

*From - C.M. Rao*

**IN THE HIGH COURT OF BOMBAY**

Writ Petition No. 9168 of 2013

Decided On: 09.01.2015

**Appellants: Uday Madhavrao Patwardhan and Ors.**

**Vs.**

**Respondent: Sangli, Miraj & Kupwad Municipal Corporation and Ors.**

**Hon'ble Judges/Coram:**

Abhay Shreeniwas Oka and A.K. Menon, JJ.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Tejpal Ingale

For Respondents/Defendant: G.H. Keluskar

**Subject: Civil**

**Catch Words**

**Mentioned IN**

**Acts/Rules/Orders:**

Maharashtra Regional And Town Planning Act, 1966 - Section 127, Maharashtra Regional And Town Planning Act, 1966 - Section 20, Maharashtra Regional And Town Planning Act, 1966 - Section 31, Maharashtra Regional And Town Planning Act, 1966 - Section 38

**Disposition:**

Petition Allowed

**Citing Reference:**

**Discussed**

3

**Distinguished**

1

**Relied On**

**Case Note:**

**Civil - Lapse of reservation - Section 127 of Maharashtra Regional and Town Planning Act, 1966- Present petition filed to declare that reservation covered by specified site on lands had lapsed by virtue of section 127 of MRTP Act - Whether reservation imposed by sanctioned development Plan stood lapsed - Held, no dispute that steps as required by section 127 were not taken by Planning Authority within statutory period - Therefore, reservation imposed by sanctioned development Plan stood lapsed - Petition allowed. [10]**

**Civil - Revised plan - Validity thereof - Present petition filed for quashing of revised Development Plan(DP) in relation to said lands - Whether reservation provided in revised D.P would apply Held, admitted position that reservation under revised D.P was same as one under sanctioned D.P which had lapsed - Therefore, by revised D.P, right accrued to Petitioner was sought to be taken away - Therefore, reservation of said lands in revised D.P would have no legal effect - Reservation provided in revised D.P will not apply as right already accrued to Petitioner could not be taken away - Petition allowed.[14]**

## JUDGMENT

**Abhay Shreeniwas Oka, J.**

1. Writ Petition is called out for final hearing. With a view to appreciate the submissions made across the bar, it will be necessary to make a reference to the factual aspects of the case. The Development Plan for the city of Miraj was sanctioned under sub-section (1) of section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') on 26th April 1979. The petitioners are claiming to be the owners of the lands more particularly described in paragraph 3 of the petition (for short "the said lands"). Under the sanctioned Development Plan (for short "sanctioned D.P"), the said lands of the petitioners were covered by reservation No. 65 which was for "Housing for Dishoused & E.W.S Housing". In the year 1988, the Sangli-Miraj and Kupwad Municipal Corporation was established under the Maharashtra Municipal Corporations Act, 1949 and the area covered by the Miraj Municipal Council was included in the limits of the said Municipal Corporation. Thus, the respondent no.1-Corporation is the successor of the Miraj Municipal Council which was the Planning Authority within the meaning of the MRTP Act.

2. The petitioners are relying upon a notice under section 127 of the MRTP Act dated 26th September 2008 in relation to the said lands. The notice which was served upon the respondent No. 2 was replied by a letter dated 27th October 2008 by stating that the petitioners have not produced 7/12 extracts, Phalani Map, Survey map etc. It is the case of the petitioners that they produced the said documents. A statement to that effect has been made in the letter dated 20th July 2011 which was addressed by the petitioners to the Commissioner of the respondent No. 1-Corporation. An application was made by the petitioner for grant of development permission which was rejected on the ground that the said lands were affected by the reservation No. 65.

3. Before the said notice was served by the petitioners, on 4th March 2005, a draft revised Development Plan was published. On 4th March 2012, the draft Revised Development Plan (for short 'Revised D.P') was sanctioned by the State Government by exercising power under sub-section (1) of section 31 read with section 38 of the MRTP Act. The petitioners are relying upon the orders passed by this Court in Writ Petition filed by the co-owners of a part of the said lands in which, by relying upon the notices issued

under section 127 of the MRTP Act, this Court declared that the reservation No. 65 has lapsed.

