



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3305 OF 2020

1. Rohini Sudhakar Patil,
Age : 80 years,
Occupation : Household and Agri.
2. Dr.Deepa N. Pawar,
Age : 58 years,
Occupation : Household.
3. Ujjwal Sudhakar Bhosale,
Age : 52 years,
Occupation : Business.
4. Dr.Neeta Sudhakar Bhosale,
Age : 54 years,
Occupation : Household.

All R/o House No.1,
Opposite Vijay Gopal Society,
Tidke Colony, Nasik, District Nasik.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra.
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Director,
Town Planning Department,
Maharashtra State, Pune.
3. The Collector,
Dhule, Taluka and District Dhule.

4. The Dhule Municipal Corporation.
Through it's Commissioner,
Taluka and District Dhule.

...RESPONDENTS

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Shri J.R. Shah, Advocate for the Petitioners.
Ms.Neha Kamble, AGP for Respondent Nos.1 to 3/State.
Shri N.N. Desale, Advocate for Respondent No.4.

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**CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.**

DATE :- 21st March, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*) :-

1. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses A and B as under:-

“A) *The Hon'ble High Court may be pleased to declare that the property bearing Survey Nos. 74/1 A2 and 74/1 B2 situated within the limits of Dhule Municipal Corporation, Dhule is released from the reservation (i.e. site No. 37 in earlier development plan and site No. 48 in the subsequent IInd Revised Plan) and the said property became available to the petitioners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan and further be pleased to pass*

- necessary orders for the said purpose;*
- B) *Pending hearing and final disposal of this Writ Petition, the Hon'ble High Court may be pleased to declare that the property bearing Survey Nos. 74/1 A2 and 74/1 B2 situated within the limits of Dhule Municipal Corporation, Dhule is released from the reservation and the said properties became available to the petitioners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan and further be pleased to pass necessary orders for the said purpose;”*

3. Having considered the submissions of the learned Advocates for the respective sides, we have perused the petition paper book with their assistance.

4. The learned advocate representing Respondent No.4/Municipal Corporation has vehemently opposed this petition. He submits that it is a settled position of law that once the plan is revised, the purchase notice loses its efficacy and a fresh lease of ten years has to be given to the reservation and only thereafter, the land owner or the person having interest in the land, can once again issue a purchase notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short, “the MRTP Act”).

5. In order to evaluate the submissions of the learned Advocates for the respective sides, it would be appropriate to refer to the sequence of events, which are as under:-

a) The writ property is survey No.74/1 – A2 and 74/1 – B2, situated within the limits of the Dhule Municipal Corporation.

b) It is undisputed that the Petitioners are the owners and title holders of the said property.

c) On 01.01.1987, a final development plan was published by the then Dhule Municipal Council (now a Municipal Corporation), indicating the writ land as a part of the reservation site No. 37. The reservation was for a school and a playground.

d) Until 06.11.2002, no steps were taken for acquisition of the property after publication of the final development plan.

e) On 07.11.2002, the Petitioners issued the purchase notice under Section 127 of the MRTP Act, which has been duly served on the erstwhile Municipal Council.

f) It is an admitted position that as the law stood then, the purchase notice became effective, for seeking a notification

of lapsing of reservation, after one year.

g) On 10.03.2003, the erstwhile Municipal Council resolved to send the proposal for acquisition of the writ property to the District Collector, Dhule.

h) Admittedly, no steps were taken by the Municipal Council/ Corporation for a period of one year after the receipt of the purchase notice.

i) In February 2010, the Petitioners applied to the Municipal Corporation (erstwhile Municipal Council) for an approval to the layout of the writ property for the purpose of development. The said application was kept pending.

j) On 28.12.2012, the second revised development plan came to be published and the property was shown to be in reservation site No. 48, for a playground.

6. The learned Advocate for the Municipal Corporation submits that after the second revised development plan was published on 28.12.2012, the Petitioners have not issued any purchase notice and, therefore, this petition is misconceived, untimely, premature and deserves to be dismissed with heavy costs.

