

Amol
Diliprao
Nawale

Digitally
signed by
Amol
Diliprao
Nawale
Date:
2023.08.11
15:24:34
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 716 OF 2012

The Tulsidas Gopalji Charitable and
Dhakleshwar Temple Trust,
having its office at 10-A, Bhulabhai
Desai Road, Mumbai, 400 026.
through its present Chairman & Trustee,
Mr. Amit V. Bhansali

...Petitioner

V/s.

1. State of Maharashtra,
through its Chief Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Municipal Corporation of Gr.
Mumbai, Head Office, Mahapalika
Marg,
Mumbai, 400 001.
3. Municipal Commissioner,
Municipal Corporation of Gr. Mumbai,
Head Office, Mahapalika Marg,
Mumbai, 400 001.
4. Director (ESP), M.C.G.M,
Head Office, Mahapalika Marg,
Mumbai, 400 001
5. Chief Engineer (D.P) MCGM,
Head Office, Mahapalika Marg,
Mumbai, 400 001
6. Dy. Chief Engineer, (B.P) city,
Municipal "E" Ward, office building,
3rd Floor, 10, Shaikhafizuddin Marg,
Byculla, Mumbai-400008
7. Executive Engineer (B.P) city,

Municipal “E” Ward, office building,
3rd Floor, 10, Shaikhafizuddin Marg,
Byculla, Mumbai-400008

8. Assistant Commissioner, “D” ward,
MCGM. Jobanputra Compound,
Mumbai- 400004.

9. Special Land Acquisition Officer-7
“Bhusampadan Bhuvan”, 2nd Floor,
Opp. Finlay Mill, Saibaba Road,
Bhartmata Cinema Naka, Lalbaug,
Mumbai- 400012.

...Respondents

Mr. Chetan Kapadia, Senior Advocate a/w. Mr. Rohan Agarwal, Ms. Priya Diwadkar, Ms. Nandita Shah i/b. Manilal Kher Ambalal & Co., for the Petitioner.

Mr. Girish Godbole, Senior Advocate a/w. Ms. Pooja Yadav & Mr. Kunal Waghmare i/b. Mr. Sunil Sonawane for the Respondents-BMC.

Mr. A. L. Patki, AGP for State.

**CORAM : SUNIL B. SHUKRE &
RAJESH .S. PATIL, JJ.**

DATED : 9th AUGUST, 2023

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J.)

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The land in question was reserved for the public purpose of recreation ground. Since the land was not acquired by the Planning Authority i.e., Respondent-Municipal Corporation for

a period of more than 10 years, the Petitioner served a purchase notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short 'MRTP Act') upon the Corporation. The purchase notice was issued on 25th September 2006 and it appears that it was received by the Corporation on the same day. After receipt of such purchase notice, as per the provisions contained in Section 127 of the MRTP Act, the Corporation was obligated to either acquire the land or take steps towards acquisition of the land within a period of six months from the date of receipt of the purchase notice. The period of six months expired on 25th March, 2007.

3. What we find here from the pleadings of both sides is that no steps towards acquisition of the land were taken by the Corporation before the expiry of period of six months, which period expired on 25th March, 2007. Of course, Mr. Godbole, Learned Senior Advocate submits that steps were indeed taken by the Corporation for acquisition of the subject land, when the proposal was moved by the Corporation on 20th March 2007 to the Government by making a request for issuing necessary notification for acquisition of the land by the State Government and the notification was also issued under Section 126 (2) and (4) of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 by the State Government. The date pointed to us by the learned Senior Advocate would only show that the step towards acquisition of the land as contemplated in law, which has been more clearly explained in *M/S. Girnar Traders vs State Of Maharashtra & Ors.* reported in *2011 (7) SCC 555*, was not

indeed taken by the Corporation. The Corporation had sent a proposal requesting the Government to acquire the land on 20th March, 2007, which was the date prior to expiry of period of six months, but this proposal not being a step towards acquisition, would not defeat the notice issued under Section 127 of the MRTP Act by the Petitioner. The Notification dated 29th August, 2008 issued by the State Government under Section 126 (2) and (4) of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 is however, a step towards acquisition of the land as contemplated in law. But this step having been taken after expiry of period of six months, we must say, would not adversely affect the purchase notice issued under Section 127 of the MRTP Act. That would mean that so far as the first reservation affecting the subject land is concerned, there is lapsing of it by virtue of failure of the Corporation to acquire the subject land or failure of the Corporation to take any steps towards acquisition of the land within the stipulated period of six months from the date of receipt of the purchase notice. We therefore, find no merit in the submission of learned Senior Advocate made in this regard on behalf of the Corporation.

4. There is another dimension to the dispute involved in this Petition. The Petition had been dismissed in default by this Court on 11th March, 2015 and while the Petition remained dismissed, the State Government published a revised draft development plan on 27th May, 2016 proposing to provide the land for reservation for different purpose of garden park. The Petitioner filed objection to the revised draft development plan on the

ground that the reservation earlier provided had been lapsed and therefore, no further reservation could be provided by the State Government. The objection was rejected and the final revised development plan was sanctioned by the Government on 8th May, 2018 providing for reservation of the subject land for the purpose of garden park. Before sanction of the revised draft development plan, the Petition had been restored to the original file of this Court by an order passed by this Court on 12th October, 2017 and thus the dispute raised in this Petition came to be revived. At the cost of repetition, we may state here that it was only after the revival of the dispute involved in this Petition that the revised draft development plan became a final development plan sanctioned by the State Government on 8th May, 2018. Now, the question would be - whether the Petitioner would be required to once again follow the procedure as contemplated under Section 127 of the MRTP Act in order to seek declaration about lapsing of reservation of his land?

