

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

WRIT PETITION NO. 2169 OF 2015

- (1) Satish Prakash Rohra]
(2) Salochana Prakash Rohra]
Both Adults,]
Indian Inhabitants,]
Having their address at]
C-2, Rameshwar,]
S.V. Road, Santacruz (West),]
Mumbai 400 054] .. Petitioners

V/s.

- (1) Municipal Corporation of]
Greater Mumbai, a statutory body,]
Constituted under the B.M.C.Act,]
Having office at Municipal]
Head Office, Mumbai - 400 001.]
(2) Municipal Commissioner,]
Municipal Corporation of]
Greater Mumbai,]
Municipal Head Office,]
Mahapalika Marg,]
Mumbai 400 001.]
(3) The Chief Engineer]
(Development Plan),]
Municipal Corporation of]
Greater Mumbai, having]
office at Municipal Head Office,]
5th floor, Annex Building,]
Mahapalika Marg,]
Mumbai 400 001.]

- (4) The District Collector,]
Mumbai Sub-urban District,]
Administrative Building,]
10th floor, Govt. Colony,]
Bandra (East), Mumbai - 400 051.]
- (5) The State of Maharashtra]
Through its Secretary,]
Urban Development Department,]
Mantralaya, Mumbai 400 032.] .. Respondents

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Mr. Virendra Tulzapurkar, Senior Counsel a/w. Mr. Sandip Parikh
and Mr. Amit Pradhan i/b. Mr. Subhash Pradhan & Co., Advocate
for the Petitioners.

Mrs. Geeta Joglekar, Advocate for Respondent Nos.1 to 3.

Mr. Anurag Gokhale, AGP for Respondent Nos.4 and 5 - State.

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**CORAM : A.S. OKA AND
C.V. BHADANG, JJ.**

**RESERVED ON : JANUARY 19, 2016.
PRONOUNCED ON : MARCH 1, 2016**

ORAL JUDGMENT (Per. C.V. Bhadang, J.)

On 12th October, 2015, a notice indicating that the petition could be heard finally at the stage of admission was issued. Accordingly, the petition is heard finally by consent and is being disposed of accordingly.

2 The petitioners are claiming to be the owners of the land bearing CTS No.455/1 [Survey No.62, Hissa No.3 (part)]

admeasuring 3808.30 sq. metres situated at village Borivali, Mumbai. The said land was reserved for the purposes of a public garden in the development plan of Mumbai since the year 1967.

3 By this petition, the petitioners are seeking a declaration that the reservation on the said land has lapsed and that the petitioners are entitled to develop the land in accordance with the provisions of the Development Control Regulations, 1991 for Mumbai. The petitioners are further seeking a direction to the respondent no.5 to issue a Notification under Sub-section (2) of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act", for short). According to the petitioners, although the said land was reserved for a public garden since the year 1967 no steps have been taken by the respondent no.1 - corporation for acquisition of the land. The petitioners claim to be in possession of the said land under a registered development agreement dated 4th January, 1980. The said reservation for a public garden was continued in the year 1991 - 92. It further appears that on 14th March, 2014, the petitioners issued a notice (purchase notice) to the respondent no.2 under Section 127 of the said Act to acquire the said land on payment of compensation as per the prevailing law namely the

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the act of 2013", for short) which came into force with effect from 1st January, 2014.

4 On suggestion being invited from the public/land owners to the draft development plan for Greater Mumbai 2014-2034, the petitioner no.1 gave certain suggestions vide letter dated 10th September, 2014. The respondent no.3 for and on behalf of the respondent no.1 claimed vide a reply dated 29th December, 2014 that the purchase notice dated 14th March, 2014 was not in accordance with Section 127 of the MRTP Act. The petitioners are relying upon a communication dated 10th June, 2015 (Annexure - T) issued by the Sub-Divisional Officer Mumbai (Western suburb) to the respondent no.3. According to the said communication, proposals for land acquisition, in respect of certain lands, have been returned to the respondent no.3 in view of the coming into force of the Act of 2013, where although a Notification under Section 4 and a declaration under Section 6 of the Land Acquisition Act, 1894 has been published, no award under Section 11 of the Act of 1894 has been made. The communication further recites that in respect of such cases, the award has to be made in accordance with the provisions of the

Act of 2013. The proposals in respect of which notification were not issued were also returned which includes the proposal of the land in question. Accordingly, the proposals for land acquisition were returned to the respondent no.3 for their resubmission. A perusal of the said letter indicates that the land bearing CTS No.455/1 form part of the proposals which have been returned. It is thus claimed that inspite of the said land being reserved for the purpose of public garden, the same has not been acquired, even after the purchase notice has been issued and served on the respondent no.2.

5 We have heard the learned senior counsel appearing for the petitioners, Mrs.Joglekar, the learned counsel for Respondent Nos.1 to 3 and Mr. Gokhale, learned AGP for the respondent nos.4 and 5. We have considered the submissions. It is clear from the perusal of the communication dated 10th June, 2015 that although the said land has been subject matter of a reservation for public garden and inspite of a service of a purchase notice under Section 127 of the MRTP Act, the same has not been acquired by issuing a declaration under Section 126(4) of the MRTP Act within a period of twelve months from the date of service of notice under Section 127(1) of the MRTP Act.

The notice was admittedly served alongwith the documents showing title of the owners Satish Prakash Rohra and another. Hence, the decision of the Apex Court in the case of **Sataybhamabai Dawkher Vs. Shrirampur Municipal Council** will squarely apply. This aspect has not been disputed apart from the same being a matter of record.

6 In that view of the matter, we find that the petition has to succeed. In such circumstances, Rule is made absolute in terms of prayer clause 33(b) with the rider that the said land shall become available to the owner thereof for the purpose of development as otherwise permissible in case of adjacent land and subject to the Development Control Regulations for Greater Mumbai, 1991. We direct that a notification as contemplated by Sub-section (2) of Section 127 be issued within three months from today.

7 No order as to costs.

(C. V. BHADANG, J.)

(A.S. OKA, J.)