Sharayu Khot.

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

WRIT PETITION NO. 2005 OF 2014

F.E. Dinshaw Trust & Ors. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

Mr Girish Godbole, a/w Ms. Rutuja Patil, i/by Negandhi Shah & Himayatullah, for the Petitioners.

Mr. Hemant Haryan, AGP, for the Respondent-State.

Mr. Narendra V. Walawalkar, Senior Advocate, a/w Ms. Vanadana Mahadik, for the Respondent-BMC.

CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.

Reserved on : 9 April 2018
Pronounced on : 3 May 2018

ORAL JUDGMENT : ***(Per Riyaz I. Chagla, J.)***

1. The Petitioners by the present Petition claims that

the reservation of piece and parcel of land bearing Survey 239 (part), CTS No. 827 (part) admeasuring 1,65,602 sq.meters situated at Dindoshi, Village Malad (East), Taluka-Borivali (for short "*the said land*") forming part of the larger property bearing Survey No. 239 (part), 240 (part) and 241 (part) totally admeasuring 23, 77, 451 sq.meters of Village Malad (East) Taluka Borivali on the North of the Aarey Milk Colony, Goregaon (East), "P" Ward (for short "*the larger property*") has lapsed and seek directions against the Respondent No. 1 to publish the order in the official gazette notifying the lapsing of the reservation. A further direction has been sought against Respondent No. 2 to forthwith handover quiet, vacant and peaceful possession of the said land to the Petitioners. Notice for final hearing at the stage of admission has been issued.

2. A brief background of facts are necessary:-

The Petitioner No. 1 is a Public Charitable Trust established on 28 December 1973 and registered under the

provisions of the Bombay Public Trusts Act, 1950. The Petitioners No. 2 to 7 are the Trustees of the Petitioner No. 1-Trust and responsible for administration of the affairs of the Petitioner No. 1-Trust. It is claimed in the Petition that the said land vests in the Petitioners No. 2 to 7 in their capacity as Trustees of the Petitioner No. 1-Trust.

3. The larger property (including the said land) was reserved for extension to the Aarey Milk Colony as per the sanctioned Development Plan of "***P***" Ward in the year 1967. The Respondent No. 2 sought to acquire the larger property under the Maharashtra Regional and Town Planning Act, 1966 (for short "*the said Act*") for the public purpose for which it was reserved viz. expansion of Aarey Milk Colony and for setting up of centralized cattle stables. Respondent No. 2 being the Planning Authority accorded its approval by Resolution passed on 17 September 1973 to initiate proceedings to acquire the larger property under Section 126 and 127 of the said Act by making an Application to the Respondent No. 1. Respondent No.

2 had, on 22 March 1974, pending the acquisition of the larger property under the said Act, taken over advance possession of 22,51,430.1 sq.meters (for short "*the MCGM possessed land*") i.e. out of the larger property. Upon the enactment of the Maharashtra Private Forests (Acquisition) Act, 1975 (for short "*Forests Act*") with effect from 31 August 1975, the larger property stood vested in the Respondent No. 1 and the acquisition proceedings, were rendered unnecessary. The Petitioner No. 1 challenged the validity of the Forests Act before this Court. Consent Terms came to be filed in the Miscellaneous Petition No. 1485 of 1975, wherein it was agreed that the larger property shall not be a 'forest' or a 'private forest' under the Forests Act and will not be claimed by Respondent No. 1. It is stated that Respondent No. 2 had informed Petitioner No. 1 that a portion of the larger property (advanced possession of which had been taken) was developed by Respondent No. 2 by constructing roads and laying of galvanized iron pipelines and would compensate the Petitioner No. 1 for only the portion of land which had been developed i.e. for 40 acres. The balance

undeveloped portion of the larger property would be excluded from acquisition proceedings as it was rocky and hilly and not suitable for relocating cattle.

4. Respondent No. 2 by its Resolution No. 19, in partial modification of its Resolution No. 616 dated 17 September 1973 resolved to return 20,85,828.10 sq.meters (MCGM possessed land excluding the said land) to the Petitioner No. 1, as the same was not suitable for the purpose of cattle settlement and was encroached upon. The acquisition of only the balance MCGM possessed land being the said land admeasuring 1,65,602 sq.meters would be acquired. Thus, Respondent No. 2 handed back physical possession of portion of the larger property and the remaining said land continued to remain in possession of Respondent No. 2. Thereafter, certain negotiations were carried on between Petitioner No. 1 and Respondent No. 2 regarding an agreement to be arrived at for acquisition of the said land and the compensation for such acquisition.

