

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3766 OF 2022

Smruthi Fotochem through its Partner
Purushotham Malaiah Eaga
Versus
The State of Maharashtra & Ors

...Petitioner

...Respondents

Mr Ramdas Sabban, for the Petitioner.
Dr Birendra Saraf, Advocate General, with MP Thakur, AGP, for
Respondent No. 1-State.
Dr Birendra Saraf, Advocate General, with Geeta Shastri & Amit
Shastri, i/b Pankaj J Das, for Respondent No. 2-SMC.

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CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 2nd January 2024

PC:-

1. This matter along with Writ Petition No 8558 of 2021 and Writ Petition No 8559 of 2021 were listed with a group of other matters today. We noticed that some of these matters were pending for a long time. Mr Sabban for the Petitioners and Dr Saraf, Learned Advocate General, both submitted that these three matters could be taken up immediately.
2. **Rule.** Returnable forthwith.

3. We have heard Mr Sabban for the Petitioner at some length and seen his brief note of submissions tendered in Writ Petition No. 8558 of 2021. We have also heard Dr Saraf and gone through the detailed Affidavit in Reply dated 26th April 2022.

4. For the reasons that follow, it is our considered view that this short 15-page Petition is thoroughly mischievous and is nothing but an attempt to take a chance on litigation. There is gross and unexplained suppression of material that is not only relevant but is critical to the outcome of the Petition. The suppression is and remains unexplained.

5. The Petition proceeds on the basis that the Petitioner has given a notice under Section 127(1) of the Maharashtra Regional Town Planning Act, 1966 (“**the MRTP Act**”) but nothing has happened thereafter. To lend context to the submission, we reproduce at the outset Section 127 of the MRTP Act:

“127. Lapsing of reservations

(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or, if a declaration under sub-section (2) or (4) of section 126 is not published in the *Official Gazette* within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty-four months from the date of the service of such notice, the

land is not acquired or no steps as aforesaid are commenced for its acquisition, 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 otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the *Official Gazette*.”

6. As it turns out, nothing material turns on this submission or on this section at all. The land in question is an area of about 850.95 sq mts belonging to the Petitioner in Solapur. The Draft Development Plan of Solapur (1997-2017) was sanctioned on 15th December 2004. Portions of these lands were shown under reservation for a fire-brigade, garden, and municipal shopping centre purposes.

7. Now the Petition directly proceeds to 20th February 2020 in paragraph 4 by saying that the Petitioner served a purchase notice of that date. It is contended that the reservation stood lapsed as there is no declaration published within the statutory limit of 24 months. The submission in paragraph 7 is that there has been no acquisition under sub-Section (2) or (4) of Section 126 within twenty four months. The grounds proceed only on this basis, and therefore the following three reliefs are sought in the Writ Petition:

“(a) This Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order thereby holding & declaring that the petitioner’s lands designated/ specified/ reserved for the Fire Brigade and Garden purposes under the Reservation no. 6/45 – area admeasuring 850.95 sq.mtrs., situated at old Survey No.745/2A/3/3, New Survey No. 149/2A/3/3, Village-Majrewadi, Hotagi Road, Taluka-North Solapur, District-Solapur, have lapsed as per the provisions u/S. 127 of the Maharashtra Regional & Town Planning Act, 1966, and further that the lands are released from said reservations, allotment or designation and have become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the Plan;

(b) This Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order directing the respondent Government to forthwith notify the lapsing of reservation of said lands by an order published in the Official Gazette as required u/S. 127(2) of the MRTP Act, 1966;

(c) This Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order directing the respondent Municipal Corporation to grant the necessary development permission in the matter giving effect to the prayer clause-(a) above.”

8. The Affidavit in Reply shows that the Petition is indeed interesting but not for what it says as much for what it conceals. The Affidavit is filed by the Assistant Engineer, Town Planning Department. It is based on the available records.

9. In paragraph 3 there is an initial reference to the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control)

Act, 2001 (“**Gunthewari Act**”). This was amended on 29th August 2012. Section 5 of the Gunthewari Act said that as a consequence of regularisation under the Gunthewari Act the provisions of any Development Plan or Regional Plan would stand modified or relaxed as may be required.

