

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.305 OF 2014

M/s.Garden Securities and Properties LLP,
a Company duly incorporated and Registered
under the provisions of the Companies
Act, 1956 (previously known as
M/s.Garden Securities Private Limited,
Through its Partner Mr.Kiran Mulji Shah,
having its office at C.T.S.No.177,
Garden Estates, Near Khatau Mill Compound,
N.H.Road No.8, Borivali (East),
Mumbai – 400 066.

...Petitioner

v/s.

- 1) The State of Maharashtra
(Secretary, Urban Development)
Mantralaya, Mumbai – 400 032.
- 2) The Municipal Corporation of
Greater Mumbai, a statutory body
established under the provisions of
The Bombay Municipal Corporation Act, 1888,
and having its office at,
Mahapalika Marg, Fort,
Mumbai – 400 001.
- 3) The Collector,
Mumbai Suburban District,
New Administrative Building,
10th Floor, Bandra (East),
Mumbai – 400 050.

- 4) The Deputy Collector (Acquisition) No.7,
Mumbai & Mumbai Suburban District,
Pratapgad Co-op. Housing Society,
Vinayak Apartment, Opp.Hafkine Institute,
1st Floor, Parel, Village, Mumbai – 400 012

...Respondents.

Mr.C.M.Korde, Senior Counsel a/w Mr.Rumeo and Mr.Sasikumar T.C., i/b
David S. Dabre, for the Petitioner.

Ms.Geeta Shastri, Additional Government Pleader for the Respondent
Nos.1, 3 and 4.

Ms.Shobha Ajitkumar, for the Respondent No.2 – BMC.

CORAM : **A. S. OKA &
REVATI MOHITE DERE, JJ.**

RESERVED ON : **3rd AUGUST, 2015.**

PRONOUNCED ON : **28th AUGUST, 2015**

JUDGMENT (Per Revati Mohite Dere,J.):-

1. Heard the learned senior counsel for the petitioner and the learned counsel for the respondents. Vide order dated 1st July, 2015, parties were put to notice that an endeavour shall be made to decide the petition finally at the stage of admission. Accordingly, Rule. Rule is made returnable forthwith with the consent of the parties.

2. By this petition, under Article 226 of the Constitution of India,

the Petitioner seeks a declaration that the reservation in the Development Plan, in respect of the land owned by the petitioner is deemed to have lapsed by virtue of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act') and that the Petitioner was entitled to develop the said land/plot, as was permissible under the Development Plan i.e. for residential purpose.

3. The petitioner is the owner of a plot of land bearing Survey No.111, Hissa No.3 (Pt), corresponding to C.T.S. No.177/1 to 3, admeasuring about 18638.39 sq.mtrs of Village Magathane, Taluka – Borivali, Mumbai Suburban District (as described in Exhibit – 'A' to the petition). The said plot is hereinafter for short called 'the subject plot'. The petitioner is stated to have purchased the subject plot by two separate Deeds of Conveyance both dated 17th April, 2000, pursuant to which the Petitioner's name was duly entered in the Property Register Card, as Owner thereof. In the Development Plan, which came into effect from 13th July, 1993, the subject plot came to be reserved for playground, municipal maternity home and dispensary and D.P.Roads. Between the period from 1993 to 2004, the second respondent – Planning Authority and the first respondent – State did not take any steps for acquisition of the subject plot.

As no steps were taken by the both the authorities, to either acquire the subject land or to publish a declaration under Section 126(2) or (4) or under Section 6 of the Land Acquisition Act, 1894, the petitioner served a purchase notice dated 1st October, 2004 on the second respondent. The said purchase notice was addressed to the Municipal Commissioner, Municipal Corporation for Greater Mumbai as well as to the Secretary, Urban Development Department. The said purchase notice sent to the respondent – authorities was under Section 127 of the MRTP Act. Pursuant to the said notice, the respondents were required to take steps for acquisition of the subject plot within a period of six months from the date of service. It appears that on receipt of the purchase notice, the Deputy Director of Town Planning for Greater Mumbai of the second respondent called upon the petitioner to submit certain documents vide letter dated 20th January, 2005. According to the petitioner, though the said documents were furnished along with the purchase notice, the said document sought, were again re-submitted vide letter dated 23rd February, 2005. It appears that in the meantime, the Improvements Committee of the second respondent passed a Resolution on 17th February, 2005, recommending the second respondent to acquire the subject plot. Accordingly, on 11th April, 2005, the General Body of the second respondent – corporation passed a resolution

