquire the said property on 12th January 1984 under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 (**'the MRTP Act'**) read with Section 6 of the Land Acquisition Act, 1894 (**'the LA Act'**). An undated notice inviting objections was issued under Sections 9(3) and 9(4) for marking, measuring and planning of the said property under Section 8 of the LA Act. A meeting was fixed. Though attended by the erstwhile owners, the meeting could not be held. This was recorded by a communication dated 23rd March 1984 by Bootwala to Respondent No.1 but was returned with remark 'not known'. Nothing happened thereafter.

7. Then on 23rd March 1988, four years later, a letter was addressed by Bootwala to Respondent No. 3 to release the property since they had failed to acquire it. In response thereto, by letter dated 20th August 1988, the Respondent No. 3 forwarded a letter dated 28th June 1988 stating that the acquisition proceeding was in progress.

8. On 20th September 1989, Bootwala issued a purchase notice under Section 127 of the MRTP Act to all Respondents. In response, the Petitioner was informed that the Purchase Notice was not applicable in view of letter dated 28th June 1988.

9. On 1st December 1990, Bootwala submitted plans for development of the said property to Respondent No. 3 which were rejected by Respondent No. 3 on 21st January 1991.

10. Three years later, on 31st March 1994, Bootwala called upon the Respondent No. 3 to release the property from reservation. Respondent No. 3 failed to release it. Bootwala then raised a grievance through a letter to the then Chief Minister of State of Maharashtra seeking intervention. Nothing happened. The idea to develop was abandoned.

11. Eleven years later, in July 2005, an RTI application was made by the Petitioner to find out the status of the adjoining plot no. 3. It was discovered that in view of the purchase notice by its owner the same was released from reservation. On the other hand, Plot Nos 1 and 2 were not released as the acquisition proceedings were allegedly still in progress.

12. On 1st November 2005, Bootwala once again submitted plans for development of the property which were again rejected by Respondent No.3 on 29th November 2005. Aggrieved by the rejection, Bootwala filed Writ Petition No. 168 of 2006. During the pendency of the Writ Petition, Bootwala then sold the property to the Petitioner by a registered sale deed of 25th April 2007.

13. The Petition was amended, and the Petitioner was substituted therein by an order dated 20th December 2007. The Petition was further amended in October 2012. A reply by Respondent No. 2 was

also filed on 2nd March 2006. But the Petition was dismissed for want of prosecution on 10th July 2017.

14. In the meantime, on 28th August 2005, by a Second Revised Development Plan the property was again notified with a reservation for a 'Shopping Centre'.

15. The Petitioners waited for 10 years. Then once again on 28th August 2015, they issued a fresh purchase notice under Section 127 of the MRTP Act to all Respondents.

16. Apparently, on 9th September 2015, Respondent No. 3 requested Respondent No.1 to take steps for acquisition. Nothing happened.

17. On 2nd September 2017, the Petitioners communicated to all respondents that since the property was not acquired they should issue the necessary notification in the Official Gazette and release the property as per Section 127(2) of the MRTP Act. Once again, the Respondents refused to release the property. Thereafter, several communications were addressed to the Respondents as also to the then Chief Minister but to no avail.

18. In the meantime, once again, the Petitioners requested permission to develop the property by an application on 13th August 2018. The application met with the same fate as earlier. It was rejected on 25th October 2018.

19. The Petitioners then filed this Writ Petition on 19th June 2019.

20. The Respondents Nos. 1 and 2 by their Reply on 18th July 2023 and Respondent No.3 by their reply on 24th August 2023 have not disputed the facts and averments in the Petition ~~as such~~.

21. The two apparent defences raised are that:

- (a) the acquisition of the said lands was initiated by the declaration under Section 126(4) of the MRTP Act, and by a declaration on 6th October 1983 under Section 6 of the Land Acquisition Act 1894 that was published in the Official Gazette on 12th January 1984; and
- (b) In view of the judgement of the Apex Court in *Girnar Traders (3) v State of Maharashtra & Ors*,¹ Section 11 of the Land Acquisition Act 1894 is not applicable to the proceedings initiated under the MRTP Act 1966.

