

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6723 OF 2014

1. Shri. Jivat Kevalram Idnani  
Age 67 yrs. Occ. Business & Agriculture  
R/at Matruchhaya, Shiv Colony,  
Nashik
2. Shri. Kanayalal Khiyalda Kevalramani  
Adult, Occ. Business & Agriculture  
R/at Devlali Camp, Tal. Nashik  
Dist. Nashik
3. Mrs. Deepa Navinkumar Tulsani  
Adult, Occ. Household & Agriculture  
R/at Behind Mhasoba Mandir,  
Nashik Road, Nashik
4. Shri. Govindram Topandas Kachhela  
Adult, Occ. Business & Agriculture  
R/at Holaram Colony, Nashik
5. Shri. Ashok Govindram Kachhela  
Adult, Occ. Business & Agriculture  
R/at Holaram Colony, Nashik
6. Shri. Devendra Shamlal Behrani  
Adult, Occ. Business & Agriculture  
R/at Upnagar, Nashik

All through the power of attorney holder  
Shri Jivat Kevalram Idnani  
Age – 67 years, Occ. Business & Agriculture  
R/at Matruchhaya, Shiv Colony,  
Nashik.

.. Petitioners

v/s.

1. State of Maharashtra

2. The Secretary,  
Urban Development Department,  
Mantralaya, Mumbai
3. Nashik Municipal Corporation,  
Nashik
4. The Municipal Commissioner  
Nashik Municipal Corporation,  
Nashik
5. Executive Engineer  
Nashik Municipal Corporation  
Nashik
6. Estate Manager,  
Nashik Municipal Corporation  
Nashik
7. The Collector  
District Nashik .. Respondents

Mr. Sandeep Phatak for the petitioners  
Mr. Murlidhar Patil for respondent no.3  
Mr. Sandeep Baber, AGP for respondent nos. 1, 2 and 7

**CORAM : M.S. SANKLECHA &  
A.K. MENON, J.J.**

**RESERVED ON : 9<sup>th</sup> FEBRUARY, 2017.**

**PRONOUNCED ON : 15<sup>th</sup> FEBRUARY, 2017**

**JUDGEMENT :- (Per M.S. Sanklecha, J)**

1. At the request of the parties, the petition was taken up for final disposal at the stage of admission. The respondent no.1 is the State of Maharashtra. Respondent no.2 is the Urban Development Department

of the State Government. Respondent no.3 is the Nashik Municipal Corporation, constituted under the Maharashtra Municipal Corporation Act, 1949. Respondent nos.4 to 6 are the Officers of the respondent no.3 Corporation and respondent no.7 is the Collector of Nashik District.

2. The petitioners claim to be owners of land admeasuring 3094.45 square meters (31 Ares) forming a part of Survey No.311/1A situated at village Pathardi Shivad (hereinafter referred to as the “said property”) within the jurisdiction of Nashik Municipal Corporation – respondent no.3. The said property is reserved as a garden in the final development plan of Nashik Municipal Corporation. The development plan was sanctioned on 28<sup>th</sup> June, 1993 by the State Government under the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) and came into force on 16<sup>th</sup> November, 1993.

3. This petition under Article 226 of the Constitution of India seeks a direction to the Government in terms of Section 127(2) of the MRTP Act to notify the de-reservation of the said property by an order published in the official gazette. This in view of the failure of the respondents to acquire the property within 10 years from the final

development plan coming into force and thereafter not taking any steps for acquisition for a further period of one year even after the purchase notice dated 4<sup>th</sup> June, 2010 was served on 8<sup>th</sup> June, 2010 upon the respondent no.3 – Corporation (Planning Authority) Besides, the petitioners also seek quashing of the Communication dated 16<sup>th</sup> March, 2014 issued by the respondent no.3 – Corporation rejecting the petitioners' application for permission for constructing a building on the said property on the ground that land acquisition of the said property is in progress.

