

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4515 OF 2022

SALIM ABDUL SUBHAN SHAIKH,
Secretary, Hutatma Cooperative Housing
Society (Proposed)
Age: 70 yrs., Occ.- Business, R/at: 131,
Siddheshwar Peth, Solapur- 413001.

...PETITIONER

~ VERSUS ~

- 1. STATE OF MAHARASHTRA,**
Through the Department of Urban
Development.
Mantralay, Mumbai
[Summons to be served on the Learned
Government Pleader appearing for
State of Maharashtra under Order
XXVII, Rule 4, of the Code of Civil
Procedure, 1908].
- 2. SOLAPUR MUNICIPAL
CORPORATION,**
Indrabhuwan, Ambedkar Chowk,
Railway Line, Solapur- 413001.
- 3. THE MUNICIPAL
COMMISSIONER,**
Solapur Municipal Corporation
Indrabhuwan, Ambedkar Chowk,
Railway Line, Solapur- 413001.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER Mr Anil Anturkar, Senior

**Advocate, i/b Sandeep
Phatak.**

**FOR RESPONDENT NO. Mrs MP Thakur, AGP.
1 & 4**

**FOR RESPONDENT NO. Mr Vishwanath Patil.
2 & 3**

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

RESERVED ON : 8th April 2024

PRONOUNCED ON : 19th April 2024

JUDGMENT (Per Kamal Khata J):-

1. **Rule.** Rule returnable forthwith. Mrs Thakur for Respondent Nos 1 and 4 and Mr. Patil for Respondent Nos 2 and 3 waive service. By consent of all counsels Petition is heard finally.

2. This Petition under Article 226 of the Constitution of India seeks a writ of mandamus directing the Respondent No.1 to issue and publish a notification under Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (“**MRTP Act**”) declaring that the reservation of “High School and Primary School” on the property bearing Gat No 304 (new Gat No 155/1/1) Majrewadi, Jule, Solapur, Part-1, admeasuring 79R (“**the Petitioner’s property**”) situated within the limits of Solapur Municipal Corporation Respondent No 2 has lapsed.

3. The brief facts are as under:

4. The Petitioner purchased the property admeasuring oH.79R out of the total area of 15600 sq. mtrs of Gat No. 304 from the erstwhile owners being the Shirgaonkar family by a registered sale deed dated 27th March 2000. This is not in dispute.

5. The State of Maharashtra arrayed as Respondent No. 1 and the Assistant Director of Town Planning arrayed as Respondent No. 4, represented by Mrs Thakur, are the ones responsible for issuing the notification in the official gazette declaring the lapsing of reservation of the Petitioner's property. The Solapur Municipal Corporation ("SMC") arrayed as Respondent No. 2 and the Municipal Commissioner arrayed as Respondent No. 3, represented by Mr. Patil, are responsible for taking steps for acquisition of the property within the statutory period of two years from the service of purchase notice under section 127 of the MRTP Act.

6. On 23rd August 1984, the State Government sanctioned a final Development Plan of Maharashtra Housing and Area Development Authority ("MHADA") with effect from 31st August 1984 reserving the Petitioner's property as reservation site No 45 for a "High School and Primary School". The Petitioner's property was within MHADA limits, which was the planning authority during that period. In 1992, the limits of SMC were extended and the Petitioner's property was included in the SMC limits. The 10-year statutory period available to MHADA expired on 31st August 1994. No steps were taken to acquire the Petitioner's property.

7. The Petitioner took various steps to get his property released from reservation during the period November 2005 to 2013 as stated more particularly in paragraphs 11 to 19 of the Petition. These details are not relevant for decision on the issue.

8. On 27th September 2013, the SMC published a Revised Draft Development Plan under Section 26(1) of the MRTP Act re-reserving the Petitioner's property for "High School and Primary School".

