

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1093 OF 2017

1. Sadashiv Tryambak Rajebahadur
Age- 77 years, Occupation – Agriculture & Business

2. Chandrakant Tryambak Rajebahadur
Age- 75 years, Occupation – Agriculture & Business

3. Nishikant Tryambak Rajebahadur
Age- 73 years, Occupation – Agriculture & Business

4. Madhusudan Tryambak Rajebahadur
Age- 68 years, Occupation – Agriculture & Business
Petitioners 1 to 4 are residing at
'Naroshankar', 199, M. G. Road,
Above Shree Samarth Sahakari Bank,
Nashik 422 001

...Petitioners

Versus

1. State of Maharashtra
through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai

2. The Commissioner,
Nasik Municipal Corporation
having his Office at
Rajeev Gandhi Bhavan,
Sharnapur Road, Nashik

3. The Assistant Director
of Town Planning,
having his Office at
Rajeev Gandhi Bhavan,
Sharnapur Road, Nashik

4. The Municipal Secretary,
Nasik Municipal Corporation
having his office at
Rajeev Gandhi Bhavan,
Sharnapur Road, Nashik

5. The Collector,
Collector Office, Old Agra Road,
Nashik 422 002

...Respondents

...
Mr. Shrishailya S. Deshmukh for the petitioners.

Mrs. M. P. Thakur AGP for State/Respondent nos.1, 3 and 5.

Mr. Vaibhav Patanakar i/by Patankar & Associates for respondent
nos.2 and 4.

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CORAM	:	G. S. KULKARNI AND KAMAL KHATA, JJ.
RESERVED ON	:	21ST APRIL 2023.
PRONOUNCED ON	:	04TH MAY 2023.

J U D G M E N T

[PER: KAMAL KHATA, J.]

1. Rule. Rule made returnable forthwith. Mr. Patankar waives service for respondent Nos.2 and 4. Mrs. Thakur, waives service for respondent Nos.1, 3 and 5.

2. By this Petition under Article 226 of the Constitution, the Petitioner seeks a Writ of Mandamus to declare that the Reservation No. 485 on Final Plot No. 131/1 and 131/2 in City Survey No. 352 & 352A has lapsed and consequently stand

released from reservation since no steps have been taken by the concerned authorities for more than twenty years either for purchase or for acquisition of land under the Maharashtra Regional and Town Planning Act, 1966 (“the MRTP Act”) and within a period of 12 months from the date of Purchase notice dated 8th July 2015 as contemplated under the Act.

BRIEF FACTS:

3. The Petitioners are owners and in possession of the land bearing CTS No. 352 & 352 A, Final Plot No. 131/1, 131/2 I TPS-1 [Final], (bearing Reservation No. 485 “Parking”) admeasuring 800 sq. meters (referred to as “the Plot” for short) situated within the jurisdiction of Nashik Municipal Corporation. It is stated that though the Plot was reserved for public parking since 1996 no steps were taken for its acquisition. On 8th July 2015, the Petitioners issued a Purchase notice under section 127 of the MRTP Act to acquire the plot on payment of compensation as per “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013”. In its response to such notice dated 24th July 2015 the Respondent-Municipal Corporation stated that the period would only commence upon submission of the Petitioners documents. Correspondence ensued between the Petitioners and the Municipal Corporation regarding production of documents of title by the

Petitioners. On 12th July 2016 the Petitioners intimated the Respondent Nos.2, 4 and 5 that the reservation had lapsed by operation of law namely the provisions of Section 127 of the MRTP Act, since the steps as contemplated under the act were not taken by the Respondents. The Petitioners contend that by an application under the Right to Information Act 2005, the Petitioners discovered that the proposal for the land acquisition bearing Land Acquisition Proposal Case No. 3 of 2000 was pending before the Dy. Collector (Land Acquisition) No.2 for measurement of the Plot. Being aggrieved by the Respondents' action purporting to continue the reservation on the Petitioner's Plot, the Petitioners have filed this Petition on 25th October 2016.

