



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8355 OF 2023

LILABAI CHAMPALAL CHAJJED AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...
Advocate for the Petitioner : Mr. Syed Azizoddin R.
AGP for Respondents/State : Mr. P.K. Lakhotiya
Advocate for R/4 : Mr. M.V. Bhamre
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 2nd February, 2024

ORDER (Per: Y.G. Khobragade, J.) :-

1. By the present petition, the Petitioners have put-forth prayer
clause-C to F as under:

“C) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to hold and declare that the land Survey No.50/1A to the extent of 2 H 43 R situated at Dondaicha Tq. Dondaicha Dist. Dhule is de-reserved and available for development and further direct the respondents to publish the Notification in the Government Gazette to that effect.

D) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to de-reserve and release the Survey No.50/1A to the extent of 2 H 43 R situated at Dondaicha Tq. Dondaicha Dist. Dhule from reservation and issue permission to develop the same in accordance with law.

In the alternative

E) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to de-reserve and release the

Survey No.50/1A to the extent of 2 H 43 R situated at Dondaicha Tq. Dondaicha Dist. Dhule from reservation under section 50(2) of the Maharashtra Regional and Town Planning Act since the same is not required for public purpose designated for ITI.

F) This Hon'ble Court may be pleased to issue appropriate writ, order or directions to the respondents to acquire the land Survey No.50/1A to the extent of 2 H 43 R situated at Dondaicha Tq. Dondaicha Dist. Dhule and pay the compensation to the petitioners within three months."

2. Having considered the strenuous submissions of the learned advocate appearing for the respective sides, we have gone through the record. The following dates and events which are undisputed are as under:

- a) The Petitioners are the owners of property bearing Survey No.50/1A to the extent of 2 H 43 R situated at Dondaicha within the limits of the Municipal Council-Respondent No.4.
- b) The development plan of the Respondent No.4-Municipal Council was sanctioned by the Competent Authority on 31.10.1981 and the Petitioners' property bearing Survey No.50/1A was reserved vide Site No.26 for Industrial Training Institute (ITI).
- c) The Respondent No.4 have not taken any steps for acquisition of reserved land for more than four decades.

d) On 22.06.2000, the Petitioners have issued purchase notice under Section 127 of the MRTP Act as the Respondent No.4 failed to acquire the land for more than 10 years and the said notice was duly served upon Respondent No.4, but Respondent No.4 still have not acquired the reserved land even after lapse of 24 months.

e) On 05.07.2012, the Respondent No.4-Municipal Council passed a Resolution No.15 for de-reserving the property of the Petitioners and further resolved to initiate action in pursuance of Section 37 of the MRTP Act.

f) The State Government issued a communication to the Petitioners stating that, on 03.04.2012 the scheme of redevelopment plan has been sanctioned which came into force w.e.f. 15.05.2012, and therefore the notice under Section 127 is premature.

3. It is obvious that, the Municipal Council has not initiated specific steps for acquisition of the said land as is required under Section 126(2). The law laid down by the Hon'ble Supreme Court in case of ***Girnar Traders V/s. State of Maharashtra; 2007 7 SCC 555*** and by this Court in case of ***Santu Sukhdeo Jaibhave and Others V/s. Nashik Municipal Corporation; 2023 (2) Bom. C.R. 469***, it has held that steps for acquisition would mean issuance of the

declaration under Sec. 6 of the Land Acquisition Act r/w Sec. 126 of the M.R.T.P. Act. The same admittedly is not issued till date.

4. In similar set of facts of this case, on 03.05.2023 the Coordinate Bench of this Court (**Coram: N.W. Sambre & S.G. Chapalgaonkar, JJ.**) in Writ Petition No.8996 passed the Judgment and held in Para Nos. 7, 8, 9 and 10 as under:

“7. We have heard the learned counsel appearing for the respective parties. There is no dispute that the petitioner is owner of the land Survey No. 105/1A+1B situated within the limit of municipal council Dondaicha-Varwade The land has been shown reserved under the development plan that was enforced w.e.f. 31.10.1981 under MRTP Act. No steps were taken for acquisition of the land shown under reservation Site No. 10 for Cottage Hospital. The petitioner served purchase notice dated 8.3.2011 in terms of Section 127 of the MRTP. In response to said notice, the municipal Council passed resolution dated 9.3.2012 to not go for acquisition of land reserved. Subsequently, the revised Development Plan has been enforced w.e.l. 28.12.2012. The petitioner has not served fresh notice after revised Development Plan came into force. However, fact remains that the Municipal Council has not taken any step for acquisition of the land in terms of the purchase notice of the petitioner.

