

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.14126 OF 2018

Irfan Allabaksh Shaikh

Age- 33 years, Occu: Business,
R/o. 128, Siddheshwar Peth,
Kadadi Chawl, Solapur.

.... Petitioner

Versus

1. The Commissioner,
Solapur Municipal Corporation,
Solapur.

2. The Assistant Director,
Town Planning, Solapur,
Solapur Division, Solapur,

3. Assistant Engineer,
Building Permission Department,
Solapur Municipal Corporation,
Solapur.

4. Under Secretary,
Government of Maharashtra,
Urban Development Department,
Main Building, 4th Floor, Mantralaya,
Mumbai-400 032

.... Respondents

.....

Mr. G. S. Godbole, Senior Advocate a/w. Mr. Yogesh Thorat i/b.
Mr. Ashok B. Tajane for the Petitioner.

Mr. Vishwanath Patil for Respondent no.1 & 3 for the
Corporation.

Ms. M. P. Thakur, AGP for Respondent No.2 & 4 for the State.

.....

**CORAM : SUNIL B. SHUKRE
RAJESH S. PATIL, JJ.**
RESERVED ON : 18 AUGUST 2023
PRONOUNCED ON : 13 OCTOBER 2023

JUDGMENT (PER RAJESH S. PATIL, J.)

1. This Writ Petition is filed under Article 226 and 227 of the Constitution of India, challenging the order dated 6 June 2016 passed by the Assistant Engineer Municipal Corporation, Solapur, thereby refusing building permission as the plot of land is affected by reservation of play ground; and order dated 6 April 2018 passed by the Additional Secretary, State of Maharashtra, Town Planning Department, thereby rejecting the notice issued under Section 127 of the MRTP Act, 1966 on the ground that the notice is premature by 30 days.

2. On 16 January 1978 the development plan of Solapur was published, wherein CTS No. 6167, Siddheshwar Solapur was reserved at site No.319 as “play ground”, admeasuring 5070 sq. mtrs.

3. Thereafter, the Municipal Corporation decided to prepare Draft Development Plan of entire area, ie., old limit+extended limit, vide resolution No.374. Accordingly, notice was published on 22 October 1992 of revised development plan. Objections to the draft development plan were called and notice of the same was published in gazette dated 26 March 1999.

4. On 26 June 2001 the Municipal Corporation passed

resolution No.163, for cancelling the reservation on CTS No.6167, which was reserved for school, as the said land was not used for play ground, so also to resolve the issue of returning the land to the owner.

5. On 28 October 2004, second development Scheme for Solapur City was sanctioned with certain modifications by the government and the same came into force from 5 December 2004.

6. Petitioner's father, as Power of Attorney holder of then owner, issued a notice under Section 127 of MRTP Act, 1966 on 14 November 2014 for cancellation of reservation. The Municipal Corporation had earlier acquired 5 guntas and 116 yard area on 10 November 1949 from the same land, i.e., CTS No.6167, for the purpose of Hindustan school of Nagar Palika.

7. The town planning department by its order dated 20 November 2014, sent a letter to the Municipal Corporation, Solapur, informing therein that the father of the Petitioner had sent the notice under Section 127 of the MRTP Act, 1966 and requested to issue direction to the concerned person to send the proposal for acquisition of land to district collector, so that the

resolution does not lapse.

8. The Town Planning Department, by its letter dated 17 December 2014 addressed to the father of the Petitioner, directed to submit map and documents of ownership with regards to the communication dated 14 November 2014. Responding to the said letter dated 17 December 2014, the father of the Petitioner by his covering letter dated 24 December 2014, submitted the relevant documents to the town planning department. By notice dated 14 January 2015, the father of the Petitioner again sought cancellation of reservation. By another Resolution bearing No.320, the Corporation resolved that there are already existing playgrounds and hence, the Corporation does not need the acquisition of the subject land, so also the Corporation cannot pay the huge amount required for acquisition.

9. By his letter dated 14 June 2015, the Commissioner of Municipal Corporation, Solapur, by his letter to the District Collector, asked for raising funds for acquisition. The land coordination officer by his letter dated 13 January 2016, addressed to the Assistant Director, Town Planning, Solapur, requested for purchasing the subject land through private

agreement. The Town Planning Department, Solapur, by its letter dated 3 June 2016 addressed to the father of the Petitioner, directed to accept TDR as compensation for acquisition within 7 days.

10. Shortly thereafter, on 6 June 2016 the Assistant Engineer of the Municipal Corporation refused building permission to the Petitioner's father, on the ground that the said plot is affected by reservation of play ground.

11. The father of the Petitioner replied to the said letter dated 3 June 2016, stating therein that the acquisition is lapsed and therefore, the building permission should be granted. Thereafter, the Town Planning Department by its letter dated 27 March 2016 addressed to the father of the Petitioner, asked for submitting explanation about Court litigation and asked for submitting the documents.

12. By his letter dated 22 June 2016, the father of the Petitioner gave explanation regarding the Court proceedings between him and the original owner and also pointed out the consent terms entered into by them.

13. Thereafter, the Commissioner of Municipal

Corporation, by his letter dated 2 December 2016 addressed to the State of Maharashtra, thereby calling upon to pass orders pursuant to the government resolution, since the TDR is refused. The Commissioner of Municipal Corporation, thereafter by his letter dated 5 May 2017 addressed to the town planning department, gave their information in respect of acquisition proceedings of the said land.

14. By letter dated 12 July 2017, the Assistant Director, Town Planning Department, addressed a letter to Director, Town Planning Department stating that the purported purchase notice dated 14 November 2014 is premature and hence reservation cannot be lapsed.