10. It is from paragraph 7 onwards that we find a careful outlining of material factors on which the Petition is entirely and inexplicably silent. In respect of Survey No. 745/2A/3/3, the Petitioner made an application on 21st November 2000 for sub-Plot No 3 (850.95 sq mts). The Petitioner applied for building permission and regularisation of development and construction on this plot. A copy of this application is annexed to the Affidavit in Reply.

11. On 14th April 2004, the Solapur Municipal Corporation (“**SMC**”) granted development permission for the construction of a building on sub Plot No 3. This permission was for development under the Gunthewari Act. The permission was subject to the conditions in Section 3(2) of the Gunthewari Act which included that unbuilt and unsold 10% area of the plot in the layout would be required to vest in the planning authority free of cost and that the project proponent/owner would have to construct a 4.5 mts width DP road. On 3rd June 2008 building permissions were also granted for a ground plus first floor structure on the plot under the MRTP Act subject to certain conditions. These were specifically communicated to the Petitioner and the record is in Exhibit “4”.

12. This is also suppressed in the Petition. There is no mention of any of this in the Petition. There is no letter shown to us by which this is denied. There is no averment in the Petition or the rejoinder.

13. In 2007, the SMC had proposed the deletion of the reservation for the fire-brigade and garden and for the municipal shopping centre and sought directions under Section 154 of the MRTP Act for a modification as contemplated under Section 37 of the MRTP Act. The SMC reiterated its request for a modification to the sanctioned Development Plan. In the meantime, there came to be filed a Public Interest Litigation in this court being Public Interest Litigation No 8 of 2017. That alleged inaction on the part of the SMC in not looking into the complaint of the PIL Petitioner regarding an allegedly unauthorised construction on Plot No 1 which was part of Survey No. 149/2A/3. That PIL came to be disposed of on 10th August 2016 with liberty to that Petitioner to make a detailed representation to the SMC, which was to take a decision on it after hearing the PIL Petitioner. All were heard, including the present Petitioner. An order came to be passed on 30th May 2018 revoking the building permissions under the Gunthewari Act on 19th April 2004.

14. At this point Mr Sabban is persuaded to attempt the argument that with this cancellation everything that went before was set at nought. Even that is incorrect.

15. The story of suppression continues. For it is also suppressed from the Petition that the SMC granted the permission sought by

the Petitioner. It sanctioned a primary layout plan on 27th February 2019 for development of Plot Nos. 1 to 10 and that includes sub-Plot No 3 which clearly shows that the plot has been developed as per the permissions and therefore the question of any acquisition will not arise.

16. This was a benefit and a concession by the SMC. The Petitioner took the benefit and advantage of it.

17. It is *after* this was done that the Petitioner issued the subject notice under Section 127 of the MRTTP Act pleading a lapsing of the reservation although the Petitioner knew full well that the plot under reservation was allowed to be developed under and as per the Gunthewari Act on applications made and permissions sought by the Petitioner himself. Notably, the entire proposal for modification of the sanctioned Development Plan to delete the reservation was obviously at the instance and on the application of the Petitioner.

18. At this stage, as Dr Saraf correctly points out, reference must be had to the sworn Affidavit in Rejoinder filed by the Petitioner that we find from pages 90 to 98. In this, the Applicant has said that he has been misled to make an application for deletion of the reservation and pending that sought building permission. We find it extraordinary that to an Affidavit of this level of detail and with this sufficiency of annexed material the Rejoinder contains nothing but denials.

19. Indeed, the submission and we can only describe this as utterly extraordinary is “that the permissions granted under the Gunthewari Act were illegal”. This is supposed to be based on a later cancellation but what the submission overlooks is that those permissions were granted on an application made by the Petitioner and after the cancellation of the permissions. Indeed, the Petitioner has obtained benefits. Now, since the reservations are not being removed the Petitioner issued a notice under Section 127(1) and has filed this utterly mischievous Petition in which every single material particular has been wilfully and knowingly suppressed.

20. The SMC took the view in correspondence that Section 127 of the MRTP Act could not be applied in the facts and circumstances of the case. This is Dr Saraf’s precise submission before us and we are unable to appreciate how or on what basis Mr Sabban can maintain the argument that there is “a hanging sword” over the Petitioner’s head. It is the Petitioner who has obtained benefits and concessions. He cannot resile from them and cannot obtain a double benefit like this.