4. The Respondent No.1 in their reply affidavit contend that, Revised Draft Development Plan for Nashik Municipal Corporation under section 26 of the Act was published in the Maharashtra Government Gazette on 4th June 2015 which has been partly sanctioned vide Notification No. TPS-1116/CR-140/1/2016/UD-9 dated 9th January 2017 under Section 31 of the MRTP Act and is in force with effect from 9th February 2017. It is stated that by an amendment the words "twelve months" were substituted by "twenty - four months" with effect from 29th August 2015 consequently, the period to take steps pursuant to the notice was

to expire on 7th July 2017. It is further stated that pursuant to the notification dated 9th January 2017 issued under section 31 of the MRTP Act, by virtue of the revised Development Plan the Plot is again reserved for “Public Amenity” under reservation site No. 136 (Original Site No. 485) with effect from 9th February 2017.

5. Mr. Shrishailya Deshmukh learned counsel for the Petitioner has placed reliance upon the judgment of the Division Bench of this Court in the case of *Santu Sukhdeo Jaibhave v Nashik Municipal Corporation*¹ of which one of us (Kamal Khata, J.) was a member, to contend that the Development plan or revised development plan becomes final only after requisite procedure prescribed in Chapter III is followed. It is urged that this is a case in which a declaration under Section 6 of the Land Acquisition Act, 1894 has not taken place and consequently, steps to acquire the land in question were not adopted.

6. Per Contra, Mr. Vaibhav Patankar learned counsel for the Respondent Nos.2 and 4 contended that the Petitioners had failed to furnish documents of title and consequently the Respondent Nos. 2 and 4 could not take steps for acquisition. He also contended that pursuant to the amendment to Section 127 of the

¹ (2023) 2 BCR 469 = 2022 SCC OnLine Bom 5273

MRTP Act, the notice period was of 24 months and not 12 months and consequently, the judgment in the case of *Santu Sukhdeo Jaibhave (supra)* is not applicable in the facts of the present case.

7. We have heard learned counsel for the parties and perused through the papers and proceedings in the matter. In our view, the contentions as urged by the Respondents would go contrary to the principles laid down by the Supreme Court in the case of *Girnar Traders*² and reiterated by this Court in the case of *Trilok Singh*³ and *Santu Jaibhave (Supra)*. Pertinently, the Respondents have not disputed that the purchase notice was issued by the Respondents on 8th July 2015 i.e. prior to the notification issued on 9th January, 2017 whereby the Draft Revised Development Plan was implemented. In this regard, this Court in *Santu Jaibhave (supra)* held that:

“25. The respondents have not disputed that the purchase notice was issued by the respondents on 14th July 2015 i.e. prior to the notification issued on 9th January, 2017 whereby the Draft Revised Development Plan was implemented. We are not inclined to accept the submission made by the learned counsel for the respondents that a purchase notice under Section 127 of the MRTP Act could not have been issued after the Draft Revised Development Plan was published though admittedly not sanctioned. In our view, the Draft Revised Development Plan cannot be elevated to the status of a final sanctioned plan under Section 31 of the MRTP Act.

26. Under Section 26 of the MRTP Act, a procedure is prescribed for preparation and publication of notice of Draft Development Plan. Under Section 28 of the MRTP Act, any person is entitled to raise objections and suggestions relating to

2 Girnar Traders v State of Maharashtra & Ors 2007 SCC OnLine 1053

3 Trilok Singh Pahlajsingh Rajpal v Municipal corporation for Greater Mumbai & Ors Judgment dated 16th September 2022 in Writ Petition No. 2450 of 2016.

Draft Development Plan within the time prescribed to the Planning Authority. Such objections or suggestions that are forwarded to the Planning Authority for consideration may cause modification or change of plan. A procedure is prescribed under Section 31 of the MRTP Act for sanctioning the Draft Development Plan. Under Section 31(6) of the MRTP Act, a Development plan which has come into operation shall be called the “final Development Plan” and shall, subject to the provisions of the said Act, be binding on the Planning Authority.

