



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1184 OF 2024

M/s. Trishul Constructions,
Through its Partner,
Shri Shodhan Yeshwant Joshi,
Age : 70 Years, Occu.: Business
R/o: 102, "Veer-Shanti",
Kranti Chowk, Adalat Road,
Chhatrapati Sambhajinagar

... PETITIONER

Versus

1. The State of Maharashtra,
Through Department of Urban Development,
Mantralaya, Mumbai-32.
2. Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-32.
3. The Collector,
Aurangabad.
4. Special Land Acquisition Officer,
(Special Unit), Aurangabad.
5. Aurangabad Municipal Corporation,
Through its Administrator @ Municipal Commissioner,
Aurangabad.
6. The Administrator,
Aurangabad Municipal Corporation, Aurangabad.
7. The Deputy Director of Town Planning,
Aurangabad Municipal Corporation,
Aurangabad.

... RESPONDENTS

Mr. D. P. Palodkar, Advocate for the Petitioner
Mr. A. B. Girase, Government Pleader for Respondent Nos. 1 to 4/State
Mr. S. P. Urgunde, Advocate for Respondent Nos. 5 to 7

CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.

RESERVED ON: 5th APRIL, 2024

PRONOUNCED ON : 12th APRIL, 2024

JUDGMENT (PER – R. M. JOSHI, J.) :-

1. Rule. Rule made returnable forthwith, heard finally with the consent of both the parties.

2. The Petitioner is the owner and in possession of land situated at Survey No. 2940/2 at Naralibag, Tal. And Dist. Aurangabad. According to the Petitioner revised development plan at Aurangabad city came to be sanctioned by the State Government on 18th April, 2001 and in the said development plan the land of the Petitioner is reserved for "Garden to the extent of 424.92 Sqr. Mtrs and 9 Mtrs wide Development Plan Road to the Extent of 221.90 Sqr. Mtrs." Though development plan was sanctioned and published on 18th April, 2001, no steps were taken towards the acquisition of the property of the Petitioner by the Special Planning Authority within a period of 10 years from the date of Enforcement of Final Development Plan. Since the Planning Authority has not acquired the land of the Petitioner affected by reservation, the Petitioner issued purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act (in short 'MRTP Act') on 29th August, 2021 which was duly received by the Respondents. Since no response was received against the said notice, another notice dated 30th September, 2021 was addressed to the Respondents. It is the contention of the Petitioner that within a period of 24 months as contemplated by Section 127 of MRTP Act, no steps were taken by the Competent

Authority for acquisition of the land and hence the acquisition to the extent of the Petitioner stood lapsed. The Petitioner, therefore, seeks declaration accordingly.

3. Respondent Nos. 5 to 7 by filing affidavit of Manoj Harishchandra Garje, Deputy Director of Town Planning at Aurangabad Municipal Corporation opposed the Petition. It is, however, not in dispute that the Petitioner is the owner of property in question and that the said property has come under reservation as stated by the Petitioner. There is also no dispute made about the fact that notice dated 30th September, 2021 was received from the Petitioner under Section 127 of the MRTP Act. It is further case of the Respondents that the Petitioner was offered TDR which he refused to accept and that his claim for Reservation Credit Certificate (RCC) was refused by these Respondents. It is further claimed that the acquisition proposal has been forwarded to Special Land Acquisition Officer, Aurangabad on 5th January, 2024.

4. We have heard learned Advocates for both sides. Perused material evidence on record and law relating to the subject matter.

5. There is no dispute about the fact that the property of the Petitioner is affected by the reservation pursuant to the development plan sanctioned on 18th April, 2001. Admittedly, no steps have been

taken to acquire the properties of Petitioner within 10 years from the date of Enforcement of Final Development Plan, which is mandatory in view of the provisions of Section 126 of MRTP Act and law laid down by the Hon'ble Apex Court in case of *Shrirampur Municipal Council Vs. Satyabhamabai Bhimaji Dawkher and others*, 2013(5) SCC 627.

6. Section 127 of MRTP Act which deals with lapsing of reservation, enables the owner or any person interested in the property affected by the development plan to issue notice of purchase on expiry of 10 years of final plan comes into force and the Authority is required to take steps for the acquisition within the period of 24 months. If Authorities do not acquire land or take steps within 24 months of the date of service of notice, for acquisition of land, the reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation and shall become available to the owner for the purpose of development, as permissible in law. In the instant case admittedly the notice under Section 127 of the MRTP Act is received by the Respondents on 30th September, 2021. The record indicates that the Petitioner was called and minutes of the meeting were recorded wherein TDR was offered to the Petitioner which he refused to accept. On the other hand the request of the Petitioner for issuance of Reservation Credit Certificate (RCC) was not conceded by the Respondents. Further admittedly the proposal for

acquisition was forwarded on 5th January, 2024.