5. Learned Senior Advocate for the Corporation submits that the Petitioner would be required to once again follow the same procedure prescribed under Section 127 of the MRTP before he gets his land freed from fresh reservation. He submits that even if it is assumed, for the sake of argument but without admitting, that the earlier reservation has been lapsed, still the Petitioner would have to go through the same rigmarole of Section 127 of the MRTP Act, which would mean that now the Petitioner would have to wait for another period of 10 years from 8th May 2018 and for further period of two years to enable the Government to

acquire the land subjected to a different reservation. This is disagreed to by learned Senior Advocate for the Petitioner. According to him, the law in this regard is well settled and the law declares that once the reservation stands lapsed, there can be no further reservation or re-reservation or continuation of the earlier reservation. For this submission, he relies upon view taken by the Division Bench of this Court in the case of ***Trilok Singh Pahlajsingh Rajpal v/s. Municipal Corporation for Greater Mumbai*** reported in ***2022 SCC OnLine Bom 2347***, which has been reiterated in the case of ***Purshotam Vishandas Raheja v/s. State of Maharashtra & Ors.*** reported in ***2022 SCC OnLine Bom 6704***.

6. On going through the judgment rendered in the case of ***Purshotam Vishandas Raheja*** (supra), which reiterates the view taken by the another Division Bench of this Court in the case of ***Trilok Singh Pahlajsingh Rajpal*** (supra), we find that learned Senior Advocate for the Petitioner is right in his submission. The law in this regard is well settled and view has been taken by two Division Benches of this Court that if the reservation on a land has already stood lapsed, it cannot be revived or the land cannot be subjected to reservation once again for the same purpose or different purpose. Observations appearing in paragraph 47 of the judgment in ***Purshotam Vishandas Raheja*** (supra) being relevant are reproduced as under :-

The Division bench of this Court in case of Dr. Ramrao Sopanrao Gondkar (supra) after adverting to the judgment of Supreme Court in case of Girnar Traders (supra) and several other judgments has held that the reservation of the writ land stands lapsed upon the expiry of the prescribed period from the

date of service of the purchase notice under section 127 are taken. This Court also adverted to the judgment of this Court in case of Trilok Singh Pahlajsingh Rajpal (supra). The said judgment accordingly held that the mere sending of a draft award to the Commissioner cannot be construed as steps taken to prevent or revive lapsing. In the facts of this case, since time to take steps for acquiring the land had already expired and reservation had already stood lapsed, such reservation cannot be revived by issuing a notification under section 6 of the Land Acquisition act or by re-reserving the same reserved land for the same purpose or different purpose, after the reservation has lapsed. The principles of law laid down by this Court in case of Dr. Ramrao Sopanrao gondkar (supra) would apply to the facts of this case.

So, it would be clear that after lapsing of the first reservation on a land in terms of Section 127 of the MRTP Act, the same land cannot be subjected to re-reservation for the same purpose or reserved for a different purpose and since this law continues to hold the field, we do not find any merit in the argument advanced on behalf of the Corporation by its learned Senior Advocate.

6. Accordingly, we find that the first reservation on the subject land in the present case having been already lapsed, the subject land could not have been placed under another reservation for a different purpose of garden park by the notification dated 8th May, 2018. We also find that the subject land having been freed from reservation, is now open for its development in accordance with law by the Petitioner.

7. This Petition, is therefore, allowed in terms of prayer clauses (a) and (b1) which read as under :-

a) That this Hon'ble Court be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus or order or any other appropriate writ, directions or

order under Article 226 of the Constitution of India directing the Respondents to forthwith withdraw and/or cancel the said notification dated 29/8/2008 and declare that the reservation on land bearing C.S.792pt.of Malabar Cumballa Hill Division under Development Plan of D ward under MRTP Act 1966 has lapsed and the said land stands de-reserved and available to the Petitioner for development in accordance with law.

"b1) That this Hon'ble Court be pleased to declare that the reservation/ subsequent reservation on the land bearing C.S. No. 792 (Part) of Malabar Cumballa Hill Division, D Ward delineated in green colour in the DP Remarks 2034 (Exhibits N&O) in the Development Plan 2034 under R.O.1.5 Garden and Park pursuant to the Notification dated 8th May, 2018 is contrary to law as the previous reservation of recreation ground on the land under reference under the earlier Development Plan of 1991 stands lapsed pursuant to failure of the Respondents to take steps for acquiring the said land after receipt of Purchase Notice dated 25/9/2006."

We direct that the notification under Section 127 (2) of the MRTP Act be issued within a period of six months from the date of the order.

8. Learned Senior Advocate makes a prayer for staying the effect and operation of the judgment, which is opposed by learned Senior Advocate for the petitioner. Considering the fact that some time has been allowed by this Court to the State Government to issue necessary notification under Section 127 (2) of the MRTP Act, we do not find it necessary to stay effect and operation of the judgment and therefore, the prayer is rejected.

9. Petition is disposed of in the above terms. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)