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

**WRIT PETITION NO. 7476 OF 2012**

M/s. Marvel Developers
A Partnership Firm duly registered under the
Indian Partnership Act, having office at
Simran Park, Near Someshwar Apartment,
Ulhasnagar-1, Dist: Thane.
Through their Partners S/Shri Vijay Manohar Idnani
and Shankar Prithamdas Hotchandani ...Petitioner

Vs.

1. Ulhasnagar Municipal Corporation
through the Municipal Commissioner
Ulhasnagar-3, District: Thane.

2. State of Maharashtra through the
Principal Secretary, Urban Development
Department, Mantralaya, Mumbai-32. ...Respondents

Mr. S.P. Kanuga i/b. Smt. Sapna V. Nath for the Petitioner
Mr. R.S. Desai for Respondent No.1
Ms. R.A. Salunkhe, AGP for the State Respondent No.2

**CORAM : NARESH H. PATIL &**
**M.S. KARNIK, JJ.**
**Date of Reserving the Judgment: 11th January, 2017**
**Date of Pronouncement of Judgment: 6th March, 2017**

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

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

2. The Petitioner by this Petition filed under Article 226 of the Constitution of India seeks a declaration that the reservation mentioned as U.No.132 (part) bearing Chalta No.212 and 212/1, U.No.133 Chalta No.210, U.No. 134 Chalta No.211 and U.No.135 Chalta No.209 all situate at Sheet No.76, Ulhasnagar-1, District Thane (hereinafter referred to as the 'said lands' for short) has lapsed and the reservation on the said lands for public purpose stands released forthwith and is available to the Petitioner for development, which is permissible in law.

3. The brief facts of the Petitioner's case, which could be stated thus:

The Petitioner claims to be the owner of the said lands. The Urban Development Department of the Respondent No.2- State of Maharashtra had sanctioned its development plan for erstwhile

Ulhasnagar Municipal Council vide notification No.TPS-1272 / 60185 / RPC dated 20th May, 1974, which came into force with effect from 1st July, 1974 under the provisions of Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the said Act for short). The said lands are shown as reserved for public purposes under the sanctioned development plan since 1974.

4. Though the development plan came into force with effect from 1st July, 1974, the Respondent No.1 Corporation even after expiry of 10 years from the date on which the development plan came into force has not acquired the said lands by agreements. Further, the Respondent No.1 Corporation did not resort to the provisions of Section 126 of the said Act for acquisition of the said lands read with provisions of Land Acquisition Act, 1894 within a period of 10 years from the date of commencement of development plan. No steps under the said Act for acquiring the said lands are taken even thereafter.

5. The Petitioner served purchase notice dated 14th October, 2008 under Section 127 of the said Act upon the

Respondents and the Respondent No.1 - planning authority has acknowledged the receipt of the same by putting a stamp on the said letter. The purchase notice contains full particulars of the properties of which they are the owners and also enclosed the title deeds to support their claim. Despite the receipt of the purchase notice by respondent No.1, respondents have failed to take steps as contemplated by provisions of Section 126 read with Section 127 of the said Act within the period specified and as such, according to the petitioner, the reservation of the said lands has lapsed.

6. Respondent No.1 has filed two affidavit-in-replies. First affidavit is filed by Shri Balaji Khatgaonkar, the Municipal Commissioner some time in November 2012. In the said affidavit-in-reply, respondent No.1 took the stand that purchase notice dated 14/10/2008 was not served on the office of Town Planning Department or the office of Municipal Commissioner. It is further stated in the affidavit-in-reply that the Municipal Commissioner has no record of purchase notice in its file or in the office of the Town Planning Department. The inward register maintained in the office of the Town Planning Department and office of the Municipal

Commissioner has no entries of the receipt of the purchase notice dated 14/10/2008.

7. The petitioner filed an affidavit contending that the purchase notice was tendered to the Planning Authority at the place authorised by respondent No.1 and acknowledgment on duplicate copy of the purchase notice has been obtained. The petitioner has thus served the purchase notice. According to the petitioner, the Municipal Corporation has no funds to acquire the properties and in similar matters, the reservations have lapsed on account of the Corporation's pleading that Municipal Corporation has no funds to acquire the properties of the citizens.

8. An Affidavit-in-reply has been filed on behalf of the respondent No.2, the Principal Secretary of Urban Development Department, Mantralaya. In the said affidavit, it is stated that though the petitioner has served the purchase notice on the Municipal Corporation on 14/10/2008, the Corporation recently published the revised draft development plan under Section 26 of the said Act. As per the draft development plan published on

04/04/2013 by the Municipal Corporation, the said lands are also affected by reservation of Recreational Open Space (site No. 45), 12m & 24m development plan road and nalla. The said land cannot therefore, be released from reservation. It is further stated that as per Section 46 of the said Act, Planning Authority while granting the permission shall have due regards to the proposal published under the said Act and therefore, the petitioners are not entitled to develop the said property.