9. Mr Anturkar for the Petitioner submits that it was in this backdrop that a purchase notice under Section 127 of the MRTP Act was served upon the SMC as well as the State on 2nd January 2016. The notice was served inter alia by Registered Post A/D. Service on the SMC is demonstrated by the Registered Post A/D acknowledgement card at page 83, and on the State by the document at page 84.

10. He submits that admittedly no steps were taken for acquisition of the Petitioner's land. He, therefore, submits that the Petitioner is entitled to a declaration that the reservation stands lapsed and consequently are entitled to a Notification under Section 127 (2) of the MRTP Act. He relies upon the judgment of this Court in the case of *Trilok Singh Pahlajsingh Rajpal and Others v Municipal Corporation for Greater Mumbai and Ors.*¹ He accordingly submits the right of the Petitioner to develop his property on account of lapsing of reservation after the expiry of the statutory

1 2022 DGLS (Bom) 2851

period provided under the MRTP Act cannot be taken away by the Planning Authority by exercising power of revision of Development Plan under Section 38 of the MRTP Act.

11. Mr Anturkar submits that the contention of SMC stated in the affidavit in Reply of SMC that the purchase notice is invalid as the document of title was not enclosed therewith, is merely an afterthought.

12. Referring to the judgment of this Court in the case of *Madhukar Prabhakar Korgaonkar v State of Maharashtra and Ors*,² he submits that assuming that the purchase notice required the title documents to be attached, the Petitioner was not given an opportunity to submit the document by the SMC as held by this judgment. He further submits that, in any event, such a requirement of the title documents is merely a formality and that the SMC who is the record keeper of all the properties would necessarily have record of title. After all, if the SMC proposed the reservation, it would surely know the property placed under reservation and what land records pertained to it. Therefore, he submits that a purchase notice cannot be said to be invalid on that ground. He thus submitted that the Petition be made absolute.

13. *Per contra*, Mr Patil referring to the Affidavit in Reply submits that SMC was appointed as a Planning Authority for the extended limits which included the Petitioner's property only on 24th November 2005. On 27th September 2013, a Revised Development

2 2017 SCC OnLine Bom 8973

Plan under Section 26(1) of the MRTP Act was published by SMC. The Petitioner's land was shown in the reservation in Site No 20 for "High School and Primary School" in Schedule B at Serial No 3 as Modification number EP No 3. A final Notification was issued on 3rd December 2016. He, therefore, submits that the purchase notice issued on 2nd January 2016 is premature.

14. The Affidavit in Reply of SMC shows that no steps were taken from 23rd August 1984 till 24th November 2005 by MHADA, being the then Planning Authority.

15. On 3rd December 2016, State rejected the proposal of SMC for amending the reservation on the Petitioner's land from "High School and Primary School" to "Residential" and continued and confirming the reservation of "High School and Primary School" on the Petitioner's land.

16. Mr Patil draws our attention to paragraph 2 of the Affidavit in Reply to submit that inspite of a detailed enquiry and checking of records, the purchase notice was not found in the records of the SMC. He further contends that certain mandatory documents were not annexed to the Purchase notice such as documents showing Petitioner's title/interest in the property, measurement plan of the Petitioner's property, etc. and therefore, the purchase notice was defective and consequently not binding on the SMC. He, thus, submitted that the Petition deserves to be dismissed.

17. Ms Thakur for Respondents Nos 1 and 4 reiterates the defence taken by SMC. She draws our attention to paragraphs 4 and 5 of affidavit in Reply of her clients dated 11th November 2022. Paragraph 4 states that her clients had received the notice dated 2nd February 2016 on 26th February 2016. However, subsequently there was a Revised Development Plan that was partly sanctioned under Section 31(1) of the MRTP Act and later on 25th August 2018 the substantial modification was sanctioned and the reservation for the “High School and Primary School” continued.

