

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.299 OF 2009

Shri Ramchandra Baburao Dhanavde. ..Petitioner.

Versus

The State of Maharashtra  
and 2 others.

..Respondents.

....

Mr.U.P. Warunjikar, Advocate for the Petitioner.

Mr.C.R. Sonawane, A.G.P., for the Respondent State.

Mr.S.M. Gorwadkar, Advocate for respondent No.2.

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CORAM : D.K. DESHMUKH, AND  
K.K. TATED, JJ.

DATED : 30TH NOVEMBER, 2009

PC.:-

1. By this Petition, the petitioner is seeking declaration that the reservation in relation to his land has lapsed. According to the petitioner, the petitioner is occupier and in possession of the premises admeasuring 56 square meters, bearing City Survey No.596/A at Nana Peth, Pune. It is claimed in the Petition that the land admeasuring 22.2 guntha from City Survey No.594 to 604 was reserved by the respondents for play ground in the year, 1966. However, in the year 1987

again the property is shown as reserved under the Town Planning Scheme being Reservation No.PG-24. Some part of the property was reserved for D.P Road.

2. The petitioner states that in this situation, he issued a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 dated 14.2.2008. Perusal of the Petition shows a copy of the notice dated 14.2.2008 is not annexed to the Petition. However, what is annexed to the Petition is a notice dated 15.3.2008. The learned Counsel appearing for the petitioner stated that the date of the notice given in the Petition is a mistake and the real date of the notice is 15.3.2008. This notice, according to the petitioner is given under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. Section 127 of the Maharashtra Regional and Town Planning Act, 1966 reads as under :

"127. Lapsing of reservations

If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve



any purposes in a Plan under the Act. He will have to name the final Regional plan or the final Development plan, where reservation has been made. He will have to state the date on which that plan has come into force and he will have to issue that notice to Planning Authority, Appropriate Authority and Development Authority.

4. Insofar as the present case is concerned, perusal of the notice dated 15th March, 2008, copy of which is annexed to the Petition, shows that the petitioner claims that he is owner of City Survey No.596/A at Nana Peth, Pune. He further states that land admeasuring 22.2 guntha comprising of City Survey No.594/604 was initially reserved for play ground in the year, 1966. He further states in the year 1987 the said property is shown as reserved under the "MPS and PG 24". He states that similarly part of the said property was reserved for D.P. Road. In the notice, the petitioner does not specify whether his property is reserved in the Regional plan or Development plan. This is necessary to be pointed out by the person issuing a notice under Section 127 because Section 127 applied only in relation to

the lands which are reserved in final Regional plan or final Development plan. Perusal of the provisions of Section 127 shows that a notice is to be issued to the Planning Authority. The term "Planning Authority" is defined in Section 2(19) of the Act and, therefore, the Pune Municipal Corporation within whose limits the land is situated may be the Planning Authority, but, the notice is also required to be served on Appropriate Authority. The term "Appropriate Authority" is defined in Section 2(3). Perusal of that definition shows that the Appropriate Authority is that public authority for whose benefit the reservation has been made. The notice therefore will have to specify what is the nature of the reservation and for whose benefit that reservation has been made. Notice dated 15.3.2008 does not state what is the exact nature of the reservation and for whose benefit it has been made. What the petitioner means by "MPS and PG-24" is not explained anywhere. It further appears that there are certain contradictions in what is stated in the Petition and what is stated in the notice. Because, in the Petition it is stated that the petitioner is occupier and the person in

possession, whereas in the notice he claims to be owner of the land. In the Petition, the petitioner is claiming that in 1987 his land was reserved in Town Planning Scheme. If the land is reserved in the Town Planning Scheme provisions of Section 127 do not apply at all. Though in the Petition, the petitioner states that the land is reserved in the Town Planning Scheme, in the notice he does not make that claim.

5. The learned Advocate appearing for the petitioner submitted that it is not necessary for him to give all the details, to which we have referred to above, in a notice under Section 127. The learned Advocate appearing for the petitioner argued that because according to him the reply filed in this Petition by the Deputy Director of Town Planning shows that he understood what the petitioner was claiming. But, what is pertinent to be noted is that notice dated 15.3.2008 is given to Director of Town Planning and the State Government. The Director of Town Planning and the State Government are neither the Development Authority nor the Planning Authority nor the Appropriate

Authority under Section 127. Therefore, issuance of notice to them was irrelevant and unnecessary and, therefore, whatever they have stated in their reply is equally irrelevant and unnecessary. In our opinion, the submission of the learned Counsel for the petitioner that his notice gives all the details which are required to be given under Section 127 is incapable of acceptance if one peruses Section 127 and the notice. In our opinion, in this situation therefore no relief can be granted to the petitioner. Petition is rejected.

**(D.K.DESHMUKH,J)**

**(K.K. TATED,J)**