

mm

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 3523 OF 2016**

Shrishail Parvati Sahakari Grihanirman Sanstha (Regd.)  
Solapur through its Chairman Mr. B.G. Dhanali ...Petitioner  
Vs.

1. The State of Maharashtra through  
the Principal Secretary  
Urban Development Department,  
Government of Maharashtra, Mantralaya  
Mumbai-400032.
2. The Collector of Solapur  
Solapur – 413 001.
3. The Solapur Municipal Corporation  
Indrabhuvan, Solapur-413001.
4. The Municipal Commissioner  
Solapur Municipal Corporation  
Indrabhuvan, Solapur-413001. ...Respondents

Dr. R.P. Sabban, Advocate for the Petitioner  
Ms. R.A. Salunkhe, AGP for the State Respondent Nos. 1 & 2  
Mr. I.M. Khairdi, Advocate for Respondent Nos. 3 & 4

**CORAM : NARESH H. PATIL &  
M.S. KARNIK, JJ.**

**Date of Reserving the Judgment: 11<sup>th</sup> January, 2017  
Date of Pronouncement of Judgment: 6<sup>th</sup> March, 2017**

**JUDGMENT (PER SHRI JUSTICE M.S. KARNIK)**

Rule, returnable forthwith. Heard finally by consent of the parties.

2. By this Petition filed under Article 226 of Constitution of India the Petitioner prays for declaration that the Petitioner's lands designated/specified/reserved under the Development Plan of Solapur 1997-2017 for the Bird Sanctuary, being reservation No.6/44, area 11,500 sq. mtrs. situated at New Survey No.152/2B (old survey No.308/2B, Village – Majrewadi, Tal: North Solapur, District: Solapur (hereinafter referred to as the said lands) had lapsed as per the provisions of Section 127 of the Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred to as the said Act for short) and further that the said lands are released from the said reservation, allotment or designation and have become available to the Petitioner for the purpose of development as otherwise permissible in the case of adjacent land under that plan.

3. The Petitioner has also prayed for appropriate writ directing the Respondent No.1 State of Maharashtra to forthwith notify the lapsing of reservation of the said lands by an order published in the Official Gazette as required under Section 127(2) of the said Act.

4. The brief facts leading to the filing of this Petition are thus:

(a) The Respondent No.1 issued a Government Resolution dated 28<sup>th</sup> October, 2004 for sanctioning development plan for Solapur Municipal Corporation ie the Respondent No.3 herein for the period of 1997-2017 which has been brought into force with effect from 15<sup>th</sup> December, 2004. The said lands of the Petitioner were reserved for the purpose of Bird Sanctuary Park.

(b) The Petitioner contends that he is the owner of the said lands which are subject matter of reservation in the sanctioned development plan of the respondent

No.3 - Solapur Municipal Corporation.

(c) On 29<sup>th</sup> June 2011 the Petitioner served the purchase notice under Section 49 of the said Act which was rejected by the Respondent No.1 vide order dated 13<sup>th</sup> January, 2012. The Petitioner filed Writ Petition No. 8011 of 2012 challenging the order dated 13<sup>th</sup> January, 2012. By an order dated 27<sup>th</sup> August, 2014 Writ Petition No. 8011 of 2012 was allowed to be withdrawn with liberty to the Petitioner to issue purchase notice under Section 127(1) of the said Act.

(d) Neither the appropriate authority nor the planning authority took any steps to acquire the said lands within a period of 10 years from 15<sup>th</sup> December, 2004 for the purpose for which it was designated to be reserved.

(e) The Petitioner, therefore, served a purchase notice under Section 127 of the said Act on 18<sup>th</sup> February,

2015 on the Planning Authority ie Respondent No.3. The said purchase notice was accompanied with requisite documents to indicate the ownership of the Petitioner over the said lands.

