Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7702 OF 2015

Shri. Amuksidha Shrikant Majge & Anr. ...Petitioners

Versus

The Commissioner,
Sangli, Miraj and Kupwad Municipal
Corporation, Sangli & Ors. ...Respondents

Mr. Ashutosh M. Kulkarni, for the Petitioners.

Mr. Shivaji Annappa Masal, for the Respondents No. 1 and 2.

Mrs. R.A. Salunkhe, AGP, for the Respondent No. 3.

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

Reserved on : 30 July 2018
Pronounced on : 17 September 2018

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

1. Rule. Rule made returnable forthwith. Heard by

consent of parties.

2. The Petitioners by the present Petition are seeking declaration that the reservation made by the Respondent No. 1 on the survey 834 Hissa – 3B/1, situated in the residential area of Miraj within the boundaries of Sangli, Miraj and Kupwad Municipal Corporation admeasuring 0H .19R (for short "***the said property***") under the final Development Plan published on 30th June 1979 has lapsed and is thus, available to the Petitioners for development. The Petitioners have sought permission of this Court to develop the said property in accordance with law.

3. The brief background of facts are as follows:-

4. The said property was originally owned by one Shri. Nathuram Vithoba Suryawanshi. The Petitioner has purchased the property from the said Shri Nathuram by way of the registered Sale Deed on 11th April 2012. The revenue records

were accordingly, changed and the name of Shri. Nathuram in the 7/12 extract was deleted and the names of the Petitioners were entered. Part of the said property was reserved by the then Sangli Municipal Council, the erstwhile predecessor of the 1st Respondent for the purpose of 15 meters wide road, part for primary school, part of the site for Municipal purpose and part of the transport and communication in the draft Development Plan prepared in the year 1978. The draft Development Plan was ultimately, sanctioned by the 3rd Respondents on 6th April 1979 and the final Development Plan came into effect from 30th June 1979. The said reservation were maintained in the final Development Plan by the State Government.

5. It is the Petitioners' case that although the said property was reserved for the aforementioned purpose in the final Development Plan, Respondents No. 1 and 2 never took steps for acquisition of the said property. The 1st Respondent was established on 9th February 1998. The original owners of the property had issued statutory notice to the 1st Respondent

on 27th February 2012 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "***the MRTP Act***"). The purchase notice was served on the 1st Respondent and has been duly acknowledged by the 1st Respondent on the same date. The 1st Respondent was called upon to acquire the said property within the statutory period of 12 months from the date of receipt of the purchase notice, failing which the reservation of the said property would lapse and would become automatically available to the Petitioners for development. It is the Petitioners' case that no steps as contemplated under Section 127 of the MRTP Act were taken by the 1st and 2nd Respondents within the statutory period. As a result, the reservation of the said property had lapsed as contemplated under Section 127 of the MRTP Act. The predecessors of the Petitioners in turn sold the said property to the Petitioners vide the Sale Deed dated 11th April 2012. The Petitioners had issued a purchase notice on 20th December 2013 although according to them, it was not necessary and was issued only by way of abundant precaution to the 1st Respondent. The purchase notice

mentions that the Petitioners are now the owners of the said property and sets out the aforementioned facts. The purchase notice has been duly served upon the 1st Respondent on the same date. The 1st Respondent although having been served with the purchase notice, did not take any steps towards acquisition of the said property. The Petitioners accordingly applied for Zonal Certification to the 1st Respondent being under the impression that the said property was now available for development, as the reservation on the said property had lapsed. The 2nd Respondent issued a communication on 16th June 2015 wherein it was stated that the property in question continues to be reserved for the various purposes mentioned. The Petitioners claim to have come across the fact that the 1st Respondent had published revised draft Development Plan which had been sent to the 3rd Respondent for sanction. It is the Petitioners' case that the pendency of revised draft Development Plan before the 3rd Respondent cannot take away the right crystallized in favour of the Petitioners upon lapsing of the reservation on account of deemed fiction due to service of

purchase notice and failure of the 1st Respondent to take steps under Section 127 of the MRTP Act. Being aggrieved by the impugned action on the part of the Respondents in claiming that the said property continues to be reserved for various purposes, the Petitioners have filed the present Petition.

6. The learned Counsel appearing for the Petitioners has submitted that the reservation of the said property in the draft Development Plan, which was sanctioned by the 3rd Respondent on 6th April 1979 and came into the effect on 30th June 1979, had lapsed.

