

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2535 OF 2008

Hiraman Sitaram Deorukhkar & Ors.

.. Petitioners

Vs

The State of Maharashtra & Others.

..

Respondents

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Shri Vineet Naik, Senior Advocate with Ms. Chaitrali Deshmukh and
Shri Pavan S. Patil i/by Shri N.M. Shah for the Petitioners.

Shri A.Y. Sakhare, Senior Advocate with Ms. K.R. Punjabi for the BMC.

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CORAM : A.S. OKA & A.R.JOSHI, JJ

DATE : 17TH JUNE 2013

P.C.

1. This Petition is today placed on board for final hearing. By this Writ Petition under Article 226 of the Constitution of India, the Petitioners are seeking a writ of mandamus directing the second Respondent Municipal Corporation to treat that the reservation on the plots more particularly described in Paragraph 1 (hereinafter referred to as "the said plots") of the Petition has lapsed.

2. It is not in dispute that under the sanctioned development plan, the said plots have been reserved for garden. The first to twelfth Petitioners are the original owners of the said plots who have agreed to sell the same to the thirteenth Petitioner. A notice under Section 127 of

the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTTP Act") was served on 25th July 2007 on the second Respondent which is the Planning Authority under the said Act. On 25th February 2008, the said notice was replied to by the fourth Respondent-the Chief Engineer (Development Plan) by contending that a proposal for acquisition of the said plots has been submitted by the second Respondent Municipal Corporation on 21st January 2008 i.e. within the period of six months from the date of service of the notice under Section 127 of the said Act.

3. We have heard the learned senior counsel appearing for the Petitioners and the learned senior counsel appearing for the second to fourth Respondents. Perused the reply filed by Shri Girish B. Nikam, the Assistant Engineer (Development Plan) in the employment of the second Respondent Municipal Corporation. The only contention raised therein is that on 21st January 2008, a proposal was submitted by the second Respondent Municipal Corporation to the State Government for acquisition of the said plots.

4. It is not in dispute that as of today, a notification for acquisition as contemplated by Sub-section (2) of Section 126 of the said Act read with Section 6 of the Land Acquisition Act, 1894 has not been issued. It is not in dispute that the notice under Section 127 of

the said Act was served after the expiry of the period of 10 years from the date on which the sanctioned development plan came into force. There is no dispute regarding service of the said notice under Section 127 of the said Act. There is also no dispute that the notification for acquisition has not been issued within the period provided under Section 127 of the said Act.

5. As far as the law on the said point is concerned, in the case of *Girnar Traders (II) v. State of Maharashtra and Others* [(2007)7 SCC 555], the Apex Court held that the only manner by which the notice under Section 127 of the said Act can be complied with is by issuing a declaration as contemplated under Sub-section (2) of Section 126 of the said Act read with Section 6 of the Land Acquisition Act, 1894. The view taken therein is reaffirmed by the decision of the Apex Court dated 1st April 2013 in the case of *Shrirampur Municipal Council, Shrirampur vs Satyabhamabai Bhimaji Dawkher and Others*. Hence, the defence that the proposal for acquisition has been submitted within the stipulated period cannot be accepted. Thus, it follows that within the time stipulated under Section 127 of the said Act, no steps for acquisition have been commenced.

6. Hence, the Petition must succeed and we pass the following order :

ORDER :

- (a) The plots of land described in Paragraph 1 of the Petition shall be deemed to have been released from the reservation under the sanctioned development plan for the City of Mumbai and shall become available to the owners thereof for the purposes of development as otherwise permissible in case of adjacent plot in accordance with sanctioned development plan;
- (b) The Rule is made absolute on above terms.

(A.R. JOSHI, J)

(A.S. OKA, J)