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**Court :** Mumbai Nagpur

**Decided On :** Mar-30-2015

**Judge :** B.P. Dharmadhikari & a.P. Bhangale

**Appeal No. :** Writ Petition No. 4724 of 2013

**Appellant :** Mohandas and Others

**Respondent :** The State of Maharashtra, through its Secretary, Urban Development Department and Others

**Advocate for Pet/Ap. :** Shri. Naik

**Judgement :**

**B.P. Dharmadhikari, J.**

1. Petitioners landowners have approached this Court for setting aside the reservation No. S-169 in Final Development Plan of Gondia Town reserving their lands i.e. Survey Nos. 405/1, 406/2, 407/2, 410/2 and 411 of Mouza Gondia (Bk), for shopping complex and vegetable market. They also want a declaration that they are free to use and develop it as per user of adjacent lands. Maharashtra Regional and Town Planning Act, 1966 is the relevant legislation.

2. Looking to the nature of controversy involved in the matter, We have heard the matter finally with consent of the learned Counsel appearing for the respective parties. **Rule** is, therefore issued in the matter and the same is made returnable forthwith.

3. Final development plan under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as **the MRTP Act** for short), for Gondia Municipal Town was published on 24.08.1984, and in it, the said land admeasuring .44 Hectors was reserved vide site no.137 as 'Shopping Centre'. On 03.09.1992, declaration under Section 126[4] of the MRTP Act came to be published in the State Government Gazette, whereby the Land Acquisition Case No. 34/A-65/1991-92 commenced before the Special Land Acquisition Officer, Gondia, for compulsory acquisition thereof. Municipal Council needed to deposit an amount of Rs. 16,55,037/- towards compensation. It deposited Rs. 1,50,822/- on 08.12.1994; Rs. 9,57,215/- on 18.03.1995 and Rs. 5,47,000/- on 12.02.1996.

4. Notice under Section 127 of the MRTP Act, was issued by the predecessors in title of present petitioners on 09.06.2004. The present petitioners have acquired title to these lands i.e. subject land through a sale deed which is executed in their favour, after expiry of period of 6 months from said date i.e. 02.01.2006. In the meanwhile, on 15.02.2005 the General Body of the Municipal Council in its special meeting vide Resolution No.5 noted its earlier resolution dated 09.03.1994, to acquire these lands and amounts deposited towards compensation. It found that the Special Land Acquisition Officer on 15.02.1995 had written a letter, informing that as the amount was not deposited within time, proceedings lapsed on 27.01.1995. It found that therefore, new acquisition proceedings were necessary. It refused to initiate those proceedings and financial provisions therefor. It resolved to release land under Section 127 from reservation. On 07.04.2005, the Chief Officer of the Municipal Council accordingly informed the predecessors in title and pointed out that after necessary modification in the development plan and its publication in gazette, the predecessors would be in a position to develop it.

5. The petitioners submit that in land acquisition case, a draft award was made in 1993, but, due to non-availability funds, those proceedings lapsed. They claim that

land was already developed and hence, its regularization was sought under the provisions of Maharashtra Guntherwari Developments (Regularization, Upgradation and Control) Act, 2001. The persons in possession applied for regularization on 26.04.2006 and 28.12.2007. These applications remained pending and on 02.07.2011, when draft development plan was published on 29.11.2007. Site no. S-169 came to be shown as reserved for shopping complex and vegetable market. Petitioners learnt about it and raised objections to it on 27.12.2007 and 7.1.2008. Notices of hearing dated 3.6.2009 and 4.6.2009 issued by respondent no.4 and hearing on 11th and 12th June, 2009 is, then pointed out by them. They also point out form Sheet-2 containing notes of said hearing which they procured under Right to Information Act, which indicates negation of their objection. Petitioners then submitted a representation to the State Government on 05.09.2011, and on 04.09.2012 State Government issued a notification granting sanction to Draft Development Plan for Gondia (second revised), and fixed date 15.05.2012 for its enforcement. Petitioners then found that their lands and reservation S-169 was not excluded in it. It has been reserved for shopping complex and vegetable market. Municipal Council on 03.12.2012, passed a resolution for minor modification under Section 37[c] of the MRTP Act, and invited objections from public by notice dated 26.02.2013. Petitioners found that their representation and notice issued under Section 127 by them, was totally ignored, therefore, they have approached this Court.