7. He submits that upon expiry of the prescribed period of one year from issuance of the statutory notice by the predecessor of the Petitioners on 27th February 2012 and which was duly served upon the 1st Respondent, the reservation of the said property lapsed under Section 127 of the MRTP Act. He submits that the 1st Respondent failed to take necessary steps towards acquisition of the said property and hence, as a result of

the reservation of the said property having lapsed, the Petitioners are entitled to develop the said property in accordance with law. He has submitted that once the reservation of the said property had lapsed, there cannot be an automatic revival only because of a draft revised Development Plan containing the reservation in respect of the said property. He has relied upon the decision of this Court in ***Baburao Dhondiba Salokhe Vs. Kolhapur Municipal Corporation, Kolhapur and another***[1], in support of his submission.

8. The learned Counsel appearing for the Respondents No. 1 and 2 and the learned AGP for the Respondent No. 3 have supported the impugned action. The learned Counsel appearing for the Respondents No. 1 and 2 has relied upon an Affidavit of Shri. Abhimanyu Pandurang Jadhav, Town Planner, Miraj Division of the Respondent No. 1-Corporation which is dated 9th December 2015 and is in Reply to the Petitioner. He has submitted that on 4th April 2012 i.e. prior to the expiry of the

1 ***2003(3) Mh.L.J. 820***

prescribed period of one year from issuance of the statutory purchase notice, the State Government of Maharashtra sanctioned part (Schedule A and Schedule B) Development Plan submitted by the Respondent No. 1-Corporation in the year 2008. He has submitted that upon sanction of the State Government, the reservation of the said property by way of 12.20 meters road and side for Municipal Corporation under the reservation No. 391 continued. He has submitted the prescribed period under Section 127 of the MRTP Act from the issuance of the purchase notice having not expired when the said part Development Plan was sanctioned, the reservation of the said property continues.

9. The learned AGP appearing for the Respondent No. 3 has relied upon an Affidavit of Shri. Rajkumar Janardan Dange, Assistant Director of Town Planning, Sangli Branch, Sangli dated 10th March 2016 in Reply to the Petition. The Deponent of the said Affidavit states that the Government of India has sanctioned part of the draft Development Plan under

Section 31 of the MRTP Act, vide notification dated 4th April 2012. The deponent of the said Affidavit further states that the Development Plan for the excluded part (E.P) of the Sangli Miraj Kupwad City Municipal Corporation area has also been sanctioned by the Government of India notification dated 3rd March 2016. The deponent of the said Affidavit proceeds on the premise that the statutory notice shall be tenable only when it is served after the expiry of 10 years from the date on which part of the draft Development Plan sanctioned under Section 31(1) of the MRTP Act vide notification dated 4th April 2012 comes into force on 20th May 2012. The learned AGP has thus submitted that the reservation of the said property has not lapsed.

10. We have considered the submissions. It is an admitted position that prior to the expiry of the prescribed period of one year is from the issuance of the purchase notice by the predecessor of the Petitioners on 27th February 2012 under Section 127 of the MRTP Act, the State Government has

sanctioned revised part Development Plan under Section 31 of the MRTP Act vide notification dated 4th April 2012. In the revised part Development Plan, the said property was again reserved for public purpose viz for 12.20 meters road and side for Municipal Corporation under reservation No. 391. Hence, we do not accept the submission of the Petitioners that the reservation of the said property has lapsed.

11. The decision of this Court in ***Baburao Dhondiba Salokhe*** (supra) relied upon by the Petitioners is distinguishable from the facts of the present case as in that case and the cases referred to therein, the reservation of the said land had lapsed and hence, it was held that the draft revised Development Plan containing the reservation could not automatically give rise to revival of the lapsed reservation of the land. This can be seen from the observations of this Court in paragraph 18, which reads thus:-

> *"In our considered view, the observations made in para 23 of the Prakash Rewadman Gupta are not consistent with the law laid down by Apex Court in Bhavnagar University to the effect that Section 21 of Gujarat Act (similar to Section 38 of MRTP Act) which imposes statutory obligation on the part of the State and the appropriate authority to revise the development plan does not take away the rights of owners in terms of Sub-section (2) of Section 20 (similar to section 127 of MRTP Act). As per the proposition pronounced by Apex Court in Bhavnagar University when applied to Sections 38 and 127 of MRTP Act it can safely be held that Section 38 does not envisage that despite the fact that in terms of Section 127, the designation or reservation shall lapse, the same, only because a draft revised plan is made, would automatically give rise to revival thereof. Section 38 does not manifest a legislature intent to curtail or take away the right acquired by a landowner under Section 127 of getting the land defreezed."*