15. Shortly thereafter, the father of the Petitioner died on 24 September 2017. The Petitioner thereafter, on 10 November 2017, by registered Sale Deed purchase the subject land from the original owner Mr. Kadadi.

16. By letter dated 6 April 2018 the Under Secretary Government of Maharashtra informed the Municipal Corporation that the notice issued purportedly under Section 127 of the MRTP Act, is premature. The Petitioner sent its reply to the said

notice dated 6 April 2018.

17. The Petitioner being dissatisfied with the notice dated 6 April 2018 and with the notice dated 6 June 2016, has filed the present Writ Petition.

18. The Respondent-Corporation have filed their reply to the Writ Petition denying the contents of Writ Petition and have submitted that the purported purchase notice dated 14 November 2014 is premature, therefore, there is no merits in the Writ Petition and the same should be dismissed. The State Government have also filed their reply and the contents of the said reply supports the stand taken by the Municipal Corporation. The Government has also repeated that there is no merits in the Writ Petition as the purchase notice was sent before the expiry of 10 years, from the date of implementation of development plan.

19. Mr. G. S. Godbole, Senior Counsel made his submissions on behalf of Petitioner.

19.1. He submitted that the order dated 6 April 2018, passed by the Under Secretary Government of Maharashtra is bad in law, since the first development plan for Solapur city was

sanctioned on 16 January 1978 and the effect for the same was given on 1 March 1978. The purchase notice was issued by the father of the Petitioner on 14 November 2014, therefore, the same cannot be said to be within a period of 10 years and therefore, the same cannot be called as premature. And in any case the purchase notice should be construed liberally.

19.2. Mr. Godbole further submitted that it was Corporation's resolution dated 26 June 2001 and 20 February 2015, wherein they resolved that sufficient area for play ground was available and the Corporation is not having any objection to return the land to the owners as well as considering the financial condition of the Corporation, the Corporation does not have funds to pay to the owners of the land.

19.3. Mr. G. S. Godbole referred to judgment of *Hirabai Babar v/s. Sangli Miraj Corporation* reported in *2007 (5) Mh.L.J.90*, to buttress his submissions.

20. Mr. Vishwanath Patil made his submission on behalf of the Respondent-Municipal Corporation of Solapur.

21. Mr. Patil submitted that on the face of it, the purchase notice is premature as the same was issued within 10

years from the date of implementation of development plan. So also, the said purchase notice was issued by a power of attorney holder, i.e., father of the Petitioner, when he was not the owner of the subject plot. Mr. Patil also submitted that the purchase notice was issued without any documents. Mr. Patil, therefore, submitted that there is no merits in the Writ Petition and the same should be dismissed with cost. Mr. Patil relied upon the Division Bench judgment of *Aminabee V/s. State of Maharashtra* reported in **2019 (3) MhLJ 672**.

22. Ms. M. P. Thakur, AGP made her submissions on behalf of Respondent No.3, the State of Maharashtra.

23. She submitted that she is adopting the submissions made by Mr.Patil for the Municipal Corporation. She submitted that the purported purchase notice is premature as per the reading of Section 27 (1) of the MRTP Act, 1966. She further submitted that the purchase notice is sent by power of attorney holder who was not the owner of the subject land, neither any documents were annexed to the purchase notice. The said notice was clearly issued before the expiry of 10 years. Therefore, the present Writ Petition is not entertainable and should be dismissed

with costs.

24. We have heard counsel for all sides and have gone through the documents on record.

25. Section 127 (1) and (2) of the MRTP Act at the relevant time read as under :-

“127. (1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a 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, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twelve months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid 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 under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the official gazette”

[Emphasis supplied]

26. Therefore, Section 127 (1) clearly mentions, that the 10 years period would start from the date of implementation of development plan and if the purchase notice is issued before 10

years period has expired, from the date of implementation of development plan, the same would become premature.

26.1. The Division Bench of this Court in *Aminabee* (supra), held that purchase notice seeking to invoke provisions of Section 127 must strictly conform to the time frame laid down therein. Right of owner to issue such notice accrues only after expiring of period of ten years. Supreme Court invoking its powers under Article 142 of the Constitution of India, to do complete justice on the facts of the case is quite different, then High Court invoking its power under Article 226 and 227 of the Constitution of India.

27. On bare reading of purchase notice dated 14 November 2014 it can be seen that the same is issued within 10 years as the Development Plan came into force on 5 December, 2004. The submission of Mr. Godbole to construe the purported purchase notice liberally, does not impress us. As we are of the view that the notice can be issued only after expiry of 10 years from the date of implementation of development plan. Admittedly, no documents as contemplated under Section 127 (1) of the MRTP Act, were submitted with the purchase notice

dated 14 November 2014. So also, the said purchase notice was not issued by the owner of the subject land.

27.1. As far as second notice dated 14 January 2015 is concerned, the same is issued by Advocate of Power of Attorney holder, on behalf of Power of Attorney holder, the same is not issued by the owner, through his Advocate. Respondent Corporation has raised objection about competency of Petitioner's letter to issue notice and as such the Petitioner, much later on i.e., 10 November 2017, purchased the subject land. Therefore, we are of the view that the purchase notice is premature.

28. If the notice is premature then the question of issuance of notification as per Sub Section (2) of Section 127 does not arise.

29. So also, an appeal under Section 47 of the MRTP Act to challenge the impugned notice dated 6 June 2016 and 6 April 2018, was maintainable. However, without filing any such appeal, the present Writ Petition has been filed by the Petitioner.

30. The judgment of Hiravai Babar (supra) referred by the Petitioner does not support the cause of the Petitioner, as the facts of this judgment is quite different. In the said judgment the

issue was regarding failure to take steps within 6 months of the service of notice. Hence, for the reasons stated above, the present Writ Petition is dismissed. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)