6. Shri A.A. Naik, learned Counsel appearing for the petitioners has relied upon various judgments to urge that as period of six months had expired in 2004 itself, land is open for development and reservation upon it is deemed to have lapsed. He contends that purchase notice dated 09.06.2004 enures to the benefit of petitioners being successors in title. He relies upon judgment reported at **2011 (1) Bom.C.R. 293 (Satish Soma Bhole .vrs. State of Maharashtra and others)** to buttress his submission. Judgment of Hon'ble Apex Court in case of **PrafullaC. Dave .vrs. Municipal Commissioner and others (2015 (1) B.C.R. (SC) 88)**, is also relied upon by him to point out how ingredients of Section 127 are satisfied in present matter. Another judgment of Hon'ble Apex Court reported at **2015 (1) Scale 578 (Godrej and Boyce Manufacturing Co. Ltd. .vrs. State of Maharashtra and others)**, is relied upon to contend that after lapsing of

reservation, powers under Section 37 or 38 of the MRTP Act cannot be invoked and reservation cannot be indirectly restored back. Division Bench judgment of this Court reported at **2006 LawSuit (Bom) 1719 (Bhagyachandra Ramrakshamal Khatri .vrs. Municipal Corporation of Amravati)** and **2009 (3) Bom.C.R. 279 (Shivram Kondaji Sathe and others .vrs. State of Maharashtra and others)**, are also pressed into service by him. A Division Bench judgment of this Court reported at **2005 (4) Mh.L.J. 466 (Kishore Gopalrao Bapat .vrs. State of Maharashtra and another)**, to which one of us (B.P. Dharmadhikari, J) is party, is also relied upon by him.

7. In reply arguments, Shri A.S. Fulzele, learned A.G.P. appearing for respondent nos. 1 to 3 and Shri A. Parihar, learned counsel appearing on behalf of respondent no.4, strongly oppose the petition. They rely upon the reply-affidavits. They submit that as land acquisition proceedings have already been initiated way back in the year 1992, i.e. before expiry of period of 10 years from the date of final development plan under Section 31 coming into force, provisions of Section 127 of the MRTP Act were or are never available thereafter to owners of the subject lands. They rely upon Constitution Bench judgment of Hon'ble Apex Court reported at **2011 (3) SCC 1 (Girnar Traders [3] .vrs. State of Maharashtra and others)**, to demonstrate that the provisions of Section 11A of the Land Acquisition Act, 1894 are not attracted in present matter and as the land acquisition proceedings continue, the petition is without any substance.

8. In this background they submit that notice for purchase under Section 127 was not given by the present petitioners, but, their predecessors in title on 09.06.2004, and the said notice being personal to those owners, cannot enure to the benefit of the present petitioners. In any case subsequent revision in the development plan under Section 38 is not prohibited in present situation and the modifications in reservation, as stipulated therein is binding on the petitioners also. Reservation of petitioners land for shopping centre and vegetable market is legal and petitioners cannot object to it. Respective Counsel also point out that subsequent resolutions of the General Body of the Municipal Council which proceeded on the presumption that those proceedings have lapsed, are void and inoperative. Later modification in revised development plan confirms the fact that the lands are required for

development by the Municipal Council, hence, any resolution of the general body which militates with this position reflected in the final development plan must be ignored and petitioners cannot take benefit thereof. They submit that larger public interest has to prevail and petition must be dismissed.

9. In reply arguments, Shri Naik, learned counsel for petitioners has reinvited attention to the law laid down in *Godrej and Boyce Manufacturing Co. Ltd. .vrs. State of Maharashtra* (supra), and also a judgment of Division Bench in case of *KishoreGopalrao Bapat .vrs. State of Maharashtra and another* (supra). He submits that the Municipal Council itself has accepted that the land acquisition proceedings have lapsed, that it does not need the lands and hence has released subject lands from reservation, as per law.