5. On 30 April 1984, a draft Revised Development Plan was published under which the said land was reserved for public purpose of "Housing the Dis-Housed". Meetings and negotiations were held between the Petitioner and the Respondent No. 2 for acquisition of the said land for the stated public purpose and in the meeting dated 19 April 1985 it was decided that Respondent No. 2 would acquire the said land immediately under the said Act and the part payment of Rs. 20/- per sq.meter would be made by the Respondent No. 2 to the Petitioner No. 1 within one month from the date thereof. The parties would also request the Land Acquisition Officer to pass a Consent Award at the rate determined by the Director of Town Planning. However, no agreement could be arrived at between the parties despite several discussions and exchange of correspondence, including exchange of draft agreement for acquisition of the said land. On 29 January 1988, Respondent No. 2 informed the Petitioner No. 1 that acquisition proceedings by Respondent No. 1 would have to await finalization of the draft revised developed plan owing to the difference in the

reservation of the said land. On 15 April 1993, the Revised Development Plan was sanctioned and came into force on 1 June 1993. However, no steps for acquisition were taken and on 4 July 2000 the Additional Collector, Mumbai Suburban District Informed the Respondent No. 2 that the Land Acquisition Officer had requested for a new proposal to be submitted regarding the proposed acquisition, because the earlier acquisition proceedings has been closed. Petitioner No. 1 reminded Respondent No. 2 to look into the acquisition proceedings which remained pending for more than 25 years and the Respondent No. 2 was further reminded to pay compensation for handing over the possession of the said land.

6. The Petitioner No. 1 served purchase notice dated 16 September 2011 under Section 127 of the said Act on Respondent No. 2, requesting the Respondent No. 2 to either de-reserve the said land or acquire the said land within 12 months. After the prescribed period under Section 127 of the said Act was over, Petitioner No. 1 on 17 May 2013 informed the

Respondent No. 2 that the reservation of the said land had lapsed. However, the Respondent No. 2 failed to respond to the Petitioner No. 1's letter and failed to published the order in official gazette notifying that the reservation of the said land under the Revised Development Plan has lapsed. Being aggrieved by the inaction on the part of the Respondents, the Petitioners have filed this Petition. A Reply has been filed on behalf of the Respondent No. 2 by Shri. M.G. Mulay, Executive Engineer (Development Plan) P&R Wards, opposing admission of the Writ Petition. It is stated in the said Affidavit that in the Revised Development Plan 2034, the said land is designated for Rehabilitation and Resettlement (DR.2.1) and municipal school purpose (DE 2.1) as per sanction of Corporation vide Resolution 393 dated 31 July 2017 submitted to the State Government for final sanction as per provisions of the said Act.

7. The learned Counsel appearing for the Petitioners has submitted that the reservation of the said land has lapsed upon the expiry of the prescribed period under Section 127 of

the said Act and despite which the Respondents have retained the said land. He has submitted that on 4 July 2000, additional Collector, Mumbai Suburban District had informed the Respondent No. 2 that the earlier acquisition proceedings had been closed due to inaction on the part of the Respondent No. 2 and requested for a new proposal to be submitted regarding proposed acquisition of the said land. He has submitted that no new proposal was ever sent. He has submitted that the said land had been reserved for "Housing the De-Housed" in the draft Revised Development Plan published on 30 April 1984 and that after lapse of ten years, the Petitioners had issued the purchase notice on 16 September 2011 as no step had been taken by the Respondents to acquire the said land for the stated purpose. He has referred to the letters which are tendered to this Court today by the learned Senior Counsel appearing for the Respondent No. 2 viz letters dated 1 February 1988, 6 April 1991 and 2 February 1993 and which it is alleged that the Petitioners have suppressed. He has stated that these letters are a part of the correspondence referred to in the Petition, although the same

were not annexed. He has submitted that from the correspondence it is apparent that an agreement was sought to be arrived at for acquisition of the said land, but the agreement never materialized, despite Respondent No. 2 agreeing to make advance payment of the said land, which is in its possession. Further, notification for acquisition of the said land has not been issued and hence, the agreement for acquisition of the said land contemplated under Section 126(1)(a) did not fructify.

8. The learned Counsel for the Petitioners relied upon the Judgment of the Supreme Court in ***Tukaram Kana Joshi and Ors. Vs. Maharashtra Industrial Development Corporation & Ors***.[1] in support of their contention that there is a legal obligation of the authorities to complete the acquisition proceedings at the earliest and to make payment of requisite compensation. He submits that the Respondents despite having taken possession of the said land, failed to take steps for acquisition of the said land by making payment of requisite compensation for several years after possession was handed

1 ***(2013)1 SCC 353***

over. He therefore, submits that it is not open for the Respondent, at this stage, to contend that the acquisition proceedings are still alive and that they should be given an opportunity of completing the acquisition and making payment towards the same. He has accordingly, submitted that acquisition of the said land has lapsed after expiry of the prescribed period under Section 127 of the said Act. He has thus, submitted that necessary directions be issued against Respondent No. 1 to publish the notification in the official gazette notifying that the reservation of the said land has lapsed and that the Respondent No. 2 be directed to handover the possession of the said land to the Petitioners.