on 11th April, 2005 to acquire the said plot. It appears that thereafter the Chief Engineer (Development Plan) of the second respondent addressed a letter dated 28th March, 2005 to the Collector, Mumbai Suburban i.e. the third respondent requesting him to initiate proceedings for acquisition of the subject plot. It also appears that the Additional Collector of the third respondent turned down the said request by letter dated 19th April, 2005, stating that no valid resolution was passed by the General Body of the second respondent. Thereafter, representation was made to the Hon'ble Chief Minister pointing out that the subject plot stood released from reservation under Section 127 of the MRTP Act. According to the petitioner in the light of the aforesaid facts, they were surprised to receive a copy of the letter from the City Survey Officer (Borivali) dated 5th January, 2008 addressed to the Chief Engineer (Development Plan) of the second respondent, fixing the date for carrying out the measurement of the subject plot. The petitioner objected to the said letter, by sending a letter to the Executive Engineer of the second respondent, claiming that as the subject plot was released from reservation, the question of survey and measurement did not arise. It appears, that the Executive Engineer (Development Plan) of the second respondent informed the petitioner that as the second respondent had taken steps for acquisition of the said

property within six months from the date of receipt of purchase notice, by submitting the proposal to the Collector and had disputed the petitioner's contention that the subject plot stood released from reservation. Thereafter, correspondence ensued between the petitioner and various authorities in which the petitioner reiterated their stand, by relying on several judgments in this regard. It appears that the first respondent – State had sought the opinion of the learned Advocate General, State of Maharashtra, which was conveyed to the Municipal Commissioner i.e., second respondent, by the Urban Development Department of the first respondent. The opinion of the learned Advocate General, was that the reservation had lapsed, in view of the Judgments of the Apex Court in that regard. Again, correspondence was exchanged between the petitioner and the authorities, as the petitioner wanted to develop the subject plot, and as there was a move to acquire the same, directly under the provisions of the Land Acquisition Act, without taking recourse to the provisions of Section 126 of the MRTP Act, for the same public purpose as stated in the reservation under the Development Plan.

4. Learned Senior Counsel contended that the reservation of the subject plot had lapsed under Section 127 of the MRTP Act, considering

the fact that the subject plot had not been acquired within ten years from the date on which the final Development Plan came into force ; and that within six months of the service of purchase notice, no steps for acquisition were taken. He further submitted that after service of the purchase notice under section 127 on the second respondent, the said reservation could be saved from lapsing, only if the State Government had published a declaration under Section 6 of the Land Acquisition Act read with Section 126 of the MRTP Act. According to him, no such declaration was issued within the said period of six months and infact till date. He relied on the judgment of the Apex Court in the case of ***Shrirampur Municipal Council, Shrirampur v/s Satyabhamabai Bhimaji Dawkher and Others***¹ which reiterates the decision in the case of ***Girnar Traders (2) v/s State of Maharashtra and Others***² and urged that the present case is squarely covered by the said decision.

5. Perused the petition alongwith its annexures and the reply affidavits filed by the first and the second respondents. It is not in dispute that the subject plot was reserved for playground, municipal maternity home and dispensary and D.P.Roads in the Development Plan, which came

1 (2013) 5 SCC 627

2 (2007) 7 SCC 555

into effect from 13th July, 1993. It is also not in dispute that for 10 years, no steps were taken by the respondent authorities to acquire the subject plot. It is also not in dispute that purchase notice dated 1st October, 2004 was served on the first and the second respondents on 1st October, 2004. Admittedly, the subject land, was neither acquired nor any declaration under sub-section 2 or 4 of Section 126 of the MRTP Act or Section 6 of the Land Acquisition Act, was published within a period of six months of receipt of the purchase note. The only bone of contention between the parties is, whether any steps for acquisition were taken during the six months period i.e. after service of purchase notice. According to the petitioner, as no steps were taken for acquisition of the subject plot within six months from service of purchase notice, the reservation had lapsed under section 127 of the MRTP Act. The same is disputed by the second respondent. According to the second respondent, they had taken certain steps during the said six months period i.e. after service of purchase notice on 1st October, 2005, inasmuch as (i) a Resolution was passed on 7th February, 2005 by the Improvements Committee, according sanction to acquire the subject land ; (ii) submission of a proposal to the Collector (MSD) on 29th March, 2005 requesting him to acquire the land, subject to approval from the Corporation (iii) the Corporation's approval was