10. In **Writ Petition No.1980/2011 Mohommad Usman Mohommad Hanif .vs. The State of Maharashtra and others**, this Court (Coram :B. P. Dharmadhikari and P.D. Kode, JJ.) on 10.08. 2011 after observing the views reached by the Division Benches in **2005 (1) Mh.L.J. 718 (Ranjan Manubhai Doctor .vs. State of Maharashtra and ors.)**, **2007 (6) Bom C.R. 520 - (Prafulla C. Dave and ors. .vs. Municipal Commissioner and ors)**, **2003 (3) ALL MR 433 (Baburao Dhondiba Solakhe .vs. Kolhapur Municipal Corporation)** and **2005 (2) ALL MR 707 (Youth League Recreation Centre .vs. Municipal Council, Buldhana)**, and facts at hand in said matter, has observed that:

9. The judgment in the cases of **RanjanManubhai Doctor** (supra) and **Prafulla Dave** (supra) does not notice this view in **Youth League Recreation Centre** (supra). There in some what similar circumstances the date of revised development plan has been treated as a date with reference to which said period of 10 years needs to be calculated. Therefore, if law as explained in these two Division Bench judgments is to be applied to the facts noted by us while considering judgment in **Youth League Recreation Centre** (supra), it becomes apparent that result therein cannot be accepted.

The question referred to Larger Bench is :

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 10 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?

11. Prafulla Dave (supra) reached Hon'ble Apex Court and law expounded is seen in **2015 (1) LJSOFT (SC) 17 = AIR 2014 SC 426 Prafulla C. Dave and Ors. Vs. Municipal Commissioner and Ors.** Hon'ble Apex Court considers provisions of Section 127, and effect of Section 38 of the Maharashtra Regional Town Planning Act, 1966 upon it. Thus, issue of lapsing of reservation, if the landowner does not take notice action after expiry of 10 years, and in the meanwhile revision of Development Plan takes place, the impact of such revision finds consideration therein. When the land is reserved for public purpose in Development plan and there is failure on part of Local Authority to acquire it within 10 years, lapsing of reservation as contemplated in Section 127 is held not automatic on the expiry said period of ten years. Positive action by land owner of giving notice on completion of 10 years and inaction of authority to respond is must. Such action on the part of the land owner or the person interested as required u/s 127 has to be anterior in point of time to the preparation of the revised plan. Where the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. Appellant Prafulla had issued notice under Section 127 only after two years of final revised plan under Section 38 coming into operation. Hon'ble Apex Court holds that said notice was rightly rejected on the ground of being premature, as it was issued before the completion of the period of ten years from the date of the revised development plan. This fresh lease of ten years time to planning authority to acquire in a situation where the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is explained by stating that to deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority, i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to

the clearly evident legislative intent. Hon'ble Apex Court points out that it cannot be overlooked that under Section 38, a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31, whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. Case Law referred to by Hon'ble Court is **Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and Ors. (2003 (2) SCC 111)** and **Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association and Ors. (1988 Supp. SCC 55)**.

12. This judgment of Hon'ble Apex Court, therefore, enables us to take up the challenge as raised for consideration without awaiting the decision on the question placed before the larger bench. It shows that if the landowner aspires to get the reservation on his land deleted, it has to serve a notice under Section 127, and for acquisition or dereservation, he must wait and act after 10 years of the coming into force of the development plan. If he omits to do so and in the meanwhile, revised development plan under Section 38 comes into force, he gets that right after 10 years of coming into force of such revised development plan. However, if the deemed dereservation has already occurred under Section 127 before coming into force of the revised development plan, such revised plan or

revision is wholly immaterial and it can not wipe out that deemed dereservation.

13. Undisputed facts before us here show that if Section 127 was available to present petitioners, right thereunder was exercised by them before coming into force of the revised development plan under Section 38 of the MRTP Act. As such, as per the above verdict of Hon'ble Apex Court, the later revised plan or the revised reservation is of no consequence. Only question is whether Section 127 could have been resorted to in present facts on 9.6.2004, when purchase notice thereunder was issued.

14. Hon'ble Constitution Bench of Hon'ble Apex Court in *Girnar Traders (3) vs. State Of Maharashtra* (supra), refuses to read Section 11A of the Land Acquisition Act, 1894 with Section 125 and 129 of the MRTP Act. It found that by doing so various developments scheme under MRTP would come to halt and public interest would suffer. The provisions introduced by 1984 amendment to Land Acquisition Act, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the Land Acquisition Act are read into acquisition controlled by the provisions of chapter VII of the MRTP Act, but, with specific exception that the provisions of Land Acquisition Act, insofar as they provide different timeframes and consequences of default thereof including lapsing of acquisition proceedings can not be read into the MRTP Act. Hon'ble Constitution Bench expressly states that Section 11A of the Land Acquisition Act being one of such provisions, cannot be applied to the acquisitions under Chapter VII of the MRTP Act.

