

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 3092 OF 2013

1. Shri Vijay Ganpat Mogre,
aged about 63 years,
occupation. - , R/o Chhota
Bazar Ward, Chandrapur.
2. Sau. Smita Vijay Mogre,
aged about 52 years,
R/o Chhota Bazar Ward,
Chandrapur.
3. Fakruddin Saifuddin Bohara,
Aged about 55 years,
r/o Balaji Ward, Chandrapur.
4. Ahamad Asgarali Songirwala,
aged about 47 years,
r/o Balaji Ward, Chandrapur.
5. Mehmood Sasuuddin Samnani,
aged about 47 years, r/o
Ramnagar, Chandrapur, Tah.
& District – Chandrapur.
6. Firoz Samsuddin Samnani,
aged about 39 years, r/o
Ramnagar, Chandrapur,
Tah. & Dist. Chandrapur.
7. Smt. Johra Khanon Samsuddin
Samnani, aged about 63 years,
r/o Ramnagar, Chandrapur,
Tah. & Dist. Chandrapur.

Petitioner Nos. 5, 6 & 7 through Power
of Attorney holder Zulfiqar Shamsuddin.

... PETITIONERS

Versus

1. State of Maharashtra
through the Secretary,
Urban Development Department.
2. Chief Executive Officer,
Maharashtra Housing and Area
Development Authority,
Kalanagar, Bandra East, Mumbai.
3. Director of Town Planning,
Maharashtra State Central Offices
Building, Pune.
4. Nagpur Housing and Area
Development Board, Nagpur thr.
its Chief Officer, Civil Lines,
Nagpur.
5. Sub-Divisional Officer & Land
Acquisition Officer, Chandrapur.
6. Collector, Chandrapur. ... RESPONDENTS

Shri C.S. Kaptan, Senior Advocate with Shri Kalangiwale, Advocate for
the petitioners.

Shri D.M. Kale, AGP for respondent Nos.1, 3, 5 & 6.

Shri P.N. Kothari, Advocate for respondent Nos. 2 & 4.

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**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.**

DATE OF RESERVING THE JUDGMENT : JANUARY 21, 2015.

DATE OF PRONOUNCING JUDGMENT : FEBRUARY 16, 2015.

JUDGMENT : (PER B.P. DHARMADHIKARI, J.)

Rule. Rule is made returnable and heard finally with the consent of Shri Kaptan, learned Senior Advocate with Shri Kalangiwal, learned Advocate for the petitioners, Shri Kale, learned AGP for respondent Nos. 1, 3, 5 & 6 and Shri Kothari, learned counsel for respondent Nos. 2 & 4.

2. The petitioner in this writ petition has approached for declaration that award passed in Land Acquisition Case No. 1/65/2005-2006, Mouza – Khutala, District – Chandrapur, on 15.03.2008 is illegal and void. The other prayer is to declare that after purchase notes issued under Section 49, the land acquisition proceedings could not have been initiated at all.

3. This Court has heard the parties on 28.10.2014 and passed the following order :

“Heard for some time.

The question is why Legislature has made two provisions in Maharashtra Regional and Town Planning Act, 1966 i.e. Section 49 and section 127. Whether the recourse to section 49 is permissible only to get land

removed from reservation even before expiry of period of 10 years as contemplated under section 127 and then to sell it in open market ? Whether such course if allowed, would defeat legislative scheme of giving time of 10 years to planning authorities ?

On the request of the advocates for the parties, we place this writ petition for further consideration after two weeks.”

4. It is not in dispute that property Survey No. 90/1, 90/2, 90/3 and 90/5 of Mouza - Khutala, District – Chandrapur, are subject matter of reservation No. 38 for hospital and reservation No. 39 for Secondary School. The petitioner has in para 1 of his petition has stated that he is challenging communication dated 17.01.2013 sent by the Chief Officer of Maharashtra Housing and Area Development Authority (Respondent No. 2) by which the said authority has refused to return back the land to the petitioners.