obtained vide Resolution dated 11th April, 2005. According to the respondents, the said steps taken by the first respondent are all steps within the meaning of sub-section 1 of the Section 127 of the MRTP Act and thus there was no lapsing of reservation of the subject plot.

6. Section 127 of the MRTP Act, as it stood then, provides as follows :-

“127. Lapsing of reservations :- 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, 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 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.”.

7. The Apex Court in the case of **Shrirampur Municipal Council, Shrirampur (Supra)** affirming the majority view in **Girnar Traders (2) (Supra)** has laid down that Section 127 of the Act prescribes two periods of time ;

- (i) a period of 10 years from the date on which the acquisition of the land has to be completed by agreement, or the proceedings for acquisition of such land under the Act or Land Acquisition Act have to be commenced ; and ;
 - if the first part of section 127 is not complied with or no steps are taken, then the second part of section 127 will come into operation, under which ;
- (ii) a period of six months (as the section then stood at the relevant time) is provided from the date on which the purchase notice has been served by the owner, within which period the land has to be acquired or the aforesaid steps are to be commenced for its acquisition.

The publication of a declaration under section 126(2) or read

with Section 6 of the Land Acquisition Act, is essential for commencement of any proceedings for acquisition under the Act. Unless such a declaration is issued, it cannot be said that steps for acquisition have commenced.

8. As is evident, the present case is squarely covered by the judgment of ***Shrirampur Municipal Council, Shrirampur (supra)***. Infact, the learned Advocate General for the first respondent had also given his opinion to the first respondent regarding lapsing of reservation of the subject plot, which opinion was forwarded to the second respondent. The said opinion is a matter of record. Admittedly, in the present case, there is no declaration issued under section 126(2) or (4) of the MRTP Act or under section 6 of the Land Acquisition Act. The steps purportedly taken by the first respondent as is evident from the reply, do not in any way constitute steps taken in terms of section 127 of the MRTP Act, for acquisition of the subject plot. Thus, without going into any other issues raised by the learned senior counsel for the petitioner, we are of the opinion that in the absence of any declaration or commencement of steps for acquisition as contemplated under the MRTP Act, the reservation of the subject plot is deemed to have lapsed. However, in paragraph 31 of this petition, the petitioner has stated thus :-

“31. The Petitioner states that a part of said plot was under Reservation for a D.P.Road (Development Plan Road). The Petitioner states that the reservation for the D.P. Road in the Development Plan on a portion of the said plot has also lapsed and the Petitioner is seeking reliefs in the present Petition on the basis of the said legal position. The Petitioner however wishes to make it clear that the Petitioner does not want to come in the way of the said proposed development road and that the Petitioner will be ready and willing to surrender the concerned portion of the said plot for the purpose of the proposed development road, to the Municipal Corporation on the usual terms and conditions with regard to grant of FSI etc. The Petitioner further states that as and when the Petitioner develops the said plot the Petitioner will plan his development in such a manner that it would be possible to hand over to the Corporation the land required for the purpose of the proposed Development Road.”

9. We accept the statements made in paragraph 31. We propose to direct that notwithstanding the lapse of reservation, the Petitioner shall abide by the said statements. Accordingly, we dispose of the petition by passing the following order :-

ORDER

(i) Rule is made absolute in terms of prayer clause (a). The

said plot shall be available to the owner thereof for development as otherwise permissible in the case of adjacent land under the sanctioned Development Plan.

ii) We accept the statements made by the Petitioner in paragraph 31 of the Petition. Notwithstanding the lapse of reservation, the Petitioner shall act in accordance with the said statements ;

(iii) There shall be no order as to costs.

10. All concerned to act upon an authenticated copy of this order.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)