

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4997 OF 2006

1. M/s. Yeravda Stud & Agricultural Farm,)
through its Constituted Power of Attorney)
Hoder, Shri A.V. Suratwala, Adult,)
Indian Inahbitant, having its office at)
Desai House, Final Plot No.177/2,)
Dhole Patil Road, Pune – 411 001.)
2. Bageecha Glades Pvt. Ltd., a Company,)
incorporated under the Companies Act,)
1956 having its registered office at 502,)
“SURAD” Apartment, 106/13,)
Erandwana, Off. Ketkar Road,)
Pune – 411 004.).. Petitioners

Versus

1. State of Maharashtra,)
through its Secretary tot he Ministry of)
Urban Development Department, having)
office at Mantralaya, Mumbai – 400 032.)
2. The Collector of Pune,)
District Pune, having office at Ambedkar)
Road, Pune – 411 001.)
3. The Director of Town Planning,)
Maharashtra State, Pune,)
through the Secretary, Urban Development)
Department, Pune, Mantralaya, Mumbai.)
4. The Municipal Corporation of City of Pune,)
through its Commissioner, having office)
at P.M.C. Building, Shivaji Nagar, Pune.)
5. The City Engineer,)
Municipal Corporation of Pune,)
having his office at P.M.C. Building,)
Shivaji Nagar, Pune.)

6. The Special Land Acquisition Officer)
 No.16, Pune, having his office at)
 Mahanagar Palika Ward Office Building,)
 3rd Floor, Tilak Road, Pune 411 002.)
7. Mr. Vilasrao Deshmukh,)
 The Chief Minister of Maharashtra,)
 having his office at Mantralaya,)
 Mumbai – 400 032.).. Respondents

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Shri Girish Godbole along with Shri Astad Randeria, Shri R.K. Satpalkar and Shri Mutahhar Khan i/by M/s. Mulla & Mulla & Craigie Blunt and Caroe for the Petitioners.

Shri V.S. Gokhalke, AGP for Respondent Nos.1 to 3 and 6.

Shri Bharat H. Mehta for Respondent Nos.4 and 5.

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CORAM : A.S. OKA & M.S. SONAK, JJ
 DATE : 31ST JANUARY 2014

ORAL JUDGMENT (PER A.S. OKA, J)

. Heard learned counsel appearing for the Petitioners, the learned AGP for the 1st to 3rd and 6th Respondents and the learned counsel appearing for the 4th and 5th Respondents.

2. The first Petitioner claims to be an owner of the Final Plot No.71 of Yeravda Town Planning Scheme No.1, bearing C.T.S. No.210 situated at Pune. In exercise of powers under Sub-section (1) of Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the MRTP Act”), the State Government sanctioned the development plan for the City of Pune on 5th January 1987. In the sanctioned development plan, the said Final Plot No.71 is

shown reserved for the public purpose of a garden. On 21st May 1998, a notice was served by the first Petitioner on the Commissioner of the 4th Respondent. The 4th Respondent the Municipal Corporation of City of Pune is constituted under the Maharashtra Municipal Corporations Act, 1949 and it is the Planning Authority within the meaning of the provisions of the MRTP Act. There was a reply sent to the said notice by the Deputy City Engineer of Municipal Corporation of Pune on 16th June 1998 informing the first Petitioner that the notice stood rejected as the documents such as document of title, survey plan, tax clearance, power of attorney etc. were not annexed to the said notice. In reply to the said letter dated 16th June 1998, on 21st July 1998, the first Petitioner forwarded various documents such as 7/12 extract, B Form, Demarcation Certificate, a true copy of the Power of Attorney, land tax receipt, etc to the Deputy City Engineer of the Municipal Corporation alongwith a letter.

3. On 23rd June 1998, the Standing Committee of the Municipal Corporation passed a Resolution proposing acquisition of the said final plot for the reservation provided in the sanctioned development plan. On the basis of the said Resolution passed on 24th August 1998, the Assistant Commissioner of the Municipal Corporation addressed a letter to the Collector of District-Pune requesting him to initiate acquisition proceedings for the said plot.

