



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1088 OF 2020

Tukaram s/o Shankar Gondkar
Age 62 years, Occ. Agriculture,
R/o. Shriram Nagar, Kankuri Road,
Shirdi, Tq. Rahata,
District Ahmednagar

...Petitioner

Versus

1. The State of Maharashtra
Through Secretary, Urban
Development Department
State of Maharashtra,
Mantralaya, Mumbai
2. The Collector, Ahmednagar
District Ahmednagar
3. The Shirdi Nagar Panchayat
Through its Chief Executive Officer
Having office at Nagar Panchayat
Shirdi, Tq. Rahata,
District Ahmednagar

...Respondents

.....
Mr. Amol K. Gawali, advocate for the petitioner
Mr. S.R. Wakale, AGP for respondent Nos. 1 and 2
Mr. Ashwin V. Hon, advocate for respondent No.3.
.....

**CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.
DATE OF RESERVING : 26.11.2024
THE ORDER
DATE OF PRONOUNCING : 04.12.2024
ORDER**

ORDER (MANGESH S. PATIL, J.) :-

By this petition, under Article 226 of the Constitution of India,

the petitioner is seeking a declaration that the reservation, placed on his property, being 30 Are portion from city survey No. 914, out of survey No. 136/16, in the development plan of respondent No.3 - Nagar Panchayat, has lapsed by virtue of Section 127(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and soliciting a direction in the nature of mandamus to the respondents to publish a notification in the official gazette, in tune with sub-section (2) of section 127 of the MRTP Act.

2. We have heard both the sides finally at the stage of admission.

3. The learned advocate Mr. Gawali, for the petitioner submits that the final development plan of respondent No.3 - Nagar Panchayat was published in the year 1992. Petitioner's property was shown as reserved for parking, at Sr. No.44, and for garden, at Sr. No.43. The revised development plan was sought to be prepared and a draft was published in the year 2017, with a slight change in the original reservation of petitioner's property. At Sr. No.31, it was shown partly reserved for parking and at Sr. No. 30, it was shown as partly reserved for garden. The petitioner served a notice under sub-section (1) of Section 127 of MRTP Act to respondent No.3 - Nagar Panchayat on 2.9.2017. By passing a resolution No.15 in the general

body, respondent No.3 - Nagar Panchayat due to financial incapacity to acquire the petitioner's land, resolved to de-reserve it, in the meeting, held on 16.12.2017. He would submit that since no steps were taken for ten years after publication of final development plan in the year 1992, a right had accrued in the petitioner to insist for acquisition of his property. The statutory notice was served.

4. He would submit that it is thereafter the revised development plan has come into force. As laid down by the full bench of this court (Nagpur Bench) in the matters of ***Prashant Bhagwantrao Raikwar and others vs. The State of Maharashtra and others*** (writ petition No.3662 of 2011) and ***Mohammad Usman Mohammad Hanif vs. The State of Maharashtra and others*** (writ petition No. 1980 of 2011), both decided on 03.10.2016, by relying upon the decisions of the Supreme Court in the matters of ***Prafulla C. Dave vs. Municipal Commissioner, 2014 Mh.L.J. Online (S.C.) 191*** and ***Chhabildas vs. State of Maharashtra and others, (2018) 2 SCC 784***, which in turn were even referred to by another full bench in the matter of ***Madanlal Zumberlal Nahar and others vs. Chief Officer, Municipal Council, Beed, reported in 2023 (2) Mh.L.J. 618***, the issue has been settled. A notice under section 127 of MRTP Act being mandatory, unless such a notice is issued, the period of ten years as provided therein shall have to be reckoned with from the

date of revised development plan coming into force under Section 38 of the MRTP Act. Since the petitioner's notice under Section 127 preceded the revised development plan and since, admittedly, no steps were taken to acquire the property under Section 126 r.w. relevant provisions of Land Acquisition Act, 1894, the reservation stood lapsed and the petitioner is entitled to seek a declaration and writ of mandamus by publication of notice under sub-section (2) of Section 127 of MRTP Act.

5. The learned advocate for respondent No.3 - Nagar Panchayat, referring to the affidavit in reply filed by its Chief Officer, would not dispute the factual aspects. He would submit that since the revised development plan was sanctioned and finalized on 19.9.2019, the cause of action for the petitioner to issue a notice under Section 127(1) of MRTP Act, got extended by a further period of ten years and ought to have been issued only after the revised development plan was published. The notice is premature and the petition be dismissed.