22. Mr. Kanade for the Petitioners submitted that the reservation had lapsed in 1989 itself and the property ought to have been released when the Respondents failed to take steps to acquire the property pursuant to the purchase notice dated 20th September 1989. He submitted that evidently no steps for acquisition have been taken by the Respondents within the statutory period or even after the 28th August 2015 purchase notice. The prescribed period of two years expired on 28th August 2017. Thus, the Respondents had wrongfully rejected the Petitioner's application dated 13th August

1 (2011) 3 SCC 1.

2018 for development of the property on 25th October 2018. Reliance was placed on the ratio laid down by the Hon'ble Supreme Court in *Bhavanagar University v Palitana Sugar Mills (P) Ltd & Ors*² to submit that the subsequent reservation was illegal and unsustainable in law. He thus prayed for the Petition to be made absolute with costs.

23. The issue of lapsing is no longer res integra. The contention of the Respondents that the purchase notice dated 20th September 1989 served subsequent to the declaration dated 12th January 1984 under Section 126(4) of the MRTP Act is not tenable. It is a defence adopted in desperation.

24. The Apex Court in the case of *Girnar Traders (2) v State of Maharashtra*³ in paragraph 31 has held as under:

“31. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced. **Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall**

2 (2003) 1 SCC 111.

3 (2007) 7 SCC 555.

commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land. **If neither of the things is done, the reservation shall lapse.** If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word “aforesaid” in the collocation of the words “no steps as aforesaid are commenced for its acquisition” obviously refers to the steps contemplated by Section 126 of the MRTP Act.

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.

[Emphasis supplied]

25. Earlier, the Supreme Court had in the case of *Municipal Corpn, Greater Bombay v Hakimwadi Tenants' Assn*⁴ held as under:

11. Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by Section 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place. The word “aforesaid” in the collocation of the words “no steps as aforesaid are commenced for its acquisition” obviously refer to the steps contemplated by Section 126(1). The effect of a declaration by the State Government under sub-section (2) thereof, if it is satisfied that the land is required for the implementation of a regional plan, development plan or any other town planning scheme, followed by the requisite declaration to that effect in the official Gazette, in the manner provided by Section 6 of the Land Acquisition Act, is to freeze the prices of the lands affected. The Act lays down the principles of fixation by providing firstly, by the proviso to Section 126(2) that no such declaration under sub-section (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub-section (4) of Section 126 that if a declaration is not made within the period referred to in sub-section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under Section 6 and not the market value at the date of the notification under Section 4, and **thirdly, by Section 127 that if any land reserved, allotted or designated for any**

4 1988 Supp SCC 55.

purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed.

[Emphasis Supplied]

26. Now let us consider the decision of *Girnar Traders (3) v State of Maharashtra & Ors*,⁵ referred to by the Respondents. The relevant paragraphs of the Apex Court's judgment are as under:

“45. The objects and reasons for amendment of Section 127 of the MRTP Act specifically referred to the hardship to the landowners, stated in the judgment of this Court in *Girnar Traders (2) v. State of Maharashtra* [(2007) 7 SCC 555] [hereinafter referred to as “*Girnar Traders (2)*”], pertaining to indefinite waiting for release

5 2011 3 SCC 1.

of their respective lands because of inaction on the part of the Planning Authority in acquisition of their lands. The legislature was obviously aware of the provisions of Section 11-A of the Land Acquisition Act which permitted lapse of entire acquisition proceedings after the prescribed period. Still, the legislature opted to amend Section 127 of the MRTP Act in the manner as it has been amended. The intention appears to be to remove the doubt, if any, created by the unamended provisions of Section 127 of the MRTP Act with regard to application of Section 11-A of the Central Act to the State Act. Once the State Legislature has, by amendment, restricted the application of default clause only in the situations covered under Sections 126(2) and 126(4) of the State Act respectively, it will then be impermissible to read Section 11-A of the Land Acquisition Act into the language of Section 126(2) of the State Act. **The amendment ex facie appears to be to avoid undue hardship to the owners of the land on the one hand while on the other, exclusion of the underlined [Ed.: Herein italicised.] portion supra especially the words “under the Land Acquisition Act”, suggests the legislative intent to complete all proceedings within the framework of the MRTP Act.”**