12. In the facts of the present case, the reservation of the said property had not lapsed, as the prescribed period of

one year from the issuance of the statutory purchase notice under Section 127 of the MRTP Act had not expired, when the revised part Development Plan had been sanctioned by the State Government. This Court has held that the notification sanctioning the revised Development Plan has to be given effect to and that the prescribed period under Section 127 of the MRTP Act would commence from the date of the notification. This has been held by this Court in ***Prafulla C. Dave & Ors. Vs. Municipal Corporation, Pune and Ors***[2]. Paragraphs 16 to 18 of the decision read thus:-

> *"16. If the petitioners arguments are to be accepted, it would mean that once a land was reserved and a plan notified under Section 21, even if the owners took no steps under Section 127 or Section 49 and thereafter there is a revised plan notified under Section 38, either having the same reservation or a different reservation, for the purpose of Section 127, the period of serving the notice would commence not from the notification of the revised development plan, but from the issuance of the*

2 2008 (3) Mh.L.J. 120

final notification under Section 29(6) of the M.R.T.P. Act of the first plan. As we have already noted while preparing the plan under Section 38 the provisions of Section 31 are also made applicable as also Section 29.

Therefore, whether it has been initiated under Section 21 or the revision initiated under Section 38, by virtue of sub-Section (6) of Section 31, the plan as finally notified is a final development plan. The expression 'final development plan' in Section 127 has to be read in that context. If not so read, it would lead to defeating the scheme of the Act.

17. *The owners may take no steps to get the land de-reserved if not acquired during the life time of the plan as notified. At the time the new plan was under consideration, the planning authority finding the land not developed and considering what is contained in Section 22 finds that a public purpose subsists or land is required for some other public purpose continues the reservation or provides for a different reservation to serve public purpose after hearing the objections filed or not taken by the land owner. The planning authority,*

development authority or appropriate authority as the case may be would have no time to take steps to acquire the land if the period to be counted is not the date of notification of the revised development plan but the plan as first notified after the Act came into force. The time cannot be read from the point of nature of reservation whether continued or not. What happens if the reservation is different or the reservation is for a different authority as specified in Section 127, will the notice commence from the date of the first notified plan or the subsequent revised plan. A section cannot be read differently in the absence of express or implied language. It will have to be given one harmonious construction. In this context, we may reproduce the observation of the Supreme Court in K.L. Gupta (supra). This is what the Supreme Court observed and we quote from para 35:-

> *"...No one can be heard to say that the local authority after making up its mind to acquire land for a public purpose must do so within as short a period of time as possible. It would not be reasonable to place such a restriction on the power of the local*

authority which is out to create better living conditions for millions of people in a vast area. The finances of a local authority are not unlimited nor have they the power to execute all schemes of proper utilisation of land set apart for public purposes as expeditiously as one would like. They can only do this by proceeding with their scheme gradually, by improving portions of the area at a time, obtaining money from persons whose lands had been improved and augmenting the same with their own resources so as to be able to take up the improvement work with regard to another area marked out for development. The period of ten years fixed at first cannot therefore be taken to be the ultimate length of time within which they had to complete their work. The legislature fixed upon this period as being reasonable one in the circumstance obtaining at the time when the statute was enacted. We cannot further overlook the fact that modifications to the final development plan were not beyond the range of possibility. We cannot therefore hold that the limit of

time fixed under Section 4 read with Section 11(3) forms an unreasonable restriction on the rights of a person to hold his property."

18. Legislature advisably has chosen to provide a time limit within which the steps have to be taken for acquisition. The same cannot be defeated by reading the plan notified under Section 38 as not a final development plan. We are of the opinion that the plan notified under Section 38 is also a final development plan as all the procedure for preparation and notification have to be taken de novo. The period, therefore, under Section 127 would commence from the date of the notification of the revised plan prepared under Section 38 and as notified under Section 31(6). Considering the above, the notice is premature."

13. It is clear from the said decision that the notification sanctioning the revised Development Plan is treated as final Development Plan and the prescribed period under Section 127 of the MRTP Act would commence from the date of the notification sanctioning the revised Development Plan. In the present case, the reservation of the subject property by the

sanctioned revised Development Plan would be the fresh starting point of the period prescribed under Section 127 of the MRTP Act. Hence, the period of ten years provided under Section 127 of the MRTP Act would start running from the sanctioning of the revised Development Plan on 4th April 2012 and only upon expiry of that period, purchase notice can be issued and upon expiry of one year from the issuance of the purchase notice, reservation of the said property can be said to have lapsed. There is thus no lapsing of reservation in the present case.

14. We are of the view that since the reservation of the said property has not lapsed under Section 127 of the MRTP Act, there is no merit in the Petition. Accordingly, this Petition fails and is dismissed with no order as to costs.

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