4. The Petitioners are relying upon the letter dated 16th December 1999 addressed by the Pune Municipal Corporation to the first Petitioner by which the first Petitioner was called upon to hand over possession of the said plot under a compromise by stating that the the possession thereof was required urgently by the said Planning Authority. On 4th January 2000, the first Petitioner was called upon to clear the grass on the said plot of land and to get the boundaries demarcated with a view to carry out survey and joint measurement. On 20th November 2003, the first Petitioner called upon by the 6th Respondent (the Land Acquisition Officer) to disclose the status of the acquisition proceedings. On 4th December 2003, a letter was received from the 6th Respondent by the first Petitioner informing the first Petitioner that the acquisition proceedings for acquisition have not commenced. On 19th May 2004, the first Petitioner submitted a proposal for development of the said plot of land to the Pune Municipal Corporation. By a communication dated 21st May 2004, the Assistant Commissioner of the Municipal Corporation informed the first Petitioner that as the said plot has been reserved for garden, the application of the first Petitioner cannot be granted.

5. Being aggrieved by the said communication, the first Petitioner preferred an Appeal to the State Government under Section

47 of the MRTP Act. By an order dated 6th October 2006, the State of Maharashtra informed the first Petitioner that on the basis of the Resolution of the Standing Committee dated 23rd June 1998, the acquisition proceedings have been commenced and, therefore, for the time being the Appeal could not be decided on merits.

6. On 20th December 2004, a Notification was issued under Sub-section (4) of Section 126 of the MRTP Act for acquisition of the said plot of land. Thereafter, a notice was issued on 17th January 2005 to the first Petitioner under Section 9 of the Land Acquisition Act, 1894.

7. The present Petition was filed on 25th July 2006. On 3rd August 2006, an ad-interim relief was granted and on 9th January 2007, the Rule was issued and the ad-interim relief was confirmed.

8. Pending the Petition, on 30th December 2010, the first Petitioner by a registered conveyance deed, sold the said plot of land to the second Petitioner and on the basis of the said conveyance deed, Civil Application No.785 of 2012 was taken out by the first Petitioner for adding the Purchaser as the second Petitioner in the present Petition. That is how on the basis of the order passed in the said Civil Application No.785 of 2012, the Purchaser has been added as the second Petitioner.

9. The learned counsel appearing for the Petitioners submitted that the notice dated 21st May 1998 is a valid notice under Section 127 of the MRTP Act. He submitted that at the relevant time, there was no requirement under Section 127 of the MRTP Act of producing documents showing title along with the notice. He, however, submitted that by way of abundant precaution, necessary documents were forwarded by the first Petitioner to the Municipal Corporation on 21st July 1998. The learned counsel appearing for the Petitioners further submitted that as no steps were taken within the period of six months from the date of service of the notice under Section 126 of the MRTP Act, the reservation on the said plot of land has lapsed. He submitted that the subsequent Notification issued under Sub-section (4) of Section 126 of the MRTP Act on 20th December 2004 and published in the official Gazette on 30th December 2004 is of no legal effect. He relied upon the decision of the Apex Court in the case of *Girnar Traders (II) v. State of Maharashtra and Others*¹. He also relied upon a recent decision of the Apex Court in the case of *Shrirampur Municipal Corporation v. Satyabhamabai Bhimaji Dawkher and Others*² which reiterates the view taken in the case of *Girnar Traders (II) (supra)*. His submission is that in any event, as per the law laid down by the this Court in the case of *C.V. Shah and A.V. Bhat v. State of Maharashtra and Others*³, the steps

1 (2007)7 SCC 555

2 (2013)5 SCC 627

3 2006(3) Bom.C.R. 216

contemplated by Section 127 of the MRTP Act ought to be taken on the basis of the resolution passed by the General Body of the Municipal Corporation and not on the basis of the resolution of the Standing Committee of the Municipal Corporation. The learned counsel appearing for the Municipal Corporation urged that the notice is not valid as no documents showing the title of the first Petitioner were not produced along with the said notice. The second submission is that the Petition suffers from the delay and laches inasmuch as this Petition has been belatedly filed in the year 2006, though the same is based on the notice issued on 21st May 1998. He submitted that the first Petitioner was disentitled to sell and/or transfer the said plot of land to the second Petitioner during the pendency of the Petition and, therefore, the sale in favour of the second Petitioner is not valid. The learned AGP supported the stand taken by the Municipal Corporation.

10. We have carefully considered the submissions. Section 127 of the MRTP Act as amended by Maharashtra Act No.16 of 2009 reads thus:

“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) of (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, alongwith 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 twelve 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.”

11. Prior to coming into force of the Maharashtra Act No.16 of 2009, the Section 127 read reads thus:

“Section 127. Lapsing of reservation -

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 proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894 (1 of 1894), are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect, and if within six months from the date of 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.”