7. The issue raised by the Respondent/ Municipal Corporation is no longer res-integra in the light of the judgment delivered by the Hon'ble Supreme Court in ***Prafulla C. Dave and others vs. Municipal Commissioner and others, (2015) 11 SCC 90***. It has been recorded in paragraph Nos.18 to 23 as under:-

“18. On behalf of the appellants it is contended that the period of ten years under Section 126 of the Act has to be reckoned from the date of coming into force of the initial final development plan and not the revised development plan made under Section 38 of the Act. Any other view, according to the learned counsel, would amount to a perpetual deprivation of the owner of land which, at the same time is also not being put to use for the public purpose specified in the development plan. Section 127 of the Act, it is contended, is a beneficial provision in so far as the land owner is concerned calling for a liberal interpretation of its effect. Learned counsel has also drawn attention to the provisions of Section 31(5) of the MRTP Act which contemplates that in so far as reservation of land for public purposes specified in sub-section (b) and (c) of Section 22 is concerned inclusion of such land in the Development Plan should not be made unless the authority is reasonably confident of acquiring the land within a period of ten years. Learned counsel has, therefore, submitted that the legislative intent was to give the authority under the Act a maximum of ten years to acquire the land earmarked for a public

purpose or at least to initiate steps for such acquisition failing which the reservation would lapse. Reliance has been placed on a decision of this Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. in support of the contentions made by them.

19. *In reply, Shri Naphade has submitted that the scheme of the Act would suggest that a revised plan prepared under Section 38 tantamounts to a complete development plan contemplated in Sections 21 to 30 of the Act. The legislative scheme takes into account that development is a dynamic process and cannot be frozen by strict prescriptions of time. Once the final development plan is revised under Section 38 the period of ten years would necessarily run from the date of coming into force of such revised plan. Any other interpretation, according to the learned counsel, would render all provisions of the Act dealing with the revised plan otiose. Shri Naphade has also argued that in the event a revised plan under Section 38 is sanctioned and brought into force the relevant date for determination of compensation would stand transposed to the fresh dates of the declaration under Section 6 of the Land Acquisition Act which would ensure payment of a fair compensation to the land owner. This is by virtue of Section 126(4) of the Act and, according to Shri Naphade, is how the balance between public interest and the interest of the land owner is maintained under the provisions of the Act.*

20. *In so far as the decision in Bhavnagar University (supra) is concerned, Shri Naphade has submitted that there are certain provisions of the MRTP Act which are not embodied in the provisions of the Gujarat Act that was considered in Bhavnagar University (supra). Specifically it is pointed out that the provisions similar to Sections 37, 49 and 50 of the MRTP*

Act which provide alternative escape routes to the land owners are absent in the Gujarat Act. It is on the aforesaid broad basis the decision in Bhavnagar University (supra) has been sought to be distinguished.

21. *Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or provisions for acquisition is not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation*

where the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required

under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors.[2] in the following terms:

"If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."

22. *In fact the views expressed in Bhavnagar University (supra) in para 34 is to the same effect:*

"34. The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse."

23. *The facts of the present case makes it plainly clear that the notice under Section 127 by the*

appellants was issued only two years after the final revised plan under Section 38 had come into operation. The rejection of the appellants' plea before the appellate authority under Section 47 of the Act as well as the rejection of the writ petition filed by the appellants before the Bombay High Court was, therefore, fully justified. Consequently, we find no reason to interfere with the impugned order dated 20th September, 2007 passed by the High Court of Bombay. Accordingly, the appeal is dismissed. However, in the facts and circumstances of the case, we make no order as to costs.”

8. It is, thus, obvious that the Hon'ble Supreme Court has considered an illustration, a possibility as to what would be the impact if no notice is issued by the land owner after 10 years of reservation and prior to the declaration of the revised development plan. It has been concluded in paragraph 21 reproduced above that after expiry of 10 years of reservation, when no steps have been taken to acquire the land, the owner or interested person gets the right to issue a purchase notice under Section 127 of the MRTP Act. There cannot be automatic lapsing of reservation after 10 years, if the purchase notice is not issued.

9. It was further held that if no purchase notice is issued after 10 years and there is a revised plan under Section 38,

which is published by the Authority, the land owner will have to then wait for 10 years and then issue a purchase notice, in the backdrop of there being no purchase notice in between the publication of the reservation and lapsing of 10 years. However, if the purchase notice is issued after lapsing of 10 years and prior to the publication of the revised plan, the revised plan would not neutralize the purchase notice.

10. For the sake of repetition, we are referring to the following portion of paragraph Nos.21 and 22 as under:-

“21. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in *Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants'*

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11. In view of the above, **this Writ Petition is allowed** in terms of prayer clauses A and B. The Municipal Corporation shall forward a communication to Respondent No. 1 within a period of 30 (thirty) days, declaring the lapsing of reservation. Respondent No. 1 shall issue a notification under Section 127(2) of the MRTTP Act, within a period of 90 (ninety) days.

12. We make it clear that the Code of Conduct on account of the General Elections, would not be an impediment for the State Government to comply with this order in issuing a notification.

13. Rule is made absolute in the above terms.

kps (R.M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)