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Court : Mumbai Nagpur

Decided On : Jan-21-2016

Judge : The Honourable Mrs. Justice Vasanti a. Naik & a.S. Chandurkar

Appeal No. : Writ Petition No. 3615 of 2015

Appellant : Hirabai and Others

Respondent : State of Maharashtra, Through its Secretary, Urban Development Department and Another

Judgement :

Oral Judgment: (Vasanti A Naik, J.)

1.**RULE.** Rule is made returnable forthwith. The petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

2. By this petition, the petitioners seek a declaration that the reservation of the agricultural field of the petitioners bearing No.115/1 (Old) and New Gat No.87/1 of Mouza Digra for D.P. Road and Social Welfare Department has lapsed in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and the petitioners are entitled to use the land for the purpose of development, permissible in the case of adjacent land under the development plan.

3. The aforesaid land of the petitioners was reserved for the D.P. Road and Social Development Department by the final Development plan published on 01.08.1987. Since the land of the petitioners was not acquired for the purpose for which it was reserved for a period of more than ten years from the publication of the final Development plan, the petitioners served a purchase notice on the respondents, on 20.06.2001. No effective steps were taken by the respondents for the acquisition of the land, as required by the provisions of Section 127 of the Act, within a period of six months. Thereafter, when a Draft Development Plan was published on 01.11.2008 under section 26 read with Section 38 of the Act, the petitioners lodged a strong objection to the proposed reservation of their lands after the lapsing of reservation under Section 127(1). In pursuance of the objection and in view of the report of the Planning Committee, the respondent no.2 passed a resolution on 25.03.2010 for deleting the reservation of the land of the petitioners for Social Welfare Department. However, by the Revised Development Plan, dated 03.04.2012, the State Government again reserved the land of the petitioners for D.P. Road and Social Welfare Department, thereby impliedly rejecting the proposal of the Planning Committee and the respondent no.2 for deleting the reservation of the land for the Social Welfare Department. The petitioners have sought the aforesaid declaration on the premise that after the lapsing of the reservation in view of the admitted facts, the publication of a Revised Development Plan in respect of the land of the petitioners would be of no effect or consequence.

4. Shri Mehadia, the learned counsel for the petitioners, submitted that the reservation of the land of the petitioners for the purpose of D.P. Road and Social Welfare Department has lapsed since the respondent no.2 did not take any effective steps for the acquisition of the land within a period of six months from the date of service of the purchase notice. It is submitted that the purchase notice was served on the respondent no.2 on 20.06.2001 and it was necessary for the respondent no.2 to take effective steps for the acquisition of the land before 19.12.2001. It is stated that since no steps for the acquisition of the land were taken by the respondent no.2 at any point of time, it would be necessary to grant a declaration that the reservation of the land of the petitioners has lapsed in view of the provisions of Section 127 of the Act. It is stated that the petitioners were constantly pursuing the matter with the respondents in respect of the deemed

lapsing and were constrained to file the petition in view of the reservation of the land of the petitioners in the Revised Development Plan, despite lapsing of reservation under Section 127(1).

5. Shri Khubalkar, the learned Assistant Government Pleader appearing for the respondent no.1, submitted that the petitioners would not be entitled to the declaration as they had not taken any steps in the matter of declaration in respect of lapsing for long and in the meanwhile, the State Government has published the revised Development plan on 03.04.2012. It is stated that since the petitioner has approached this Court after the publication of the revised Development plan on 03.04.2012, the declaration in respect of the lapsing of reservation may not be granted.

6. Shri Deshmukh, the learned counsel for the respondent no.2, opposed the prayer made in the writ petition and submitted that the petitioners had not tendered the documents showing their title in the said land along with the purchase notice. It is submitted that in the absence of the documents of title, it was not necessary for the respondent no.2 to take any steps towards the acquisition of the land that was reserved by the final Development plan. It is, however, admitted that no effective steps, as are required to be taken by the provisions of Section 127 of the Act, were taken by the respondent no.2 within a period of six months from the service of the purchase notice on 20.06.2001. It is admitted that no steps were ever initiated towards the acquisition of the land. It is submitted that since the revised development plan is published on 03.04.2012, the time of ten years would again start running from 03.04.2012 and in the circumstances of the case, the petitioners would be required to wait for ten more years from 03.04.2012 for serving a purchase notice on the respondent no.2.