4. On 20<sup>th</sup> June, 1993, the final development plan of respondent no.3 - Corporation in respect of Nashik was sanctioned by the State Government under Section 31 of the MRTP Act. On 16<sup>th</sup> November, 1993, the final development plan of the respondent no.3 Corporation came into force. In the final development plan, the said property was reserved as a garden.

5. On 10<sup>th</sup> September, 2008, the petitioners purchased the said property under a registered Sale Deed from one Mr. Dattatraya Bhaguji Jachak and others. The property was a part of the 42 Are, being a part of Survey No.311/1A purchased by the petitioners.

6. In view of the said property being reserved under the final development plan, had not been acquired within 10 years from the development plan coming into force, the petitioners in exercise of its rights under Section 127 of the Act issued a purchase notice dated 4<sup>th</sup> June, 2010 to respondent no.3 – Corporation. The purchase notice dated 4<sup>th</sup> June, 2010 was served upon the respondent no.3 – Corporation on 8<sup>th</sup> June, 2010 along with documents showing petitioners' title and interest in the said property i.e. 7x12 extract, copy of the Sale Deed and a copy of the development plan in respect of the said property.

7. In terms of Section 127 of the MRTP Act, if the said land is not acquired or no steps are taken for its acquisition within a period of 12 months of the service of the purchase notice, then, the acquisition is deemed to have lapsed. The said property would then be deemed to have been released from such reservation.

8. The petitioners state that after the service on 8<sup>th</sup> June, 2010 of the purchase notice on the respondent no.3 – Corporation, neither was the said property acquired nor any steps taken for a period of one year

to acquire the said property. Therefore, the petitioners were under a *bona fide* belief that the said property has been freed from reservation as a garden in the development plan. Consequently on 26<sup>th</sup> July, 2013, the petitioners submitted its building plans for sanction, to the respondent no.3 Corporation.

9. On 16<sup>th</sup> May, 2014 the petitioners received a communication from respondent no.3 corporation rejecting its application for sanction of building plan dated 26<sup>th</sup> July, 2013. This on the ground that the process of acquiring the said property has already commenced.

10. It was in the light of the above order / communication dated 16<sup>th</sup> May, 2014 that the present petition has now been filed seeking to quash the communication dated 16<sup>th</sup> May, 2014 rejecting the petitioners' application for sanction to its building plans on said property, as the basis of the communication dated 16<sup>th</sup> May, 2014 i.e. reservation of the said property has ceased. The petitioners seek a direction for release of the said property from acquisition under Section 127 of the MRTP Act and further a direction to the State Government to issue a Notification in the Official Gazette declaring the said property as free from reservation.

11. The respondents do not dispute that the said property has not been acquired within 10 years of the development plan coming into force. Thus, the owner has a right to issue a purchase notice in this Section 127 of the Act. It is also an undisputed position before us that the issue in principle stands concluded by the decisions of the Apex Court in *Shriram Municipal Council Vs. Satyabhamabai Bhimaji Dawkher (2013) 5 SCC 627* and the earlier decision in the case of *Girnar Traders Vs. State of Maharashtra (2007) 7 SCC 555*. In the aforesaid cases, the issue was whether the reservation of land in the development plans prepared under the MRTP Act is deemed to have lapsed because the same was not acquired or no steps were commenced for acquisition after service of purchase notice. The Apex Court held that if no declaration under Section 6 of the Land Acquisition Act is issued, then it cannot be said that steps for acquisition had commenced for the purposes of Section 127 of the MRTP Act.

12. Thus, factually it is not disputed that the purchase notice was served on 8<sup>th</sup> June, 2010 by the petitioners under Section 127 of the MRTP Act to the respondent no.3 – Corporation and no steps to acquire the said property in terms of the above decision was taken by

respondent no.3 Corporation till 8<sup>th</sup> June, 2011.