21. In light of the stand taken in the Writ Petition, the SMC has withdrawn the permissions granted. It is entitled to proceed in accordance with law against the property or any development carried on by the Petitioner.

22. Most of all, we are unable to appreciate how such a Petition can ever be filed. The duty of every litigant before a court is to present the material facts fairly so that the court may decide as

objectively as possible. The Supreme Court in *SP Chengalvaraya Naidu v Jagannath & Ors*¹ has held that a litigant who approaches the Court is bound to disclose all material particulars. If he withholds a vital document or suppresses material information in order to gain advantage over the other side then he would be guilty of playing a fraud on the Court as well as the opposite party. Such a party is not entitled to any relief. Above all, a court must have a complete and candid disclosure of all material particulars. A failure to disclose material particulars is indistinguishable from an attempt to mislead the Court. This is now well settled in our jurisprudence.²

23. We see no reason why this should not be applied to the facts of this case. Indeed, we see no reason why the very sword of which Mr Sabban speaks should not be allowed to now fall where it must.

1 (1994) 1 SCC 1.

2 See:

- i *Hari Narain v Badri Das*, (1964) 2 SCR 203;
- ii *Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody*, (1964) 3 SCR 481;
- iii *Gowrishankar & Anr v Joshi Amba Family Trust & Ors*, (1996) 3 SCC 210;
- iv *Ashok Leyland Ltd v State of Tamil Nadu & Anr*, (2004) 3 SCC 1, paragraph 116;
- v *AV Papayya Sastry & Ors v Government of AP & Ors*, (2007) 4 SCC 221;
- vi *Dalip Singh v State of UP*, (2010) 2 SCC 114;
- vii *Oswal Fats & Oils Ltd v Additional Commissioner (Administration) & Ors*, (2010) 4 SCC 728;
- viii *A Shanmugam v Ariya Kshatriya Rajakula Vamsathu, etc*, (2012) 6 SCC 430;
- ix *Maria Margarida Sequeira Fernandes & Ors v Erasmo Jack De Sequeira*, (2012) 5 SCC 370;
- x *Sciemed Overseas Inc v BOC India Ltd*, (2016) 3 SCC 70;
- xi *Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors*, (2017) 5 SCC 496.

24. In our view, this Petition is a gross abuse of the process of this court. It is nothing but an attempt to gamble on litigation and it is an active attempt to mislead this court into passing an order favourable to the Petitioner by wilfully suppressing every single piece of material and relevant information.

25. We have not the slightest hesitation in discharging Rule and rejecting the Petition. We would be greatly remiss if we allowed this to go without an order of costs. Mr Sabban immediately applies for leave to file an application for amendment. We refuse to permit this. It would be nothing other than permitting a party to literally take a chance in a Writ Petition and, once caught out, then to endeavour to improve the case. We will also not permit the withdrawal of this Petition — not even if it is accompanied by a withdrawal of the Section 127(1) notice. This is precisely the kind of litigation that our Supreme Court has repeatedly held unnecessarily clogs the system and deprives other litigants of an opportunity of being heard in deserving cases.

26. If there is any ambiguity at all about the nature of the submissions, the degree, extent or deliberateness of the suppression, it is surely put to rest by the written submissions in Writ Petition No 8558 of 2021 submitted to us without asking for it by Dr Subban. Not one of these submissions deals with a single aspect of what is stated in the Affidavit in Reply but instead, and to our mind entirely ill-advisedly purports to build upon and reiterate what is stated in the Petition, notable as we have said for its gross suppression. The

written submissions are taken on record and marked “X” for identification with today’s date.

27. When we point this out and dictate this portion, we are now told by Mr Sabban that the omission of an explanation in the written submissions including to the Affidavit of the Petitioner was inadvertent. The less said of this the better.

28. Now Mr Sabban says “the broad brushstrokes” of the Gunthewari Act permissions are mentioned in the written submissions but only the details are missing. These are not arguments of persuasion. They are arguments of desperation.

29. The Petition is dismissed. The dismissal is accompanied by an order of costs quantified at Rs 25 lakhs payable to the SMC . The amount is to be paid within two weeks from the date this order is uploaded. In default, the amount will carry interest at 9% per annum and may be recovered from the Petitioner as arrears of land revenue.

30. Mr Sabban applies for a stay of the order of costs. The stay is refused.

(Kamal Khata, J)

(G. S. Patel, J)