9. The learned Senior Counsel appearing for the Respondent No. 2 has submitted that the possession of the said land had been voluntarily surrendered by the Petitioner No. 1 to the Respondent No. 2 and hence, recourse to Section 127 of the said Act cannot be taken. He has submitted that in the present case the Petitioners have waived their rights to take recourse to

Section 127 of the said Act and/or claim that the reservation in respect of the said land has lapsed. He has referred to Section 126(1) as amended of the said Act and has submitted that there are two modes open to the Respondent No.2 for acquiring the said land viz. by an agreement between the parties by paying an amount agreed to and grant of TDR against the surrender of the said land. He has submitted that an agreement had been contemplated between the Petitioner No. 1 and the Respondent No. 2 and which is reflected in the correspondence exchanged between the parties. He has drawn reference to letter dated 1 February 1988 along with the letters dated 6 April 1991 and 2 February 1993 addressed by the Petitioner to the Respondent No. 2 which he claims, have been suppressed by the Petitioners in the Petition. He has submitted that Section 126(1) was amended to enable the Planning Authority or an appropriate authority to acquire the land *inter alias* by agreement and paying the amount agreed to. In the present case, the Respondents proposed to acquire the said land by agreement, by agreeing to make payment to the Petitioners of an agreed

amount for acquisition of the said land. However, payment for acquisition had not been possible due to the Petitioners unwillingness to finalise the agreement. He has submitted that the Respondents are even today willing to acquire the said land by making suitable payment for acquisition of the said land. He has thus, submitted that this Court should grant time to the Respondents for acquisition of the said land.

10. We have considered the submissions. We find that the said land was handed over by Petitioner No. 1 to Respondent No. 2, conditional upon the Respondents' acquiring the said land. It is clear from Section 126(1) of the said Act that one of the modes available to the Respondent No. 2 Corporation for acquiring the said land is by agreement and by paying an amount agreed to. We find that such an agreement was not arrived at between the Petitioners and the Respondent No. 2. In fact, it is observed that by letter dated 4 July 2000 the Additional Collector, Mumbai Suburban District (Respondent No. 3) had closed the acquisition proceedings and had requested

for a new proposal to be submitted by Respondent No. 2. The Respondent No. 2 has till date not come up with a new proposal for acquisition of the said land. We are of the view that the purchase notice issued on 16 September 2011 i.e. after expiry of ten years from the date of coming into force, the Development Plan is a valid and legal purchase notice served under Section 127 of the said Act. It is clear from Section 127 of the said Act that steps are required to be taken for acquisition of the said land within the prescribed period from service of the purchase notice. Failure to do so would result in the lapsing of reservation of the said land. It is an admitted fact that the Respondents have failed to acquire the said land within the prescribed period. It is well settled that mere exchange of correspondence between Respondent No. 2 and Respondent No. 1 proposing to take steps for acquisition of the said land or the subsequent reservation of the said land in the draft Revised Development Plan 2034 for municipal school purpose and Rehabilitation and Resettlement, which is a different public purpose than that for which the said land was to be acquired viz. Housing the De-Housed cannot

revive the lapsed reservation under Section 127 of the said Act.

11. It is clear from the Judgment of the Supreme Court in ***Tukaram Kana Joshi*** (supra) that the legal obligation on the part of the authorities is to complete the acquisition proceedings at the earliest and to make payment of requisite compensation. It is clear that the Respondents cannot deprive the Petitioners from enjoying the said land by retaining the said land without completing its acquisition.

12. Further, where there is no agreement to acquire the said land by payment of compensation, the steps contemplated by the legislature for the acquisition of the land can only be by the issuance of a declaration under Section 6 of the Land Acquisition Act, 1894 read with Sub-Section (2) or (4) of Section 126 of the said Act. The Supreme Court in the case of ***Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and Ors***.[2] has observed thus:-

2 ***(2013)5 SCC 627***

“"42. We are further of the view that the majority in Girnar Traders (2) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government."

"43. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as

commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 126 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31 (5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under

Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

13. In the present case, admittedly a section 6 Notification was not issued. Hence adverting to the principles of law laid down by the Supreme Court in the aforesaid decision it would be required to be held that reservation of the land in question had lapsed by operation of section 127 of the said Act. We are thus, of the view that the Writ Petition deserves to be allowed. Accordingly, the following order:-

(i) The State Government is directed to publish the order in the official gazette notifying the lapsing of reservation of the said land as per requirements of Section 127(2) of the said Act, which shall be done within a period of one year from today.

(ii) The Respondent No. 2 is directed to handover quite, vacant and peaceful possession of the said land to the Petitioners within one year from the date of this order. Upon so handing over, the land shall become available to the Petitioners for development as otherwise permissible in the case of adjacent lands. During this period of one year, it will be open for the State Government to initiate proceedings for acquisition under the law of compulsory acquisition. In such case, the State Government will be entitled to apply for modification of this direction to deliver

possession.

(iii) Writ Petition stands allowed on the above terms with no order as to costs.

[RIYAZ I. CHAGLA J.] **[ABHAY S. OKA, J.]**