4. The first prayer in the petition is for a declaration that the reservation covered by site No. 65 on the said lands has lapsed by virtue of section 127 of the MRTP Act. The second prayer is for quashing the revised D.P dated 4th April 2012 in relation to the said lands.

5. There is a reply filed by the Assistant Director of Town Planning of the respondent No. 1-Corporation. It is stated that the same reservation No. 65 was maintained in the revised D.P. The contention is that the petitioners could not have issued a notice on the basis of the reservation under the revised D.P as the period of 10 years has not lapsed from the date of which revised D.P came into force. The other contention is that the petitioners did not comply with the requisitions contained in the letter dated 27th October 2008.

6. The learned counsel for the petitioners contended that under the provisions of section 127 as it stood on the date on which the notice under section 127 was served, there was no requirement of producing documents showing title in respect of the land subject matter of the notice and the said requirement was brought on the statute book in the year 2009. Thus, the reservation No. 65 affecting the said lands under the sanctioned D.P had admittedly lapsed as no steps were taken on the basis of the notice under section 127 of the MRTP Act within the time stipulated therein. He relied upon a decision of the Apex Court in the case of Bhavnagar University vs. Palitana Sugar Mill (P) Limited and others MANU/SC/1092/2002 : (2003) 2 Supreme Court Cases 111 He also relied upon the various decisions of this Court including the decisions in the case of Kishor Gopalrao Bapat and others vs. State of Maharashtra and another MANU/MH/0840/2005 : 2005(5) Bom.C.R. 682 and Baburao Dhondiba Salokhe vs. Kolhapur Municipal Corporation and another MANU/MH/0176/2003 : 2003 (5) Bom.C.R.232 He urged that the rights accrued to the petitioner by virtue of a notice under section 127 of the MRTP Act cannot be defeated by imposing the same reservation under the revised D.P and therefore, the said reservation will have to be held as illegal.

7. The learned counsel for the respondent No. 1-Planning Authority submitted that on the basis of the notice dated 26th September 2008, the present petition has been filed on 17th September 2013 and therefore, there is a gross delay which is not explained by the petitioner. He relied upon the decision of the Division Bench of this Court in case of Prafulla C. Dave and others vs. Municipal Commissioner and others MANU/MH/0765/2007 : 2007 (6) Bom.C.R. 520 Relying upon the said decision, he urged that merely because on the basis of the sanctioned D.P., a notice under section 127 of the MRTP Act was issued, the discretion of the Planning Authority and the State Government under section 38 cannot be taken away as a revised D.P sanctioned in accordance with section 38 is for all purposes a Development Plan under section 31 of the MRTP Act. He would, therefore, urge that no interference can be made with the reservation imposed in the revised D.P.

8. We have considered the submissions. The first issue will be as regards the legality and validity of the notice dated 26th September 2008 under section 127 of the MRTP Act. The objection of the first respondent is based on the failure of the petitioners to submit the documents such as 7/12 extract, Phalani Map, Survey Map etc along with the notice. In the letter dated 20th July 2011 addressed by the petitioners to the Commissioner of the respondent No. 1, the petitioners have claimed that the said documents were already submitted in terms of letter dated 20th October 2008. A specific averment to that effect has been made in the said letter dated 20th July 2011 annexed to this petition. In the reply filed by the Assistant Director of Town Planning of the respondent No. 1, what is stated in the letter at Exh.B is not disputed. It must be noted here that neither in the communication dated 22nd October 2008 nor in the reply filed by the respondent No. 1, the case made out by the petitioners that they are the co-owners of the said lands has been disputed.

9. Moreover, the requirement of submitting documents showing title or interest of the person issuing a notice under section 127 along with the said notice was brought on the statute book by the Maharashtra Act No. 10 of 2009 with effect from 26th June 2009. Therefore, on the ground set out in the letter dated 22nd October 2008 issued by the respondent No. 1, the notice cannot be held to be illegal.