13. However, Mr. Patil, the learned Counsel appearing for the respondent no.3 Corporation objects to the petition being entertained and relief being granted to the petitioners on the following grounds :-

(a) The Writ Court should not entertain the petition and grant any relief to the petitioners as there is a gross delay on the part of the petitioners in moving this Court under Article 226 of the Constitution of India;

(b) The purchase notice dated 4<sup>th</sup> June, 2010 served upon the respondent no.3 Corporation was defective, inasmuch as it was not accompanied with a certified copy of the measurement map, prepared by the Survey Officer. The measurement map, according to the respondent no.3 Corporation, is necessary, so as to identify the said property and take steps for acquisition of the same; and

(c) The respondent no.3 Corporation had as far back as on 18<sup>th</sup> June, 2008 submitted its proposal for acquisition of the said property to the State Government i.e. Collector of Nashik. However, according to the respondent no.3 Corporation, the petitioners and the Officers of the State Government had acted in collusion and ensured that the declaration of acquisition under Section 6 of the Land Acquisition Act is



not issued within a period of one year from the receipt of the purchase notice. In the above view, it is submitted that no relief can be granted to the petitioners as they have not come to the Court with clean hands as they have colluded with the State Government to delay the acquisition process by engaging in protracted correspondence so as to ensure that the period of 12 months from the date of the purchase notice expires.

14. So far as the first submission is concerned, we find that the petitioners have stated in the petition that after having giving the purchase notice on 4<sup>th</sup> June, 2010 to the respondent no.3 Corporation and for one year thereafter, the respondent no.3 Corporation and / or the State Government took no steps to acquire the said property by declaration under Section 6 of the Land Acquisition Act. Thus, it followed that the said property had become free from reservation for garden under the development plan and available to the petitioners for enjoyment. It was in the aforesaid circumstances, that on 27<sup>th</sup> June, 2013 that the petitioners submitted a building plan to the respondent no.3 Corporation for the purposes of constructing a building on the said property. In response to the above, it was only on 16<sup>th</sup> May, 2014 that the petitioners were informed that the building plans submitted for

sanction cannot be processed, as acquisition of the said property under the MRTP Act was in progress. It was this communication dated 16<sup>th</sup> May, 2014 from the respondent no.3 Corporation that alerted the petitioners for the first time that the respondent no.3 Corporation is acting in defiance of the statutory provisions of Section 127 of the MRTP Act. It is this action on the part of the respondents led the petitioners to file this petition.

15. The above chronology of events very clearly evidences the fact that there has been no laches and / or undue delay on the part of the petitioners in moving this Court as the cause of action only arose when the respondent no.3 Corporation by its letter dated 16<sup>th</sup> May, 2014 asserted its right over the said property, even though the reservation had lapsed by virtue of Section 127 of the MRTP Act. Thus, there is no substance in the first objection canvassed on behalf of the respondent no.3 Corporation.

16. So far as second objection of the respondent no.3 Corporation is concerned i.e. the purchase notice is defective in the absence of the same being accompanied with measurement map prepared by the Survey Officer, we find that the aforesaid submission is not supported

by a plain reading of Section 127 of the MRTP Act. In terms of Section 127 of the MRTP Act, the owner of the said property on the expiry of 10 years from the development plan coming into force, is entitled to serve a purchase notice upon the respondent no.3 Corporation “along with documents showing his title or interest in the said land” in case the property has not been acquired. The aforesaid provision does not require any measurement map to be submitted along with the purchase notice. The only requirement under Section 127 of the MRTP Act is that the purchase notice should be accompanied along with the documents showing his title or interest in the subject land. In this case, it is undisputed that the petitioners had submitted documents evidencing their title to the said property along with the purchase notice.