15. Undisputed facts reveal that declaration for acquisition of subject land was issued under Section 126(4) of MRTP Act way back on 3.9.1992 itself. Respondent nos. 1 to 3 have filed their reply affidavit on 8.5.2014, itself and the petitioners thereafter have not filed any rejoinder. In that reply, it is pointed out that the proceedings to acquire lands mentioned in purchase notice as survey no. 406, 407, 410 and 411, admeasuring 4930 Sq. Mtrs. are initiated on 3.9.1992 in Land Acquisition Case No. 34/A-65/1991-92 of Gondia (Bk.) Copy of the gazette in which said notice is published is also annexed therewith. Reservation then was for shopping center and road. State Government then extended the financial

assistance to pay the owners compensation and paid Rs. 15,69,000/- for said purpose. Respondent no.4 Municipal Council has filed similar reply on 2.12.2014, and in addition, it has pointed out that in year 1991-92, when the acquisition proceedings were started, amount of compensation was worked out at Rs. 16,55,037/-. It has also pointed out that it deposited this amount in three installments i.e. vide voucher no. 17 dated 8.12.1994 Rs. 1,50,822/-, vide voucher no. 27 dated 18.3.1995 Rs. 9,57,215/- and voucher no. 20 dated 12.2.1996 Rs. 5,47,000/-. These assertions on affidavit have not been rebutted by filing any counter affidavit by the petitioners. On the contrary, Petitioners plead preparation of a draft award way back in 1993, in those proceedings.

16. In *Prafulla C. Dave and Ors. Vs. Municipal Commissioner and Ors (supra)*, Hon'ble Apex Court has pointed out that under Section 38, a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 and Section 127 also computes a period of 10 years with effect from the very same date for the consequences prescribed therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance gets interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 happens only on the happening of the contingencies mentioned in the said section and not otherwise. Thus, for deemed lapsing of reservation, the omission or failure on part of respondent no.4 Municipal Council is must. It follows that if after receipt of such notice municipal council initiates necessary steps leading to Section 126(4) declaration, the lapsing is ruled out. Similarly, if such step is already taken and declaration is already made within 10 years, the landowner or interested person can not invoke Section 127 at all. Here the final development plan for Gondia town came to be published under Section 31 of the MRTP Act by notification no. TPS-2382/CR/298/793-UD-9 dated 24.8.1984, and reservation on subject lands figure in it. Declaration or notification under Section 126(4) is dated 3.9.1992 i.e. within 10 years thereof, and therefore, the proceedings for acquisition of said lands have commenced within 8 years and 10

days i.e. before expiry of ten years made available to the respondent no. 4 Municipal Council. Said proceedings did not lapse and were going on 9.6.2004 when petitioners served notice under Section 127. As declared by the Hon'ble Apex Court in Girnar Traders (3) (supra), the provisions of Section 11A of the Land Acquisition Act do not apply and, as such, the said proceedings can not lapse and are still on. Hence, in the year 2004, remedy under Section 127 was itself not open to the petitioners or their vendors.

17. Though, there are some subsequent resolutions of the general body indicating that it does not need these lands, the later revision under Section 38 of MRTP Act is again at the instance of Municipal Council. This exercise of its statutory power by the planning authority is conclusive and decisive of the need. It is, therefore, not necessary to consider impact of those resolutions which run contrary to the ongoing acquisition proceedings and later revised final development plan. The petitioners have not attacked the land acquisition proceedings which started in 1992 though they are aware of the same. They were and are also knowing the law settled by the Constitution Bench of the Hon'ble Apex Court in Girnar Traders (3) (supra). Even then, they have not amended the writ petition to incorporate proper challenges.

18. We therefore find recourse to Section 127 of the MRTP Act, by the petitioners erroneous and misconceived. Notice for acquisition under it could not have been issued in present facts. Hence, they are not entitled to any relief in present matter. Writ Petition is, accordingly dismissed. Rule discharged with no order as to costs.

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