7. To determine the questions involved in this writ petition, it would be necessary to consider the provisions of Section 127(1) of the Act. Section 127(1) of the Act, as it then existed on the Statute Book, prior to its amendment on 25.06.2009, reads thus:

127(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 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 land may serve notice on the Planning Authority, the Development Authority or, as the case may be, the 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 been lapsed and, therefore, the land should be deemed to have been released from such reservation, allotment or designation and shall become available to the owner for the purpose of development or otherwise, permissible in the case of adjacent land under the relevant plan.?

On a plain reading of the provisions of Section 127(1) of the Act, with which we are concerned, it is clear that an owner or any person interested in the land would be required to serve a notice on the Planning Authority or the appropriate authority, if the land is not acquired within ten years from the date on which the regional development plan or the final Development plan has come into force. Section 127(1) provides that an owner or a person interested in the land would only be required to serve a notice on the planning or the appropriate authority and if the appropriate authority does not take any steps for the acquisition of the land, the reservation, allotment or designation of the land shall be deemed to have lapsed. It was not necessary for an owner or a person interested in the land to supply the documents showing their title or interest in the land under the unamended provisions of Section 127(1). The requirement of supplying the documents in respect of title or interest has been inserted in the provisions of Section 127(1) of the Act by the amendment, dated 25.06.2009. The learned counsel for the petitioner has rightly relied on the judgment of the Hon'ble Supreme Court reported in **1988 Mh.L.J. 1** (Municipal Corporation of Greater Bombay Versus Dr. Hakimwadi Tenants Association and Others), wherein it is observed by the Hon'ble Supreme Court while upholding the impugned order and judgment that the time of six months for taking steps towards the acquisition of the land would start running from the date on which the owners served the purchase notice on the Commissioner of Municipal Corporation of Greater Bombay, the Planning Authority

in that case, and the time could not be enlarged on the basis of the communication from the Corporation's Executive Engineer seeking information regarding the ownership of the land from the owners. It was, thus, observed by the Hon'ble Supreme Court in paragraph 6 of the said reported judgment:

6. It is needless to stress that the Corporation 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 Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice. Viewed in that perspective, the High Court held that the Executive Engineer of the Municipal Corporation was not justified in addressing the letter dated July 28, 1977 by which he required respondents Nos.47 the trustees, to furnish information regarding their title and ownership, and also to furnish particulars of the tenants, the nature and user of the tenements and the total area occupied by them at present. The Corporation had the requisite information in the records. The High Court was therefore right in reaching the conclusion that it did.?

The Hon'ble Supreme Court upheld the finding recorded by the High Court that since the Planning Authority failed to take any steps towards the acquisition of the land within a period of six months from the date of service of the purchase notice, the reservation of the land for the recreation ground had lapsed. We find that the unamended provisions of Section 127 (1) of the Act, with which we are concerned did not require that the owner or a person interested should serve a notice along with the documents and the said requirement has been inserted in the provisions for the first time, by the amendment dated 25.06.2009. The respondent no.2 cannot, therefore, effectively canvass that since the petitioners had not tendered the documents of title or interest along with the purchase notice, the purchase notice was irregular. It is also not the case of the respondent no.2 that it had sought the documents of title or interest from the petitioners after the receipt of the purchase notice and the petitioners had declined to supply the documents. In the aforesaid circumstances, the case of the respondents that the purchase notice was irregular and the petitioners cannot seek a declaration in respect of the deemed lapsing is liable to be rejected.

8. It would also be necessary to reject the other submission made on behalf of the respondents that since the writ petition is filed after the publication of the revised development plan on 03.04.2012, a declaration in regard to deemed lapsing cannot be granted. It is clear from a reading of the provisions of Section 127 of the Act that if the planning or the appropriate authority fails to take any effective steps within a period of six months, the reservation of the land shall be deemed to have lapsed. There is a deemed lapsing of reservation in case the planning or the appropriate authority fails to take any effective steps within a period of six months. It may not be necessary for an owner or a person interested to seek a declaration in respect of the deemed lapsing if no steps are taken by the planning or the appropriate authority within a period of six months. There is not only a deemed lapsing of reservation but there is also a deemed release of the land from reservation and the provision makes the land available to the owner for the purpose of development, as is permissible in the case of adjacent land, under the relevant development plan. In the admitted set of facts, it is difficult to gauge as to how the publication of a revised development plan would have the effect of nullifying the deemed lapsing of the reservation under Section 127(1) of the Act. Since a declaration in respect of deemed lapsing may not be necessary and the authorities could act upon the deemed lapsing in some cases where facts are admitted, it cannot be successfully canvassed on behalf of the respondents that since there is a delay on the part of the respondents in seeking a declaration, the revised development plan would have the effect of eclipsing the deemed lapsing. Also, we find that the petitioners were constantly in touch with the respondents after the deemed lapsing and had also filed an objection to the Revised Draft Development Plan in 2008, claiming deemed lapsing. The respondent no.2 had also passed a resolution on 25.03.2010 for deleting the reservation for Social Welfare Department on the basis of the recommendations of the Planning Committee. In the circumstances of the case, the submission made on behalf of the respondents that the time of ten years would restart running from the date of publication of the revised development plan on 03.04.2012 and the petitioner would be required to wait for a period of ten years from 03.04.2012 to serve a purchase notice on the respondent no.2, is liable to be rejected. The judgment reported in **2014(13) Scale 457** (Prafulla C. Dave and Others Versus Municipal