7. The law on offering of TDR whether amounts to taking steps for acquisition is settled by Full Bench of this Court, in the case of ***Shree Vinayak Builders and Developers, Nagpur Vs. State of Maharashtra and others, 2022 (4) Mh.L.J. 739***. It is held in paragraph 36 to 41 as under:

"36. Section 127 deals with lapsing of reservation. This section provides that if any land reserved, allotted or designated for any purpose specified in any plan under MRTP Act is not acquired by agreement or otherwise within 10 years from the date on which the final plan comes into force, the owner or any person interested can serve a purchase notice to the concerned authorities. If the Authorities do not acquire the land or take steps within 24 months from the date of service of such notice for acquisition of land, 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 permissible in the case of adjacent land under the relevant plan.

37. In Municipal Corporation of Greater Bombay, Vs. Dr. Hakimwadi Tenants Association and others, 1988 (Supp) SCC 55, the Hon'ble Supreme Court held that the steps towards commencement of the acquisition would necessarily be the steps for acquisition and not a step, which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation. It was held that steps for acquisition of the land would be issuance of the declaration under Section 6 of the Land Acquisition Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation.

38. In Girnar Traders vs. State of Maharashtra and

others (2007) 7 SCC 555, the Hon'ble Supreme Court after considering the entire scheme of Sections 126 and 127 observed that the step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTD Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

39. In Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher (2013) 5 SCC 627, the Hon'ble Supreme Court reiterated the finding in Girnar Traders and held that mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceeding for the acquisition of land. It is held that the State Legislature has prescribed the time limit to ensure that the land owners/other interested persons whose land is utilized for execution of the Development Plan/Town Planning Scheme etc are not left high and dry.

40. These principles have been reiterated in Poona Timber Merchants and Saw Mill Owners Association vs. State of Maharashtra & Ors. (2015) 13 SCC 544, Chhabildas vs. State of Maharashtra and others (2018) 2 SCC 784 and in the recent decision of the Hon'ble Supreme Court in Kolhapur Municipal Corporation & Ors. vs. Vasant Mahadev Patil (dead) through Legal Representatives and others (2022) 5 SCC 758.

41. It is thus well settled that the step taken under the aforesaid section should be an irreversible step, which will culminate in acquisition of land. Hence, mere grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation cannot be treated as a step for acquisition

of land, but it is the conclusion of a contract regarding acquisition of land by granting FSI/TDR which constitutes a step for acquisition of land. Surrender of land with a view to obtaining FSI/TDR can be a step to commence acquisition proceedings, if it is something by which conclusion of contract occurs. There may be, however, be cases in which by acts and conduct of parties contract in terms of Section 126(1)(b) of the MRTP Act is concluded even before surrender of land and the latter act is only consequential to contract between the parties. Ultimately, it all boils down to the stage when the contract between parties concludes.”

8. Since the Respondents have failed to take any other step except offering TDR within 24 months of the receipt of notice under Section 127 of MRTP Act, we do not find it necessary to go into the aspect as to whether after 24 months any steps even as contemplated by Section 126 of MRTP Act are taken by Authorities or not. Once no steps are taken within 24 months of receipt of notice of purchase under Section 127 of MRTP Act, it becomes immaterial/inconsequential as to which steps are taken thereafter. The only consequence of failure on the part of Authorities to take steps within stipulated period is only deemed lapse of reservation. We, therefore, have no hesitation to hold that present case is fully covered by rigors of Section 127 of MRTP Act. Resultantly, it is finally declared that reservation in respect of the property of Petitioner stood lapsed on expiry of 24 months of the date of receipt of notice issued by Petitioner to Respondents under Section 127 of the MRTP Act.

9. **This Writ Petition, therefore, stands allowed** in terms of prayer clauses 'A' to 'C'. The Corporation is directed to issue a communication to Respondent No.1 for release of land in question from reservation, within 30 days from today. Respondent No.1 would thereafter issue appropriate notification making such declaration within 90 days.

10. Rule is made absolute in the above terms.

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

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