9. By filing a supplementary affidavit (the second affidavit-in-reply) on 18/04/2015, respondent No. 1- Municipal Corporation has stated that after filing of the first affidavit-in-reply, the dispatch register maintained for Town Planning Department has been traced. The register reveals the entries of receipt of purchase notice . Paragraphs 3 & 4 of the said affidavit read as under :

> 3. I say that the Ulhasnagar Municipal Corporation being the planning authority has undertaken the work of preparation of revised Development plan by publishing the draft development plan vide resolution No. 71 dated 02/04/2013 under section 26 of Maharashtra Regional and Town Planning Act, 1966.
>
> 4. I say that the planning authority in the process of preparation of revised development plan has removed the

> reservation from said land and designated the same under residential zone. The approval as prescribed under section 28(4) of Maharashtra Regional and Town Planning Act 1966 has been accorded by the planning authority vide resolution No. 41 dated 17/01/2014. The gazette notification to this effect has also been published vide No.UMC/TPD/25/14 dt: 3rd June 2014. The same has been submitted to Government for final approval under section 31 of MRTP act, 1966."

10. We have heard the submissions advanced by the learned Counsel appearing on behalf of the respective parties. Our attention is invited to 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 MRTP 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."

11. For the purpose of the present case, a useful reference can also be made to the decision of the Apex Court in case of ***Praful C.Dave and ors. Vs. Municipal Commissioner and ors. (2015) 11 Supreme Court Cases 90.*** The relevant portion reads thus :

> 21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceedings for acquisition are not

initiated within ten years from the date on which the final development plan had come into force. After service of notice by the landowner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the landowner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the landowner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required

under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors. in the following terms :

> "10.....If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."

22. In fact the views expressed in Bhavnagar University, in para 34 is to the same effect:

> "34...The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse."

12. In the present case, there is no dispute that the petitioners have duly served the purchase notice on the Municipal Corporation the planning authority on 14/10/2008 and admittedly, the same has been received by the Corporation. The petitioners claim to be the owners of the said land and have taken positive steps to serve the purchase notice under Section 127 of the said Act

on the Corporation. Admittedly, the Corporation has failed to take requisite steps as demanded in the purchase notice. The respondents have not issued declaration under Section 6 of the Land Acquisition Act and therefore, it is apparent that the steps which are required to be taken for acquisition of the land are not taken within the time stipulated.

13. The submission of the learned Additional Government Pleader that in view of the publication of the draft revised development plan under Section 26 of the said Act on 04/04/2013, the reservation over the said land does not lapse cannot be countenanced in view of decision of the Apex Court in the case of **Prafulla C. Dave and ors** *(supra)*. The petitioner had issued a purchase notice dated 14/10/2008 only after expiry of 10 years from the date when the sanctioned development plan came into force i.e. with effect from 01/07/1974. The draft of the revised development plan is published on 04/04/2013 only after service of valid purchase notice dated 14/10/2008. The petitioner having taken positive steps by issuing purchase notice dated 14/10/2008 which was duly served on the Corporation and consequent failure

of the Corporation to take steps as mandated by Section 127 of the said Act, the reservation has lapsed. The action on the part of the petitioner in issuing the purchase notice dated 14/10/2008 is anterior in point of time to the publication of the draft revised development plan dated 04/04/2013. Therefore, the continuation of the reservation made for public purpose in the final development plan is clearly interdicted on account of the petitioner serving a valid purchase notice on the planning authority under Section 127 of the said Act and the consequent failure of the authority to so act in terms of Section 127. It is therefore clear that in view of the happening of the contingencies mentioned in the said Section the reservation allotment and designation over the said lands has lapsed. The subsequent act of publication of the revised draft development plan cannot save the reservation from lapsing.

14. Furthermore, now, the Corporation has subsequently taken a stand that in the process of preparation of revised development plan the said land is removed from reservation and the same has been designated as residential zone. Approval as prescribed under Section 28(4) of the said Act has been accorded

by the planning authority and gazette notification to this effect has also been published. The same has been submitted to the government for final approval under Section 31 of the said Act.

15. In these circumstances, the present Petition succeeds and accordingly allowed in terms of prayer clauses (a) & (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.

16. Rule is made absolute in the above terms. No order as to costs.

**(M.S. KARNIK, J.)** **(NARESH H. PATIL, J.)**