12. In the case of *Girnar Traders (II)* (*supra*), the Apex Court considered the scope of the unamended Section 127 of the MRTP Act which is applicable to the present case as the notice under Section 127 is of the year 1998. In Paragraphs 55 to 61 of the said decision, the Apex Court held thus:

“55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of “*eminent domain*”. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan

in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.
59. There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1)(c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

60. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority.
61. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on

receipt of the application mentioned in Clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4).”

(underline supplied)

13. Thus, the view taken by the Apex Court is that the publication of a declaration under Sub-section (2) or Sub-section (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 is a sine qua non for commencement of any proceeding for acquisition under the MRTP Act. The Apex Court held that unless and until a declaration under Section 6 of the Land Acquisition Act, 1894 is issued within the time stipulated by Section 127 of the MRTP Act, it cannot be said that the steps for acquisition are commenced. In short, the Apex Court had held that if the steps for acquisition by issuing a notification were not commenced within the stipulated period of six months from the date of service of the notice under Section 127 of the MRTP Act, the Planning Authority or the Appropriate Authority, as the case may be, the reservation under the sanctioned development plan automatically lapses. The view taken by the Apex Court in the case of *Girnar Traders (II)* (*supra*) has been affirmed in the decision in the case of *Shrirampur Municipal Corporation* (*supra*).

14. In the present case, the Notification for acquisition under Sub-section (4) of Section 126 of the MRTP Act was issued on 20th December 2004. There is no dispute about the service of notice dated 21st May 1998 under Section 127 of the MRTP Act. Thus, no steps as contemplated by law were taken by the Planning Authority within the stipulated period of six months from the date of service of the notice dated 21st May 1998. Therefore, the legal consequences provided by Section 127 of the MRTP Act must follow. On the date on which the said notification was issued, the reservation had already lapsed by operation of law on the expiry of period of six months from 21st May 1998. Thus, on the date of the notification under Sub-section (4) of Section 126 of the MRTP Act, there was no reservation. Hence, recourse to Section 126 of the MRTP Act could not have been taken. Hence, the said notification is illegal.

15. As far as the submissions based on the delay are concerned, legal consequences provided by Section 127 of the MRTP Act will automatically follow. It is not necessary for the owner or the person interested to seek a declaration from the Court of law that the reservation has lapsed. The lapsing of reservation is a legal consequence which follows from non-compliance with the notice under Section 127 of the MRTP Act. Apart from that, the first Petitioner has referred to the correspondence made ending with the letter dated 4th

March 2003 issued by the 6th Respondent showing that the acquisition was not commenced. In May 2004, an application for development permission was made by the first Petitioner on the footing that the reservation has elapsed. The same was rejected on 21st May 2004. On 31st May 2004, an Appeal was preferred by the first Petitioner to the State Government in which a specific contention was raised that the reservation has lapsed in view of Section 127 of the MRTP Act. As we have stated earlier, the Appeal was never decided till the Writ Petition was filed before this Court. By the order dated 18th December 2006, this Court recorded that the Appeal could not be decided on merits on account of pendency of the Special Leave Petition before the Apex Court against the decision of this Court in the case of *C.V. Shah (supra)*. Therefore, the argument based on the delay deserves to be rejected. As far as last argument based on sale by the first Petitioner to the second Petitioner pending the Writ Petition is concerned, even assuming that the reservation would not have lapsed, the title of the first Petitioner is not affected in any manner by virtue of the reservation. Therefore, we find no merit in the objection raised by the Municipal Corporation to the transfer of the said plot of land made by the first Petitioner in favour of the second Petitioner on 30th December 2010 by executing a registered Sale Deed.

16. In the circumstances, the Petition must succeed and we pass the following order.

ORDER :

- (a) It is declared that the reservation on the said plot of land, more particularly described in Paragraph 1 of the Writ Petition, under the sanctioned development plan under the Maharashtra Regional and Town Planning Act, 1966 has lapsed and the said plot of land has become available to the owner for the purposes of development otherwise permissible in case of adjacent land under the relevant development plan;
- (b) As the reservation had already lapsed, the Notification dated 20th December 2004 issued under Sub-section (4) of Section 126 of the MRTP Act is not legal and valid and the same is hereby quashed and set aside;
- (c) Notwithstanding the rejection of the earlier Application dated 19th May 2004, it will be open for the Petitioners now to make a fresh Application for grant of development permission;

(d) If such Application is made, the same shall be considered in the light of this judgment and order and in accordance with law;

(e) The Rule is made absolute on above terms.

(M.S. SONAK, J)

(A.S. OKA, J)