10. There is no dispute that the steps as required by section 127 were not taken by the Planning Authority within the statutory period and, therefore, on the basis of the law laid down by the Apex Court in the case of Shrirampur Municipal Council vs. Satyabhamabai Bhimaji Dawkher MANU/SC/0282/2013 : (2013) 5 SCC 627, reservation No. 65 imposed by the sanctioned D.P stood lapsed.

11. The second issue which arises for consideration is the effect of the revised D.P which came into force subsequent to the lapsing of reservation on the basis of the notice dated 26th September 2008. As stated earlier, in the revised D.P, the same reservation was shown on the said lands. The learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of the Bhavnagar University which has been extensively considered by a Division Bench in the case of Baburao Salokhe. In the said case before the Division Bench, the petitioner was the owner of a land which was reserved under the sanctioned D.P which came into force with effect from 15th October 1977. On 8th August 1991, a notice under section 127 of the MRTP Act was served by the petitioner. On the basis of the said notice, writ petition No. 1193 of 2008 was filed in this Court seeking a declaration

that the reservation is deemed to have lapsed and that the petitioner are entitled to develop the land in question. During the pendency of the Writ Petition, a revised D.P was sanctioned on 18th December 1999 in which same reservation was shown on the land in respect of which the notice under section 127 was served earlier. After considering the decision in the case of Bhavnagar University, in paragraph 17, the Division Bench has held thus :

"17. The legal position as regards M.R.T.P. 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 M.R.T.P. 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 petitioners land for the purposes of garden had lapsed and as we found in fact has lapsed on 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....."

(underline supplied)

12. Thereafter, the Division Bench proceeded to consider another decision of this Court in the case of Prakash Rewadmal Gupta Vs. Lonavala Municipal Council MANU/MH/0839/2001 : 2002 (2) Bom.C.R. 484 on which a heavy reliance was placed before the Division Bench by the Counsel representing the Planning Authority. In paragraph 18 of the decision, the Division Bench held that the decision in the case of Prakash Rewadmal Gupta was not consistent with the law laid down by the Apex Court in the case of Bhavnagar University. In paragraph 18 of the said decision, the Division Bench held thus:

"18. In our considered view, the observations made in para 23 of the Prakash Rewadmal Gupta are not consistent with the law laid down by Apex Court in Bhavnagar University to the effect that section 21 of Gujarat Act (similar to section 38 of M.R.T.P. Act) which imposes statutory obligation on the part of the State and the appropriate authority to revise the Development Plan does not take away the rights of owners in terms of sub-section (2) of section 20 (similar to section 127 of M.R.T.P. Act). As per the proposition propounded by Apex Court in Bhavnagar University when applied to sections 38 and 127 of M.R.T.P. Act it can safely be held that section 38 does not envisage that despite the fact that in terms of section 127, the designation or reservation shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 38 does not manifest a legislative intent to curtail or take away the right acquired by a landowner under section 127 of getting the land defreezed."

Therefore, the Division Bench proceeded to hold that the reservation for garden on the land of the petitioner provided in the original sanctioned D.P stood lapsed and the revised

D.P under section 38 does not take away the right of the land owner accrued to him under section 127.