27. Under Section 38 of the MRTP Act, the Planning Authority is empowered to revise the Development Plan at least once in 25 years from the date on which a Development Plan has come into operation, and where a Development Plan is sanctioned in parts, a Planning Authority may revise the Development Plan, either wholly, or the parts separately, after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction. The provisions of Sections 22 to 28, 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development Plan.

28. It is thus clear that even in respect of such revised development plan, a draft thereof has to be published followed by the objections and suggestions, as may be, filed by the person concerned, and after consideration of those objections and suggestions, final revised development plan is sanctioned. In our view, till such time, the draft Revised Development Plan is sanctioned finally and comes into effect in accordance with the provisions prescribed in the MRTP Act, the Draft Revised Development Plan has no legal sanctity and cannot be considered as final.

29. It is obvious that if any objections and suggestions opposing the Draft Revised Development Plan are accepted by the Planning Authority, such Draft Revised Development Plan would not be final in its original form. Admittedly the purchase notice issued by the petitioner under Section 127 was not issued after the sanction of Draft Revised Development Plan under Section 31 of the MRTP Act. The respondents thus cannot be allowed to urge that the notice issued by the petitioners under Section 127 of the MRTP Act after publication of the Draft Development Plan would not be a valid purchase notice. There is no substance in the submission made by the learned counsel for the respondents that the time to take steps by the respondents to acquire writ land would not commence from the date of receipt of purchase notice in view of the respondents already having published a Draft Revised Development Plan or that petitioners would have to issue a fresh notice under Section 127 of the MRTP Act after expiry of 10 years from the date of sanction of Draft Revised Development Plan. The submission advanced by the

learned counsel for the respondents are ex facie contrary to the provisions prescribed in Chapter III of the MRTP Act.

(emphasis supplied)

Thus in our view, seeking title documents from the Petitioners can have no bearing and cannot be construed as *steps taken* pursuant to the purchase notice as acquisition can only be said to have commenced when the State Government takes steps for acquisition of land by publication of declaration under section 6 of the Land Acquisition Act, 1894 which is not done in the present case. Furthermore, the Supreme Court in the case of ***Municipal Corporation of Greater Mumbai v Dr. Hakimwadi Tenants' Association***⁴ in paragraph 7, 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 prerequisite 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

⁴ 1988 Supp SCC 55

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 as attempt to prevent the running of time and was of little or no consequence..."

Thus, 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. This Court in the case of ***Chinmay Gurunath Parale v State of Maharashtra***⁵ following the judgment of the Supreme Court in *MCGM vs. Dr. Hakimwadi Tenants Association (supra)* has held that non submission of the title documents along with the Purchase notice would not render the Purchase notice invalid.

8. In regard to the contention of the Respondent Nos.2 and 4, that in view of the amendment in August 2015, lapsing would be on the expiry of 24 months i.e. on 7th July 2017 and not after twelve months on 7th July 2016 from the service of the purchase notice on 8th July 2015 as contended in the Purchase notice, in our

view, such contention presumes that, an amendment to the period, as effected from 29th August 2015 would have a retrospective effect cannot be accpeted. Such amendment to MRTP Act as noted above is not retrospective in operation, consequently, the lapsing would be after twelve months i.e. on 7th July 2016. In any event, this contention does not advance the case of the Respondent, in view of the Respondents' failure to publish a declaration under section 6 of the Land Acquisition Act. 1894.

9. We accordingly pass the following order-

- i.* The Writ Petition is allowed in terms of prayer clause (a).
- ii.* The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127 (2) of the MRTP Act, which shall be done as expeditiously as possible and preferably within a period of six months from today.
- iii.* If fresh plans for building permission are submitted by the Petitioners, then the same be considered expeditiously.
- iv.* Rule made absolute in above terms. No order as to costs.
- v.* All parties to act on the authenticated copy of this Order.

[KAMAL KHATA, J.]

[G. S. KULKARNI, J.]