[Emphasis Supplied]

27. Thus, if the land is not acquired as per the provision of Section 126(3) of the MRTP Act within the statutory period, the reservation would lapse. That being so, following the ratio in *Bhavnagar University (supra)* and the aforesaid judgements, in our view the subsequent reservation would be null and void.

28. In view of the above, we are unable to agree with the Respondent's contention that on account of the reservation in the Second Revised Development Plan notified on 29th June 2005 and which came into effect only from 27th August 2005, the purchase notice served under Section 127 of the MRTP Act on 20th September 1989 and 28th August 2015 was of no effect. Section 126(3) of the MRTP Act contemplates acquisition of the property as a step to be taken and not a mere declaration within the stipulated period.

29. Now in paragraphs 9(y) and (z) of the Petition it is averred that if Respondent No. 3 did not deposit the compensation amount of Rs.78215.70 along with measurement fees of Rs 50 plus estimated service charges of Rs 2280 before 15th September 1986 the acquisition would lapse. In furtherance to the said communication, by another communication dated 15th December 1986 the SLAO informed Respondent No.3 that the acquisition proceedings had lapsed for non-deposit of the compensation amount.

30. In this back drop, paragraph 9 of the Affidavit in Reply by one Pandit Khandu Patil is pertinent:

“9. I state that the Lonavala Municipal Council is willing to acquire the land but due to insufficient funds LMC need to approach for the funds from Government after that the Lonavala Municipal council shall take the necessary steps as early as possible.”

31. Moreover, the Petitioner has averred in paragraph 9(h) that the erstwhile owner had by a letter dated 23rd March 1988 to the

Respondent No.3 stated that the Plot No. 3 in Survey No. 120/2 belonging to Mrs. Dordi which was under the same reservation was released by Respondent No.3 and permission for residential development was granted. It would clearly establish that the suit property was not acquired for want of funds.

32. Neither the Respondent Nos. 1 to 3 have denied these facts, nor have they responded to these averments.

33. A simple calculus would show that 45 years have passed now since the Petitioners' said property was reserved. This right of a property owner was exactly what the Apex Court wanted to safeguard, and it did clarify in *Girnar Traders 3 (supra)* that the owner could not be deprived of his rights to the property after the statutory period ended as contemplated under the MRTP Act.

34. The relevant paragraphs in *Girnar Traders (3) v State of Maharashtra*, are as under:

“97. Section 125 of the MRTP Act introduces a legal fiction as it requires that reservation and designation of land under the plan shall be deemed to be a public purpose within the meaning of the definition of the Land Acquisition Act. Section 126 of the MRTP Act is the effective provision which refers to the Land Acquisition Act.

98. In terms of Section 126(1), the land can be acquired for public purpose specified in the plan. It gives right to acquire even after publication of a draft regional plan. Whenever a land is required or reserved for any public purpose specified in any plan or scheme under the MRTP

Act, the authority concerned may, with the exception of the provisions of Section 113-A of the State Act i.e. land designated under the Act connected with the development of the new town, acquire the land by different modes i.e.

(a) by paying an amount agreed (by agreement);

(b) in lieu of any such amount by granting the right specified under Section 126(1)(b); and

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act. 99.

