

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8559 OF 2021

Sharad Krishna Thakre & Anr ...Petitioners
Versus
The State of Maharashtra & Ors ...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.

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

ASHWINI H
GAJAKOSH

Digitally signed by
ASHWINI H
GAJAKOSH
Date: 2024.03.18
09:54:18 +0530

PC:-

1. This matter along with Writ Petition No 8558 of 2021 and Writ Petition No 3766 of 2022 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 Petitioners 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 5th January 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 remains unexplained.

5. The Petition proceeds on the basis that the Petitioners have 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 274.50 sq mts, 540.00 sq mts and 183.10 sq mts belonging to the 1st Petitioner in Solapur. The land of the 2nd Petitioner is 1155.00 sq mts. 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 17th October 2019 in paragraph 3 by saying that the Petitioners served four purchase notices of that date. It is contended that the response was that there were defects in the purchase notices. Then the reference is to correspondence of February 2020 by which the Petitioners contended that there were no defects. The submission in paragraph 7 is that there has been no acquisition under sub-Section (2) or (4) of Section 126 within 24 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 No.1's land area admeasuring 274.50 sq. mtrs., 540.00 sq. mtrs & 183.10 sq. mtrs. and the Petitioner No.2's land area admeasuring 1155.00 sq. mtrs., reserved/allotted/designated for the Fire Brigade, Garden and Municipal Shopping Centre purposes under the Reservation no. 6/45 and 6/46, situated at old Survey No. 745/2A/3, New Survey No. 149/2A/3, Village-Majrewadi, 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 5 there is an initial reference to the Maharashtra Gunthewari Development (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 6 onwards that we find a careful outlining of material factors on which the Petition is entirely and inexplicably silent. In respect of Survey No 149/2A/3, the 1st Petitioner made three applications on 21st November 2000 for Plot No 6 (540 sq mts), Plot No 8 (274.50 sq mts) and Plot No 9 (183.10 sq mts). The 2nd Petitioner made a similar application of the same date for Plot No 5 (1155 sq mts). All applications were for building permission and regularisation of development and construction on these plots. Copies of these applications are annexed to the Affidavit in Reply.

11. On 19th April 2004, the Solapur Municipal Corporation (“**SMC**”) granted permission for the construction of four separate buildings on these separate Plot Nos 5, 6, 8 and 9 respectively. 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. These were specifically communicated to the Petitioners and the record is in Exhibit “5”.

12. This is also suppressed in the Petition.

13. It does not end at that. The Petitioners actually took advantage of these permissions and constructed four separate ground floor structures on all four plots.

14. Mr Sabban has instructions to state that nothing was done and attempts to show us some photographs of some shed. We give no credence to this kind of material simply because there is such wholesale suppression in these Petitions. It is all the more unworthy of credence because annexed to this Affidavit in Reply at Exhibits “6” and “7” are copies not only of the four building permissions all dated 19th April 2004, but of three Completion Certificates (“CC”) of 11th April 2005.

15. There is no mention of these in the Petition. There is no letter shown to us by which this is denied or an averment in the Petition or in the rejoinder. Indeed, it cannot be denied because we do not see how the Petitioners could have obtained a CC for constructing something that they say they had never constructed if that is the Petitioners’ case today.

16. 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 Petitioners. An order came to be passed on 30th May 2018 revoking the building permissions under the Gunthewari Act on 19th April 2004.

17. At this point Mr Sabban is persuaded to attempt the argument that with this cancellation everything that went before was set at naught. That is plainly incorrect. It suppresses the fact that the Petitioners and other plot holders *then* applied under the Gunthewari Act for a revised building permission. This time they agreed to a vesting and surrender of the 10% of the unbuilt and vacant plot area and also agreed to construct the DP road and to transfer it to the SMC free of cost. That application is of 23rd November 2018. A copy is at Exhibit “8” to the Affidavit in Reply.

18. The story of suppression continues. For it is also suppressed from the Petition that the SMC granted that permission sought by the Petitioners. It sanctioned a primary layout plan on 27th February 2019 for development of Plot Nos 1 to 10 and that includes Plot Nos 5, 6, 8 and 9 which are the subject matter of this Writ Petition. Under this sanctioned layout, the landowners, including

the present Petitioners were required to surrender a total of 630.81 sq mts from Plot Nos 1 to 10 and also to provide for a DP road of 896.40 sq mts and a service road of 895.50 sq mts.

19. This was a benefit and a concession by the SMC. The Petitioners took the benefit and advantage of it.

20. It is *after* this was done that the Petitioners issued the subject notice under Section 127 of the MRTP Act pleading a lapsing of the reservation although the Petitioners knew full well that the plots under reservation were allowed to be developed under and as per the Gunthewari Act on applications made and permissions sought by the Petitioners themselves. 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 Petitioners.

21. At this stage, as Dr Saraf correctly points out, reference must be had to sworn Affidavits filed by the Petitioners and other owners that we find from pages 98 to 105. In this, every one of these Applicants have said that they have made 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.

22. 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 applications made by the Petitioners and after the cancellation of the permissions, the Petitioners once again applied for retention or regularisation and seeking further benefits and concessions. Indeed, the Petitioners obtained those benefits. Now, since the reservations are not being removed because the Petitioners have solemnly undertaken to surrender those portions to the Government and to construct the roads, to somehow evade and avoid their solemn undertakings including on Affidavit, the Petitioners issued a notice under Section 127(1) and have filed this utterly mischievous Petition in which every single material particular has been wilfully and knowingly suppressed.

23. 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 Petitioners’ heads. It is the Petitioners who have themselves given undertakings and on the basis of the undertakings have obtained benefits and concessions. They cannot resile from them and they cannot obtain a double benefit like this.

24. 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 Petitioners.

25. 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

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.

26. 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 Dr Sabban speaks should not be allowed to now fall where it must.

27. 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 Petitioners by wilfully suppressing every single piece of material and relevant information.

28. 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. Dr 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.

29. 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 Mr Sabban. 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.

30. 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 Affidavits and Undertakings of the Petitioners were inadvertent. The less said of this the better.

31. Now Mr Sabban says the ‘broad brushstrokes’ of the Gunthewari Act permission are mentioned in the written submissions but only the details are missing. These are not arguments of persuasion. They are arguments of desperation.

32. 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 day this order is uploaded. In default, the amount will carry interest at 9% per annum and may be recovered from the Petitioners as arrears of land revenue.

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

(Kamal Khata, J)

(G. S. Patel, J)