18. Thereafter, the Petitioner had made an application on 5th January 2019 requesting the State to issue a notification under Section 127(2) of the MRTP Act seeking a declaration that the reservation on the Petitioner’s property had lapsed. On receipt of such application State submitted a detailed report on 12th February 2019. Later, by a letter dated 2nd November 2020, the Assistant Director of Town Planning, SMC, submitted his report to Respondent No 1-State. The SMC submitted a compliance report about the reservation by its letter dated 21st May 2021 to Respondent No 1-State. The decision of the State Government on this application of the Petitioner is pending and is under consideration at the State Government level.

19. She further submits that the Revised Development Plan for Jule Solapur Part-I was sanctioned by Notification dated 2nd September 2016 and 10th July 2018 by the Government in the Urban Development Department after following all procedures as per the provisions of Section 31 of the MRTP Act. She accordingly

submits that the Court may pass an appropriate order considering all the contentions of all the Respondents.

20. We heard both sides counsel. The issue of lapsing is well settled. Let us consider the defences taken by the Respondents. Mr. Patil contends that the Purchase notice issued on 2nd February 2016 was not found in the records. This is vague. There is no averment with regard to the acknowledgement annexed to the Petition. Besides the Mrs Thakur for the Respondent-State has admitted receipt of the notice on 26th February 2016. Now, admittedly no steps to acquire have been taken for two years being the statutory period that expired in February 2018.

21. Mr Patil contends that the purchase notice is defective as the Petitioner has not attached documents of title/interest in the property.

22. This is logically inconsistent. If the SMC records do not show the notice, the SMC cannot possibly know what was or was not annexed to it. Saying that title documents were not annexed is the purest speculation and is not an assertion of fact. It is based simply on a reading of the purchase notice annexed to the Petition by pointing out that the notice does not reference title documents.

23. In any case, Mr Anturkar's contention is that the SMC maintains all records and would obviously have it. He submits that the Respondents have not asked for it and given an opportunity to the Petitioners to submit them. He points out that the Registered

Post A/D card show service on the SMC. The Petitioner cannot be held responsible for the quality of SMC's record-keeping. We agree. The notice is shown to have been duly served. It is not shown to have been fatally defective. There is no response from SMC to the Purchase notice. The defence is raised seeks to obliterate the rights accrued to the Petitioner on account of lapsing.

24. We have perused the purchase notice. That is issued by an Advocate representing the Petitioner. It specifies that the Petitioner is the owner and clearly describes the Petitioner's property. It also narrates the events that transpired since the sanction of the Development Plan since 1984. It mentions the value of the property and calls upon the Respondents to acquire it. The Petitioner served the purchase notice through Registered Post AD. The acknowledgement card is annexed to the Petition. In our view, nothing more could have been done by the Petitioner. Against this, the only defence that SMC has is that the Purchase Notice is not found in their records. The Respondent No.1 – State has acknowledged receipt of the Purchase Notice and also contended that the proposal was pending at the State Government level.

25. The contention that the notice dated 2nd February 2016 does not attach the documents showing the Petitioner's title/interest in the property or that the SMC cannot find it in its records and, therefore, not a legal notice has only to be stated to be rejected. Section 136 of the MRTP Act provides for the service of notice and the relevant portion reads thus:

“136. Service of notice, etc.

(1) All documents including notices and orders required by this Act or any rule or regulation made thereunder to be served upon any person shall save as otherwise provided in this Act or rule or regulation, be deemed to be duly served—

(a) where the document is to be served on a Government department, railway, local authority, statutory authority, company, corporation, society or other body, if the document is addressed to the head of the Government department, General Manager of the Railway, Secretary or Principal Officer of the local statutory authority, company, corporation, society or any other body at its authority, principal, branch, local or registered office, as the case may be, and is either—

- (i) sent by registered post to such office; or
- (ii) delivered at such office;
- (b)
- (c)"

(Emphasis supplied)

26. Section 136 of the MRTP Act provides, *inter alia*, that any notice required under the MRTP Act may be served upon the Principal Officer of the local authority and if such notice is addressed to the Principal Officer of the local authority that shall be deemed to be duly served on the local authority.