13. In the case of Kishor Gopalrao Bapat (supra), a similar view has been taken by the another Division Bench of this Court. Now we turn to the decision in the case of Prafulla C. Dave and others (supra) relied upon by the learned counsel for the respondent No. 1. This was a case where the land of the petitioner was reserved for garden in the sanctioned D.P notified on 8th July 1966. In the revised D.P dated 5th January 1987, the said reservation was continued. A notice under section 127 of the M.R.T.P Act was purportedly issued on 5th October 1989. Notice was issued much before the completion of period of 10 years from the date on which the revised D.P dated 5th January 1987 came into force. It appears that the argument before the Division Bench was that the reservation in the original sanctioned D.P and the revised D.P was the same and therefore, on the basis of the notice dated 5th October 1989, the reservation under the original D.P dated 8th July 1966 will lapse and consequently, the similar reservation in revised D.P will also lapse. This contention was dealt with by the Division Bench and ultimately, it was held that a Revised D.P made and sanctioned under section 38 of the MRTP Act is for all purposes a final Development Plan under section 31. In paragraph 12 of the said decision, the Division Bench considered the case of Baburao Salokhe. The Division Bench observed that the decision in the case of Baburao Salokhe (supra) does not support the contention raised in the petition on the basis of a premature notice. The decision in Prafulla C. Dave was in a case where before the Revised D.P came into force, a notice under section 127 was not issued on the basis of the reservation in the original sanctioned D.P. Therefore, the reservation under original sanctioned D.P was in force. The notice under section 127 of the MRTP Act was issued after the revised D.P was sanctioned. The said notice was premature as it was issued before the completion of the period of ten years from the date on which the sanctioned Revised D.P came into force. Hence, this decision in the case of Prafulla C. Dave will not apply to the facts of the case.

14. Therefore, the scenario which emerges is that the law laid down by the Division Bench in the case of Baburao Salokhe (supra) will squarely apply to this case. The revised D.P was sanctioned on 4th April 2012. Before the date of sanction of revised D.P., on the basis of the notice dated 26th September 2008, the reservation imposed under the original sanctioned D.P stood lapsed by operation of section 127. It is an admitted position that the reservation under the revised D.P is the same as the one under the sanctioned D.P which had lapsed. Therefore, by the revised D.P, the right accrued to the petitioner by virtue of the notice dated 26th September 2008 is sought to be taken away. It is not permissible to do so in view of the law laid down by the Apex Court and this Court. Therefore, the reservation of the said lands in the revised D.P for "Housing for Dishoused & E.W.S. Housing" will have no legal effect.

15. The last issue is of the delay in filing the petition. It is contended that on the basis of the notice of 26th September 2008, present petition has been filed in the year 2013. After service of a valid notice under section 127 to either the Appropriate Authority or the Planning Authority, as the case may be, if steps as contemplated by section 127 are not taken within the period stipulated in the section, the reservation shall be deemed to have been lapsed and the land in respect of which the notice is issued shall be deemed to be released from the reservation. Thus, by operation of law the land

stands released from the reservation and the Planning Authority or the Appropriate Authority cannot treat the land as reserved. In fact, there is no need for the owner to seek a declaration from the Court of law on the basis of notice under section 127. The effect of lapsing of reservation on the basis of the notice is automatic. In this case, there is also a challenge to the reservation imposed by the revised D.P which was sanctioned on 4th April 2012. In fact, cause of action arose on 4th April 2012 as the said lands were again shown reserved for the same purpose for which the earlier reservation had lapsed by operation of law. Hence, the issue of delay will not arise.

16. We must note here that we have examined the case in the context of the peculiar fact that the reservation in the original sanctioned D.P and the reservation in the revised D.P is identical. A case of an altogether different reservation provided in Revised D.P after the lapse of reservation under the original sanctioned D.P may stand on a different footing.

17. Accordingly, the petition must succeed. Hence, we pass the following order:

(I) Rule is made absolute in terms of prayer clause b(i);

(II) We hold that the reservation provided in revised D.P dated 4th April 2012 in relation to the said lands described in paragraph 3 of the petition will not apply as the right already accrued to the petitioner under section 127 of the M.R.T.P Act cannot be taken away. Thus, the said reservation in the Revised D.P in relation to the said lands will be of no legal consequence;

(III) We direct the State Government to issue a notification in terms of sub-section (2) of section 127 of the M.R.T.P Act within a period of three months from today only in relation to the said lands;

(IV) If an application for seeking development permission is made by the petitioner, the same shall be decided by the respondent No. 1 in the light of this Judgment and order;

(V) Writ Petition is allowed on above terms.

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