Section 126(2) lays down the procedure, primarily, as to how the application made under Section 126(1)(c) is to be dealt with by the State Government and if it is satisfied, to make a declaration in the Official Gazette to the effect that the land is needed for a public purpose, *in the manner provided in Section 6 of the Land Acquisition Act*. **Section 126(3) deals with the procedure to be followed after declaration contemplated under Section 126(2) has been published. The Collector has to proceed for acquisition of the land under the Land Acquisition Act and the provisions of that Act shall apply for acquisition. Market value of the land has to be determined with reference to the date specified in clauses (i) to (iii) of sub-section (3) of Section 126. In terms of proviso to Section 126(2) if the declaration is not made within one year from the date of publication of the draft regional plan or any other plan or the scheme, as the case may be, the authority loses the right to make such a declaration. Exception to this is contemplated under Section 126(4) that despite the above consequences, the Government still has the right to make a fresh declaration for acquisition of the land subject to the modification that market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.**

100. Section 127 of the MRTP Act which deals with

lapsing of reservation under this Act stood amended vide Maharashtra Amendment Act 16 of 2009. We have already reproduced above the amended and unamended provisions of Section 127 of the MRTP Act. **It is noteworthy that in the unamended provision of Section 127, it was contemplated that if the proceedings for acquisition of such land under this Act or under the Land Acquisition Act are not commenced within such period, the owner/interested person of any land may serve a notice on the Planning Authority and if within six months from the date of the service of such notice, the land was not acquired or no steps were taken, the land shall be deemed to be released from such reservation.**

109. Besides the MRTP Act being a self-contained code, these are enactments which, apparently, are dissimilar in their content and application. The provisions of Section 127 of the MRTP Act were amended long after the amendment of the Land Acquisition Act by Central Act 68 of 1984. The legislature was fully aware of the entire matter including **hardship of the landowners**. The Statement of Objects and Reasons for amendment of Section 127 of the MRTP Act conveys intent antipodal to that sought to be put forward by the appellants, that Section 11-A of the Land Acquisition Act would be attracted. Section 11-A was in existence at the time of amendment in 2009 of the MRTP Act and if it was intended to be applied to the MRTP Act there was hardly any need to amend Section 127 of the MRTP Act in the manner in which it was done. If the intention of the legislature was to permit lapsing of acquisition, in that event provisions of Section 11-A of the Land Acquisition Act, per se, would have achieved the purpose. **The 2009 Amendment to the State Act restricted even lapsing of the reservation or designation only if there was default in compliance with the**

provisions of Sections 126(2) and 126(4) of the MRTTP Act. General reference to acquisition under the Land Acquisition Act was deleted as it was never intended to be read as a part of the State Act. Thus, the State Legislature in its wisdom restricted the consequences only to lapsing of reservation.

[Emphasis supplied]

35. In the present case, it is apparent that there was a default in compliance with the provisions of Sections 126(2) and 126(4) of the MRTTP Act. After the notification in 1984, no steps were taken to acquire the land as contemplated in Section 126(3) of the MRTTP Act. Communications amongst the Respondents clearly evince that they were aware that the reservation had lapsed. Yet they failed to release the said property and thus deprived the erstwhile owners and now the Petitioners of their right to develop the property for more than six years of even after the second purchase notice issued in 2015.

36. This leads us to an inescapable conclusion that the Respondents failed in performing their duty. It is not the law that a property can be held under reservation without acquisition for almost half a century, and in all that time, the owner is denied both compensation and the right to enjoy the fruits of development. The erstwhile owner made several requests and visits to the Respondent even raised his grievance with the Chief Minister but to no avail. Finally, he came to this Court. He then sold the property. The Petitioners too have come to Court. The Respondents have misread and misinterpreted the law.

37. The Petition is made absolute in terms of prayer clauses a and b which are as follows:

(a) This Hon'ble Court be pleased to declare that the reservation in respect of the said Property under the II (Revised) Development Plan for Lonavala notified on or about 28th August 2005 is illegal, non-est and void ab initio and is not applicable to the said Property;

(b) This Hon'ble Court be pleased to declare that the reservation of shopping center in respect of the said Property has lapsed and the said Property can be developed in accordance with applicable laws.

38. Rule is made absolute accordingly. No costs.

39. The State Government to notify the lapsing of the reservation by an order to be published in the Official Gazette as per Section 127(2) of the MRTP Act on or before 20th February 2024.

40. All concerned to act on the authenticated copy of this Judgment.

(Kamal Khata, J)

(G. S. Patel, J)