



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2800/2020

M/s. Laxmi Construction Company,
through its Partner, Vipul Chotabhai
Patel, aged about 50 Yrs., R/o Aney
Mahia Vidyalaya Road, Datta Chowk,
Yavatmal, Tq. & Dist. Yavatmal.

... Petitioner

- Versus -

1. State of Maharashtra,
Department of Urban Development,
through Chief Secretary, Mantralaya,
Mumbai 400 032.
2. Municipal Council,
through Chief Officer, Town
Planning Department, Near
Police Station, Yavatmal.
3. Town Planning Officer,
Yavatmal, Dist. Yavatmal.

... Respondent

Mr. M.M. Agnihotri, Advocate for the Petitioner.
Mr. Nitin Autkar, A.G.P. for the respondent Nos.1 and 3.
Mr. R.S. Gode, h/f Mr. V.D. Darne, Advocate for respondent No.2.

CORAM :- SMT. ANUJA PRABHUDESAI &
MRS. VRUSHALI V. JOSHI, JJ.

DATED:- 12.12.2023

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent.

2. By this petition the petitioner seeks to challenge the inaction on the part of the respondents in not taking steps envisaged under Section 126 and 127 of the Maharashtra Regional Town Planning Act, 1966 (for short “Act of 1966”).

3. The petitioner is the owner of part of Survey No.13/4, sheet No.55, Nazul Plot No.3/1, admeasuring 1.37 hector, Class-I in Mouza Yavatmal, Tahsil and District Yavatmal which is within the municipal limits of respondent No.2 Council. The petitioner purchased the above mentioned land from one Mr. Madanbhai Samnanni vide registered sale deed dated 24.4.2002.

4. Area of 2920.35 Sq. Mtrs. i.e. 0.29 hector was under reservation No.79 of Development Plan of 1978 and thereafter in

Development Plan of 1997 under Reservation No.34. A DP road of 2850 Sq. Mtrs. is also passing through the land of the petitioner. The instant petition relates to only 0.29 hector of land which was under Reservation No.34.

5. As per the Development Plan of 1978 vide Reservation No.79, out of admeasuring 1.37 HR land about 2920.35 Sq. Mtrs. was reserved by respondent No.2 Authority for the playground. Thereafter in Development Plan of 1998 reservation was changed for the park / garden vide Reservation No.34 vide Order No.TPS/2795/1600/C.R./U.D.-13 dated 8.7.1997.

6. The land was notified in the year 1978. No steps were taken by the respondent No.2 Council, therefore, in the year 2004 the petitioner issued a purchase notice under Section 127 of the Act of 1966 to the respondents. The respondent No.2 has duly received the same on 15.3.2004 and respondent No.3 Town

Planner received the same on 15.4.2004. The copy of said notice was also forwarded to the Deputy Director, Town Planning, Amravati and Director of Town Planning, Pune by registered post.

7. The petitioner has reliably learnt that as per the records of respondent No.2 Council, all other authorities who were in receipt of notice under Section 127, had cautioned the respondent Council to take effective steps for acquiring the land within six months as per Section 127 of the Act of 1966. These authorities also clarified that if the respondent No.2 fails to initiate action within six months the reservation would lapse.

8. On 22.7.2004 the issue was discussed in the meeting and a resolution was passed thereby refusing to acquire the land as per Section 126 of the Act of 1966 since the respondent No.2 was not having good financial condition so as to bear the cost of the

land. In spite of the fact that said resolution dealt with the land of the petitioner it was never forwarded to the petitioner.

9. After the resolution of the authorities, the Town Planning Department and Collector were informed about the said Resolution No.6 with respect to purchase of land in question. However, on 6.9.2004 vide outward No.347/2004 the respondent No.2 taking shelter of Government Resolution dated 31.10.1997 requested the Collector to continue with the land acquisition proceedings. Accordingly, the proposal to acquire the land in question in prescribed format was forwarded.