5. Development Plan for new Township of Chandrapur was sanctioned and came into force on 30.06.1998. The petitioner submits that out of Total 1391.71 Hectares of land required therefor, 247.68 Hectares was to be acquired for public road, public housing,

growth Centre and the complex of Respondent No. 2 – Housing Board. The remaining land was to be developed by land owners/ institutes/ authority. He submits that except for development of road, no other work was undertaken in the Area. As authorities did not take any action, the petitioner issued notice on 17.05.2004 under Section 49 of Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 1966 Act) for its purchase. The said purchase note was ultimately confirmed on 09.11.2004 under Section 49(4) of 1966 Act. Respondent No. 2 which was appointed as Special Planning Authority for new Chandrapur town could have started acquisition proceedings within one year thereafter but no such steps were taken. Hence, the reservation on said lands i.e. reservation Nos. 38 & 39 lapsed and lands become available for its development as per user of adjacent land.

6. It is submitted that after expiry of said period of one year, notice under Section 126 of 1966 Act read with Section 6 of Land Acquisition Act was issued on 21.12.2005 and was published on 22.03.2007. Section 11 award has been made on 15.03.2008. It is contended that thus, for the first time, and that too after expiry of one year, award has been made. It is, therefore, void and unsustainable.

7. Shri Kaptan, learned Senior Advocate with Shri Kalangiwale, has in the light of orders passed on 28.10.2014 supra invited our attention to unreported judgment dated 11.06.2012 in Writ Petition No. 506 of 2011 to which one of us (B.P. Dharmadhikari, J.) is a party. He, however, states that the said judgment does not recognize the fact that Section 127 of 1966 Act and Section 49 thereof operate in different fields. He contends that after confirmation of purchase notice issued by the petitioners, initiation of land acquisition proceedings on 21.12.2005 by the Collector, being beyond one year is void. Consequential award under Section 11 of Land Acquisition Act passed on 15.03.2008 is equally unsustainable and must be set aside. He has relied upon various judgments which consider either provisions of Section 127 or then Section 49 of 1966 Act.

8. Shri Kothari, learned counsel for respondent Nos. 2 & 4 – Housing Board submits that award has been made on 15.03.2008 and present petition has been filed on 17.04.2013 i.e. after almost five years. Hence, in the light of judgment in the case of Municipal Corporation, Greater Bombay vs. the Industrial Development Investment Co. Pvt. Ltd. & Ors., reported at AIR 1997 SC 482, particularly paras 23 and 28, this Court should not intervene in writ jurisdiction. He

also relies upon the judgment of this Court in the case of Vithal Rana Bhopi & anr. vs. City and Industrial Development Corporation & Ors., reported at 2013 (5) Mh. L.J. 847, to submit that the provisions of Sections 49, 117 and 127 occupy separate fields. He further submits that under Section 49(7), it is open to Respondent No. 2 to proceed to acquire land. Our attention is invited to the statement made by Respondent Nos. 2 & 4 in reply affidavit that the lands are acquired for public purpose. Land bearing Survey No. 38, reserved for hospital purposes is allotted to Indian Sickle Cell Research Centre of Central Government. He, therefore, prays for dismissal of writ petition.

9. Shri Kale, learned AGP for respondent Nos. 1, 2, 5 & 6 supports the arguments of Shri Kothari, learned counsel. He points out that the entire case law pressed into service by Shri Kaptan, learned Senior Advocate, does not consider the impact of Section 49 on Section 127 and need felt by the State Legislature to provide such sections in the same Act.

