



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10550 OF 2022
AND
WRIT PETITION NO. 10584 OF 2022

1. Nitin s/o Uttamrao Kote
Age 39 years, Occ. Agriculture
2. Archana w/o Uttamrao Kote
Age 64 years, Occ. Household & Agri.
3. Shriram s/o Vasantrao Kote,
Age 33 years, Occ. Agriculture
4. Sangita w/o Shivaji Kote
Age 39 years, Occ. Household & Agri.
5. Ketan s/o Shivaji Kote
Age 29 years, Occ. Agriculture
6. Sankalp s/o Shivaji Kote
Age 22 years, Occ. Agriculture

All R/o. Pimpalwadi Road, Shirdi
Tq. Rahata, District Ahmednagar

...Petitioners

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 petitioners
Mrs. V.N. Patil-Jadhav, 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 these petitions, under Article 226 of the Constitution of India, the petitioners are seeking a declaration about lapsing of reservation under Section 127(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and consequently a writ of mandamus, directing the respondents to issue a notification under sub-section (2) of Section 127 of MRTP Act.

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

3. Though the matters are separate, the planning authority being the same and even the development plan being the same, though the reservations are different in respect of different properties, in order to avoid rigmarole, we are disposing of these writ petitions by this common order.

4. The learned advocate Mr. Gawali, for the petitioners submits that the development plan for the respondent - Nagar Panchayat was finalized and published in the year 1992, wherein the petitioners' properties were reserved under reservation Nos. 5 and 6 respectively, for public purposes. Since no steps were taken as contemplated therein for acquiring the properties as contemplated under Section 126 of MRTP Act read with the provisions of the Land Acquisition Act, 1894, for a period of ten years, statutory notices under Section 127(1) of the MRTP Act were issued on 08.03.2018, by the petitioners. The Nagar Panchayat in its general body meeting dated 13.4.2018, resolved not to acquire the petitioners' lands due to financial constraints and consequently the petitioners are entitled to seek a declaration and writ of mandamus, as prayed for.

5. The learned advocate for the petitioners would further submit that though some steps were initiated in both these matters by issuing notices under section 4 and declaration under section 6 of the Land Acquisition Act, 1894, the petitioners' suit seeking a declaration, specifically injuncted any award to be passed, and the appeal preferred by the Nagar Panchayat was dismissed and the decision has reached finality.

6. The learned advocate Mr. Hon submits that the respondent - Nagar Panchayat does not dispute the facts, however, revised development plan was finalized and published on 19.09.2019 and the period of ten years, as contemplated under section 127 of MRTP Act will have to be reckoned from that date and the petitioners would get the cause even for issuance of notice under Section 127 of the MRTP Act only thereafter.

7. We have considered the rival submissions and perused the papers. As is mentioned herein-above, there is no dispute about the facts. If the date of finalization of the development plan in the year 1992 is considered to be a starting point for the respondent - Nagar Panchayat to acquire the petitioners' properties, the petitioners having called upon it to take appropriate steps for acquisition of their respective properties, by serving a notice under sub-section (1) of Section 127 of MRTP Act, after ten years of the year 1992 and the failure of the respondent - Nagar Panchayat to take steps as contemplated therein for a period of next 24 months, the petitioners are otherwise entitled to seek a declaration and even writ of mandamus as prayed for.

8. So far as the stand of the respondent- Nagar Panchayat regarding subsequent revised development plan, sanctioned and

finalized on 19.09.2019, since notice issued by the petitioners under sub-section (1) of Section 127 of MRTP Act, in tune with the right accrued in them to issue such notices, having already been exercised even prior to sanction and finalization of the revised development plan under section 38 of the MRTP Act, such subsequent revision would not give a lease of life for another ten years therefrom. The situation contemplated in ***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***, lays down that such right available under section 127(1) of the MRTP Act would get defeated if in the meantime i.e. before exercising such right by issuing a notice, revised development plan comes into force under Section 38 of the MRTP Act.

9. The issue has already been put to rest 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, 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)"

10. In a slightly different context, another full bench of this court in the matter of ***Madanlal Zumberlal Nahar and others vs. Chief Officer, Municipal Council, Beed, reported in 2023 (2) Mh.L.J. 618***, 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 MRTTP 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 ***Chabildas (supra)***.

11. 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 MRTTP 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.”

12. 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.

13. When admittedly, even before revised plan of the respondent - Nagar Panchayat came into force w.e.f. 19.09.2019, the petitioners having exercised their rights 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.

14. 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 reservations on the petitioners' properties would stand lapsed.

15. Writ petitions are allowed.

16. It is declared that the reservation Nos. 5 and 6 on petitioners' land being survey No. 4/1 admeasuring 3 Hectare 45 Are (land admeasuring 3 Hectare 27 Are and Potkharaba 0 Hectare 18 Are) for garden, swimming pool and parking, situated at Mauje Shirdi, Tq. Rahata, District Ahmednagar, in the development plan of respondent No.3 – Nagar Panchayat, has lapsed.

17. 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.)

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