6. We have considered the rival submissions and perused the papers. As can be gathered, the only issue that arises for consideration has already been put to rest by the full bench of this Court in the case of ***Prashant Bhagwantrao Raikwar and others (supra)***, to which the following question was referred:-

“Whether date of revised development plan under section 38 of the Maharashtra Regional and Town Planning Act, 1966 is the date relevant for calculation of period of ten years for serving notice under section 127 thereof or then it has to be date of final development plan as notified under section 31(6) thereof?”

It was answered in the following manner:-

“In view of the subsequent development i.e. lying down of the law after interpreting the provisions of sections 127, 21, 22, 31 and 38 by two Judgments of the Hon’ble Apex Court in the cases of Prafulla C. Dave and others vs. Municipal Commissioner and others, 2014 MhLJ Online (S.C.) 191 = (2015) 11 SCC 90 and Godrej and Boyce Manufacturing Company Limited vs. State of Maharashtra, (2015) 11 SCC 554, we find that the position stands crystallized and it will not be necessary to answer the question which is referred by the learned Judges of the Division Bench.

Needles to state that each case will have to be decided on the facts of each case, in the light of pronouncement of the law by the Apex Court in the cases of Prafulla Dave and Godrej and Boyce Manufacturing Company Limited (supra)”

7. In a slightly different context, another full bench of this court in the matter of **Madanlal (supra)** had reiterated the position. While answering the issue as to if in absence of a valid notice under section 127 of MRTP Act, the High Court cannot lawfully declare the

reservation for public purpose under MRTP Act for inordinately long period of time, free from reservation. While answering this issue, the full bench had declared that validity of such notice will have to be determined on facts of each case at the touchstone of the principle laid down in ***Prafulla C. Dave (supra)*** and ***Chhabildas (supra)***.

8. Obviously, a reference to ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others, reported in (2003) 2 SCC 111*** would be imperative. In the context of Sections 20 and 21 of the Gujarat Town Planning and Urban Development Act, 1976, which is analogous to the MRTP Act, a question that was posed before the Supreme Court was stated in para 6 as under:-

“6. The short question which arises for consideration in these matters is as to whether by reason of inaction on the part of the State and its authorities under the Town Planning Act to acquire the lands for a period of more than 10 years, in terms of the provisions of the Land Acquisition Act, 1894 despite service of notice, the same stood dereserved/ de-designated; or in view of the issuance of draft revised plan under Section 21 thereof, the term of ten years stood extended.”

It has been answered in paragraph 36 as under:-

“36. The question, however, is as to whether only

because the provision of Section 20 has been refereed to therein; would it mean that thereby the legislature contemplated that the time of ten years specified by the legislature for the purpose of acquisition of the land would get automatically extended? The answer to the said question must be rendered in the negative. Following the principle of interpretation that all words must be given their full effect, we must also give full effect to the words "so far as may be" applied to such revision."

9. Relying upon the decision in ***Bhavnagar University (supra)***, in the matter of ***Prafulla C. Dave (supra)***, it was held in the context of provisions of MRTP Act and particularly, the scheme under Section 127 of MRTP Act that it does not provide for automatic lapse of acquisition/ reservation /allotment or designation of land, included in any development plan on expiry of ten years. The land owner or the person interested is mandated to take certain positive steps for issuance / service of notice under Section 127 of MRTP Act after expiry of period of ten years. Even before he does so if the revised plan is prepared under Section 38, the period of ten years contemplated therein, would get a fresh lease of ten years from the revised plan coming into force.

10. When admittedly, even before revised plan of the respondent - Nagar Panchayat came into force w.e.f. 19.09.2019, the petitioner having exercised his right by issuing a statutory notice

under Section 127(1) of MRTP Act, the period of ten years will have to be reckoned with from the development plan under Section 31(6) of the MRTP Act, which in the present case was 1992.

11. Consequently, respondent No.3 - Nagar Panchayat having failed to take any steps as contemplated under section 126 r.w. relevant provisions of the Land Acquisition Act, 1894, the reservation would stand lapsed.

12. The writ petition is allowed.

13. It is declared that the reservation on petitioner's land being 30 Are portion from city survey No. 914, out of survey No. 136/16, situated at Shirdi, Tq. Rahata, District Ahmednagar, in the development plan of respondent No.3 – Nagar Panchayat, has lapsed.

14. The respondents shall take immediate steps and shall issue a notification under sub-section (2) of Section 127 of MRTP Act, in any case within eight (08) weeks.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL , J.)