10. In the judgment dated 11.06.2012 delivered in Writ Petition No. 506 of 2011, this Court has made the following observations:

“6. Under Section 127 of 1966 Act, the Planning Authority like Municipal Council gets time of 10 years to acquire the land which is reserved for particular purpose in development plan. The person like the petitioner can get the leave to develop by forcing Municipal Council to acquire only after waiting period of 10 years in normal circumstances. Law enables him to serve purchase notice after expiry of period of 10 years after publication of final development plan, if in the meanwhile land is not acquired by local authority. Here, the petitioner has issued purchase notice on 28.08.1985 i.e. within one year of the publication of final Development Plan. Section 49 permits him to do so, however, the said provision is by way of an exception and it enables a genuine and honest owner to exercise his rights when that exercise is really warranted and there is an element of urgency to it. It also applies in very limited situations but, then due to previous litigation, we are not required to delve into said aspect. The limited remedy or opportunity given to the land owner under Section 49 who bona fide need to develop immediately, is not with a view to circumvent scheme of Section 127 of 1966 Act.

7. Here, though the petitioner served a purchase notice and then got permission to develop, the land has not been developed at all, its physical condition remains the same. The contention that the Municipal Council cannot seek re-reservation of land for playground or road is, therefore, misconceived. The petitioner has for last more

than 28 years, not put his land to any non agricultural purposes. He has not pointed out any communication sent to the Tahsildar informing him about the actual change of user. Even details of alleged sales are not given & purchasers are not joined as parties before us. We are, therefore, satisfied that the petitioner used the exceptional remedy under Section 49 of 1966 Act, only to circumvent provisions of Section 127 of Maharashtra Regional & Town Planning Act, 1966.”

11. Various precedents which consider provisions of Section 127 of 1966 Act or effect of deeming provision therein are looked into in said judgment in para 8. This Court has found that the normal provision for lapsing of reservation is contained in Section 127 of 1966 Act. However, when owner is in urgent need, 1966 Act does not oblige him to wait for 10 years and in certain contingencies it is open to him to serve purchase notice under Section 49. Here, the waiting period is one year only. Thus, exigencies are taken care of and property is not locked but released through this mechanism where circumstances so warrant by State Legislature. The effort is to balance right of an individual to enjoy his property with public need.

12. Shri Kaptan, learned Senior Advocate has relied upon the

judgments of the Hon'ble Apex Court in the case of Prakash R. Gupta vs. Lonavala Municipal Council & Ors., reported at (2009) 1 SCC 514, Prakash Rewadmals Gupta vs. Lonavala Municipal Council & Ors., reported at 2002 (2) Bom. C.R. 484, Majmudar Laiq Ahmed Shaikh vs. Municipal Corporation of Greater Mumbai & Ors., reported at 2012 (2) Bom. C.R. 50. In these judgments the Hon'ble Court was not required to consider the legislative wisdom in enacting two such provisions in the same Act. If arguments of Shri Kaptan, learned counsel are accepted, nobody will like to wait for 10 years and then serve notice as contemplated by Section 127 of 1966 Act. Immediately everybody will serve such notice, get his property released from reservation and then wait till he gets desired response. This will frustrate the very purpose of 1966 Act and defeat legislative scheme. That is not the purpose for enacting Section 49.

13. In this situation, as the petitioners have failed to make out any case to persuade us to take a different view of the matter, we find the controversy covered by our judgment dated 11.06.2012. The petitioners in para 4 have stated that after the Development plan came into force on 30.06.1998, it was incumbent on the authorities to issue notice under Section 126(2) of the 1966 Act, within one year and that

was not done. In para 5, they state that because of this inaction on the part of the authorities to take any action regarding acquisition, on 17.05.2004, they served notice under Section 49. The petitioners, therefore, have given notice before expiry period of 10 years. They have also not pointed out any exceptional circumstance or their design to develop their lands as per law. It is seen that till date the land has not been developed. Award acquiring the same has been published on 15.03.2008 i.e. shortly after expiry of period of ten years but then the proceedings for acquisition have commenced before the expiry of said period as contemplated by Section 127(1) of 1966 Act. This award is being questioned about after five years.

14. We, therefore, do not find any case made out warranting intervention under Article 226 of the Constitution of India. Writ Petition is accordingly dismissed. Rule is discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDGE

JUDGE

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