8. Mr. Manish Bhamre Learned counsel appearing for the respondent Municipal Council would submit that the notice served by the petitioner is different than the notice that has been placed on record of this Court. However, such contention appears to be fallacious and artificial. We observe that resolution dated 5.7.2012 clearly refers to the purchase notice served by the petitioner and consequential decision arrived at in the general body meeting of the Municipal council to not to acquire land of petitioner. In that view of the matter, we have no hesitation to accept the contention of the petitioner that he has served purchase notice in terms of Section 127 of the MRTP Act to the respondent Municipal Council.

9. *The contents of the resolution passed by the Municipal Council dated 5.7.2012 would show that there is no dispute regarding petitioner's ownership of the land bearing Survey No. 105/1A+1B situated at Dondaicha. The purchase notice dated 8.3.2011 depicts that the 7 x 12 extract was made part of the notice served upon the Municipal Council. In that view of the matter, there is sufficient compliance of Section 127 of the MRTP Act. The Municipal Council has passed resolution not to acquire the land in pursuance of the service of purchase notice. No steps for the acquisition of land in terms of Section 126 of the MRTP Act r/w Land Acquisition Act of 1894 Or 2013 have been initiated during statutory period of two years after service of purchase notice to the respondent Municipal Council. Therefore, we have no hesitation to hold that reservation is deemed to have been lapsed by operation of law.*

10. *The next contention of the respondent is that, revised Development Plan has been enforced w.e.f. 28.12.2012 before expiry of period of 2 years of service of purchase notice by the petitioner. The land in question is again notified as reserved under the revised Development Plan and the petitioner was required to wait for further period of ten years. Such contention cannot be accepted for the reason that the petitioner has served purchase notice in terms of Section 127 of the MRTP Act when Development Plan sanctioned on 31st October, 1981 was operational. The revised development plan came into effect after one and half years after service of purchase notice under Section 127 of the MRTP Act. The right of the petitioner has been crystallized. This Court in the matter of Kesaranand Ginning and Pressing Factory and another Vs. State of Maharashtra in (W.P. No. 8978 of 2015 decided on 25.2.2016) has dealt with the same issue pertaining to same reservation and upheld the contention of the petitioners therein that the right has been accrued in their favor and reservation stood lapsed.”*

5. Being aggrieved by the said judgment, the Respondent No.4- Municipal Council approached the Hon'ble Supreme Court by filing **Special Leave to Appeal (Civil) No.16968/2023 (Dondaicha Varwade Municipal Council V/s. Natwarlal Dhanjibhai Vora & Ors.)**, however, on 14.08.2023 the

Hon'ble Supreme Court dismissed the said appeal and affirmed the order of Coordinate Bench of this Court.

6. The issue pertaining to non acceptance of TDR by the Petitioner is no more *res integra* as per the ratio laid down in the judgment of this Court delivered in the case of **Shri Vinayak Builders & Developers Vs. The State of Maharashtra and Ors.; 2022 (4) Mh.L.J. 739.**

7. In the case in hand, though the land of the Petitioners is reserved under the development plan as Site No.26 for ITI on 31.10.1981, but said property has not been acquired for more than four decades by the Respondent No.4. Further the development plan dated 03.04.2012 was revised w.e.f. 15.05.2012, but prior to that, the Petitioners have issued the notice dated 03.08.2011, but Respondent No.4 has not taken any steps even after lapse of 24 months. It is trite law that the subsequent revised development plan which is more than decade after the issue of notice u/s 127 of the M.R.T.P. Act would not affect the right of the Petitioners crystallized earlier as held by the Hon'ble Supreme Court in case of Godrej and Boyce Manufacturing Co. Ltd., vs- State of Maharashtra & Ors., decided on 21-01-2015 in Civil Appeal No. 1086 of 2015.

8. In view of the above discussion, **this petition is allowed in terms of prayer clause C, D and E.** Respondent No.4 is hereby directed to forward the

proposal to the Respondent No.1 within a period of 30 days from today. After receipt of the said proposal, Respondent No.1 would issue the notification under Section 127(2) of the MRTP Act within a period of 60 days.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]