Commissioner and Others) and relied on by the counsel for the respondent no.2 would not be applicable in the facts of the case. In the case before the Hon'ble Supreme Court, the land was reserved by the final Development plan on 08.07.1966 and the final Development plan was revised on 05.01.1987. Between 08.07.1966 to 05.01.1987, the owners or the persons interested in the land did not serve a purchase notice on the planning or the appropriate authority. Nothing was done by the owners or the persons interested till the Revised Final Development Plan was published. In the said case, the notice under Section 127 of the Act was served by the owners on the Planning Authority on 05.10.1989. Since no notice was served by the owners on the appropriate or planning authority till the Revised Development Plan was published, the Hon'ble Supreme Court held that the period of ten years under Section 127 had to get a fresh lease of life of another ten years with effect from 05.01.1987. Such is not the case here. In the instant case, the petitioner had served the purchase notice on the respondent no.2 before the publication of the revised development plan on 03.04.2012. In somewhat similar set of facts, the Hon'ble Supreme Court held in the judgment in the case of **Godrej and Boyce Versus State of Maharashtra and Others**, reported in **2015(1) Scale 578** that after the expiry of ten years and six months notice period, the appellant therein had acquired the valuable statutory right upon the land and the State Government could not have issued the impugned notification proposing to modify the development plan. It was observed by the Hon'ble Supreme Court on a careful reading of the provisions of Section 127 and 37(1) of the Maharashtra Regional and Town Planning Act, 1966 that the State Government was not empowered to delete the reservation of the land involved in the said case from railway use and modify the same for development of the road, after the reservation of the land for the railway track had lapsed, on the expiry of six months from the service of notice upon the authority. It was held that after the reservation of the land for railway tracks had lapsed under Section 127 of the Act, the land enured to the benefit of the owner and it was not open for the State Government to modify the development plan. Also, this Court, thus, observed in the judgment reported in **2003(3) Mh.L.J. 820** in the case of **Baburao Dhondiba Salokhe Versus Kolhapur Municipal Corporation, Kolhapur and Another**:

The legal position as regards MRTP Act on the basis of aforesaid observations made by Apex Court in Bhavnagar University emerges that by imposition of a statutory obligation under section 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of section 127 are not taken away. Section 38 of MRTP Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested under section 127 is taken away. In other words, section 38 does not envisage that despite the fact that in terms of section 127, the reservation lapsed, only because of a draft revised development plan or final revised development plan is made would automatically result in revival of reservation that had lapsed. If the reservation of the petitioner's land for the purposes of garden had lapsed and as we found in fact has lapsed in 28-2-1992, because of draft revised plan made in the year 1992 and thereafter final revised development plan sanctioned in the year 1999 would not revive the lapsed reservation.?

The provisions of Section 127(1) of the Act had the effect of deemed lapsing of reservation in respect of the land of the petitioners in the case in hand on 20.12.2001 and the publication of the Final Development Plan on 03.04.2012 was inconsequential, insofar as the land of the petitioners is concerned.

9. As a consequence of the above discussion, the writ petition is allowed. It is hereby declared that the reservation of the land of the petitioners bearing No.115/1 (Old) and New Gat No.87/1 of Mouza Digras for D.P. Road and Social Welfare Department has lapsed and the said land stands released from reservation and is available to the petitioners for development as is permissible in the case of adjacent land as per the development plan.

Rule is made absolute in the aforesaid terms with no order as to costs.

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