17. In fact, this objection to the purchase notice being incomplete as canvassed by Mr. Patil has been taken by respondent no.3 Corporation only in its affidavit-in-reply of Mr. Bhaskar U. More, dated 5<sup>th</sup> November, 2014. In case, the purchase notice dated 4<sup>th</sup> June, 2010 (received on 8<sup>th</sup> June, 2010) was incomplete / defective, for lack of measurement map, the least that the respondent no.3 Corporation as a State ought to have done was to communicate the same to the

petitioners, at the time when they received the purchase notice. If the non submission of a measurement map resulted in a handicap in identifying the property, to issue a declaration under Section 6 of the Land Acquisition Act, then asking for the same would have enabled it to identify the property. However, at that time, no such objection was taken, as presumably even according to the respondent no.3 Corporation, there was no requirement of measurement map to accompany the purchase notice under Section 127 of the MRTP Act.

18. In any case, this issue is no longer *res integra* as this Court in *Jaika Vanijye Ltd. and Anr. and Ors. Vs. State of Maharashtra & Ors. (2014) 1 All MR 136* had in respect of an identical objection namely, non-supply of measurement map on the part of the respondent Corporation therein, negated the demand by pointing out that the same is not a statutory requirement under Section 127 of the Act. This in spite of the fact that on receipt of the purchase notice, the Corporation therein had raised the objection of the purchase notice not being accompanied by measurement map and yet the Court negated the requirement of supplying measurement map along with the purchase notice under Section 127 of the Act. Thus, there is no merit in the second objection.

19. The third objection of the respondent no.3 Corporation that the petitioners are not entitled to any relief as there is a collusion between the petitioners and the State of Maharashtra. This collusion is sought to be established by the affidavit-in-reply dated 5<sup>th</sup> November, 2014 of Mr. More the Estate Manager of respondent no.3 Corporation by merely stating that the Officers of the State Government did not issue the necessary declaration under Section 6 of the Land Acquisition Act and only called upon the respondent no.3 Corporation to submit the measurement map when the same was not necessary condition for issue of declaration under Section 6 of the Land Acquisition Act. We note that no particulars are indicated in the affidavit-in-reply or at the hearing to establish that the petitioners were in any manner responsible and / or participated in ensuring that the Officers of the State do not discharge their duties. Merely because the State Government, according to the respondent no.3 Corporation, did not act in the interest of the respondent no.3 Corporation, it cannot follow that it was because of collusion between the petitioners and respondent no.3 Corporation.

20. Moreover, the allegation made by the respondent no.3

Corporation of *malafides* on the part of the Officers of the State Government has not been appropriately pleaded. In case, the Officers of the State Government were deliberately delaying the issuance of a declaration under Section 6 of the Land Acquisition Act, as alleged before us, then nothing prevented the respondent no.3 Corporation from filing a petition in this Court seeking a direction to the State Government to issue the necessary declaration under Section 6 of the Land Acquisition Act. The respondent no.3 Corporation accepted the non-issuance of declaration under Section 6 of the Land Acquisition Act by the State Government and did not challenge the same. The allegation of *malafide* must be specifically pleaded with sufficient particulars so as to enable the party against whom *malafides* are alleged to suitably respond. In the above view, we find that no substance in the allegation of collusion between the officers of the State Government and the petitioners as alleged by the respondent no.3 Corporation.

21. Therefore, we allow the petition by passing the following order :-

- (i) We declare that the said property stands released from reservation under the sanctioned development plan for the city of Nashik which came into force from 16<sup>th</sup> November, 1993;

(ii) Consequently, the said property being free from reservation is now available to the petitioners for the purposes of development, as otherwise permissible under the development plan subject to the boundaries being correctly established and in accordance with law;

(iii) Thus, we set aside the communication dated 16<sup>th</sup> May, 2014 rejecting the petitioners' application dated 26<sup>th</sup> July, 2013 for sanction of its building plan on the said property and the respondent no.3- Corporation will consider afresh the application of the petitioners dated 26<sup>th</sup> July, 2013; and

(iv) We direct the State Government to issue a Notification in terms of Section 127(2) of the MRTP Act in respect of the said property within a period of 3 months from today.

(v) No order as to costs.

**(A.K. MENON, J.)**

**(M.S. SANKLECHA, J.)**