10. On 9/19.302005 the Collector had instructed the Sub-Divisional Officer cum Land Acquisition Officer to initiate the action under Section 4 of the Land Acquisition Act, 1894. It was also directed to collect 2/3rd amount from the Municipal Council. As the respondent No.2 had not informed about the steps taken by it in response to the purchase notice issued, the

petitioner issued a letter to the respondent No.2 informing that though 15 months have passed there is no response from the respondent Council.

11. Since no effective steps were taken by the respondents the petitioner again issued notice dated 5.12.2005 through his counsel under Section 49 of the Act of 1966 by which it was informed that the concerned authorities have failed to clear the land for which it was reserved. Therefore, the intention for which the land was reserved has become infructuous. Therefore, the petitioner called upon the authorities of the Town Planning as well as the respondent No.2 Council as to why the reservation as proposed over the said land could not be deemed to be lapsed as stipulated within the provisions of Section 49 of the Act of 1966.

12. After the receipt of the said letter dated 18.8.2005 the notice dated 5.12.2005 vide letters dated 22.11.2005 and 31.3.2006 the respondent No.2 Council replied to the petitioner

informing that in view of notice issued by the petitioner, the respondent Council has followed the process of acquisition of the land.

13. Since the respondent No.2 had informed about initiation of process of acquisition, the petitioner vide his letter dated 19.12.2005 called information as the status of proposal which has been forwarded to the Government. However, till date the respondent No.2 Council has not given any reply nor did forwarded proposal to the authorities.

14. Though the respondent Council has made specific statement regarding initiation of acquisition process no further steps were taken till the filing of the petition. On 16.11.2009 the petitioner once again issued letter to the Chief Officer of respondent No.2 Council requesting them to complete the process of acquisition and compensation be given to the petitioner.

15. On 25.1.2011 the petitioner again issued a legal notice to respondent No.1 informing that the land is reserved and more than 14 years has been lapsed, however, no steps regarding its acquisition has been taken by the respondents and, therefore, the land stands released from the reservation. In spite of receipt of the notice 25.1.2011 the respondents have failed to take necessary steps.

16. In the Annual General Meeting dated 22.7.2004 it had specifically expressed its financial crunch to clear the property in question. Therefore, it was bounden duty of respondent No.2 to de-reserve the land of the petitioner. Considering the above said aspect and considering the statutory period of 10 years it is crystal clear that the period of 10 years had lapsed. In spite of the fact that the period has expired and the purchase notice has been served steps were not taken by the respondents for acquiring the land and compensating the petitioner. The petitioner issued statutory notice under Section 127 of the Act of 1966. By this,

the respondents were called upon to take steps within a period of 24 months from the date of service of the notice. Notice is served on the respondents more specifically on respondent No.2 no action has been initiated by it. By this notice, all the above facts were brought to the knowledge of the respondents. It was pointed out that despite reservation of the land in question no steps for acquisition were taken by them. Though the notice was issued on 15.3.2004 till date of filing the petition respondents have not taken steps for acquiring the land of the petitioner as envisaged under Section 126 of the Act of 1966. Therefore, the land of the petitioner needs to be deserved and declared that the petitioner is entitled to release the land.

17. For the aforesaid reasons, the petition is allowed. The petitioner's land admeasuring 2920.35 Sq. Mtrs. in part of Survey No.13/4, Mouja Yavatmal, Tahsil and District Yavatmal which is within the Municipal limits of respondent No.2 Council which had been reserved by the respondent under Reservation

No.34 (Garden) has lapsed and is released from the said reservation. The permission is granted to the petitioner to utilise the said land in question as it being utilized by the adjacent land owners. Notification under Section 127(2) of the MRTP Act, be issued within three months from the date of the order.

18. Rule is made absolute in the above terms. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(SMT. ANUJA PRABHUDESAI, J.)

Tambaskar.