27. Having received the purchase notice, the SMC has not raised any objection about any defect in the purchase notice for want of documents of title/interest or that the notice ought to have been

issued only to SMC. Therefore, clearly this defence that is taken six years after the purchase notice for the first time in the Reply dated 11th November 2022 to the Petition is clearly an afterthought with a view to deprive the Petitioner of rights accrued to him on lapsing of reservation.

28. The submission of title document along with the purchase notice would render the purchase notice invalid has also been dealt with by this Court in the case of *Sadashiv Tryambak Rajebahadur & Ors v State of Maharashtra & Ors*³ which in turn referred to the judgement of the Supreme Court in the case of *Municipal Corporation of Greater Mumbai v Dr Hakimwadi Tenants' Association*⁴ which held that the corporation (the acquiring body) must *prima facie* be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, Section 127 of the MRTP Act does not contemplate an investigation into the title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. The Supreme Court held that the corporation had the requisite information in their records including the records pertaining to the petitioner's land. Merely requiring some information would not stop limitation running against the corporation.

29. This defence is thus rejected.

3 2023 SCC OnLine Bom 999 : (2023) 4 AIR Bom R 64 : (2023) 5 Bom CR 371 : 2023:BHC-AS:13616-DB

4 1988 Supp SCC 55.

30. This Court has recently decided precisely the defences that have been raised in this Petition. In our recent judgment in the case of *Chetan @ Chanbassappa Sadashiv Bolkote v The State of Maharashtra*⁵ this Court by referring to and reiterating the decisions of the Apex Court as well as this Court confirmed that the owner cannot be deprived of his rights to the property after the statutory period has expired when no steps to acquire the land as contemplated under Section 126 of the MRTP Act were taken.

31. The Court also reiterated that the Notification of lapsing in the Official Gazette is merely a ministerial act as held by the co-ordinate Bench of this Court in the case of *Arun Motiram Nimkar v Municipal Corporation of City of Amravati and Ors.*⁶

32. In *Santu Sukhdeo Jaibhave v Nasik Municipal Corporation*,⁷ a co-ordinate bench of this Court held that the publication of the Draft Revised Plan issued prior to the issuance of Purchase notice cannot have an effect of continuing the reservation on account of the same being sanctioned subsequently.

33. Thus, in our opinion, it is amply clear that the defences of the Respondents are entirely baseless in view of well settled law. We accordingly pass the following order.

34. The Writ Petition is allowed in terms of prayer clause [A].

5 2024:BHC-AS:9242-DB

6 2013 SCC OnLine Bom 739: (2013) 4 Mah LJ 714: (2013) 5 BCR 546

7 2022 SCC OnLine Bom 5273 : (2023) 2 Bom CR 469

35. The State Government shall notify the lapsing of the reservation of “*High School and Primary School*” on the property bearing Gat No 304 (new Gat No 155/1/1), Majrewadi, Jule Solapur, Part-1, admeasuring 79R situated within the limits of Respondent No 2 Solapur Municipal Corporation by an order published in the Official Gazette as per Section 127(2) of the MRTP Act on or before 10th June 2024.

36. It is clarified that the Petitioner will be entitled to proceed with the development of the property and the Respondents will not delay in granting the permissions. If fresh Plans for building permissions are submitted by the Petitioner, then the same to be considered expeditiously.

37. The authorities are hereby notified that the Notification in the Official Gazette is merely a ministerial act as held in the case of *Arun Motiram Nimkar (supra)* and the process of development proposed by the Petitioner and granting of permission by SMC shall not be delayed for want of Notification.

38. Rule is made absolute in the above terms.

39. No orders as to costs.

40. All concerned to act on the authenticated copy of this order.

(Kamal Khata, J)

(G. S. Patel, J)

Note: This judgement is modified as per order dated 22nd April 2024 passed on a praecipe. The corrections are shown in bold, italics and underline.