(f) The Planning Authority by communication dated 26<sup>th</sup> February, 2015 informed the Petitioner that it may apply for FSI or TDR as per Development Control Regulation No. 31.1 and further information was also sought. The Petitioner submitted the requisite documents by letter dated 19<sup>th</sup> March, 2015 & 26<sup>th</sup> March 2015. After 26/03/2015, the respondent – Corporation informed the District Collector to start the process of acquisition of reserved land vide letter dated 09/07/2015. The office of the District Collector replied to the Corporation by letter dated 13/01/2016 asking them to submit their proposal for acquisition as per new rules of acquisition.

5. As the Respondents failed to take steps, the Petitioner has

filed this petition for appropriate reliefs.

6. The Commissioner of Respondent No.3 – Corporation filed an affidavit in reply on 6<sup>th</sup> December, 2016. In the affidavit filed by the Respondent No.3 at para 9 it is stated thus:

*“9. I say that the said reserved land for the Bird Sanctuary, being reservation no.6/44, Area 11,500 sq. meter situated at New Survey no.152/2B and Old Survey no.308/2B, village Majerewade, Tq. North Solapur, Dist. Solapur. The said area is new extension area of Corporation and out of total acquisition amount of said reserved land some amount is necessary to give for acquisition purposes but due to financial weak condition of Corporation as on date it is not possible to deposit the amount to initiate the process of acquisition as per the Chief Accountants letter dated 09/11/2016. (here to marked as Exhibit-E)”*

7. The learned Counsel for the Petitioner contends that as the said lands which are reserved in the sanctioned development plan dated 15<sup>th</sup> December 2004, are not acquired within a period of 10 years from the date of coming into force of the sanctioned DP and as the Respondents have failed to issue a declaration under Sub Section (2) or 4 of Section 126 of the said Act for acquisition of the

said reserved lands within a period of 12 months from the date of service of notice, the reservation has lapsed and the Petitioner is entitled to develop the land in accordance with law. He further submits that the Respondent No.2 Corporation has taken a categorical stand in the affidavit-in-reply at paragraph 9 that due to weak financial condition of the Corporation as on date it is not possible to deposit the amount to initiate process of acquisition.

8. The learned Counsel for the Petitioner further contends that as admittedly the purchase notice dated 18<sup>th</sup> February, 2015 has been served on the Planning Authority and as no steps have been taken for acquisition of the said lands within a period of twelve months from the date of service, the consequent failure on the part of the Respondents to comply with the requirements of Section 127 of the said Act, the Petitioner is entitled to the relief of declaration of lapsing of reservation.

9. On the other hand the learned Counsel for the Respondents Nos. 3 & 4 submits that in view of the stand taken in the affidavit-in-reply about the weak financial position of the Respondent

Corporation, it is not possible to deposit the amount to initiate the acquisition of the said lands.

10. Having considered the submissions advanced on behalf of the learned Counsels for the respective parties we are of the view that the present Petition deserves to be allowed.

11. The Petitioner relied on the decision of the Apex Court **in the case of Girnar Traders Vs. State of Maharashtra 2007(7) SCC 555**. The relevant paragraphs of the decision of the Apex Court read thus:

54. "When we conjointly read sections 126 and 127 of the MRTTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in *Municipal Corpn. of Greater Bombay* case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available



for the landowner for his utilisation as permitted under section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation."

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 steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a 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 step 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."

12. In the instant case admittedly a valid purchase notice dated 18<sup>th</sup> February, 2015 was served on the Planning Authority Respondent No.2 and admittedly in view of the weak financial condition of the Respondent No.2 Corporation, the steps for acquisition of the said lands were not taken within the period of twelve months from the receipt of the purchase notice issued under Section 127 of the said Act. In view of the law laid down by the Apex court the steps for acquisition of the land can be said to have

commenced only upon issuance of a declaration under Section 6 of the Land Acquisition Act, 1894 is issued. Admittedly, no such declaration was issued by the Respondent after the receipt of the purchase notice and within a period of twelve months therefrom in view of the weak financial condition of Respondent No.3 – Corporation.

13. The Petition, therefore, succeeds and the same is allowed in terms of prayer clauses (a) and (b). The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of Section 127(2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of six months from today.

14. Rule is made absolute in the above terms.

15. No order as to costs.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)