

SUPREME COURT OF INDIA

Godrej & Boyce Manufacturing.Co.Ltd.

Vs.

State of Maharashtra

C.A.No.1086 of 2015

(V.Gopala Gowda and R.Banumathi JJ.)

21.01.2015

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave granted.

2. The appellant whose land bearing CTS Nos. 31(pt), 7 (pt), 70 to 78, 80(pt) and 81, measuring 2188 sq. mtrs. at Vikhroli were reserved in the Development Plan in the year 1991 for acquisition by the Ministry of Railways for laying additional railway tracks between "Thane and Kurla", has questioned the correctness of the notification dated 5.8.2008 issued by the Urban Development Department of the respondent No. 1-State Government under Section 37(1) of the Maharashtra Regional Town Planning Act (for short "the MRTP Act") proposing the modification in the Development Plan deleting the reservation of land in question from Railway reservation and adding reservation for Development Plan Road, before the High Court of Bombay questioning the power of the State Government regarding the proposed modification in the Development Plan after the period of 10 years specified under Section 127 of the MRTP Act, was expired and the State Government has failed to take steps for acquisition of the land involved in these proceedings reserved for the purpose of laying additional railway tracks between "Thane and Kurla", which was not interfered with by the High Court by recording its reasons in the impugned order dated 12.12.2011, passed in the Writ Petition No. 2274 of 2011, is under challenge in these proceedings, urging various legal contentions. The brief facts of the case are as under:-

3. In the year 1991, appellant's land in question were reserved under the Sanctioned Development Plan of Greater Mumbai for acquisition of respondent No.2 herein - Union of India, Ministry of Railways for laying down additional Railway tracks between "Thane and Kurla". No steps were taken by the concerned authorities despite passing of 10 years period as contemplated under Section 127 of the MRTP Act to acquire the reserved land of the appellant. The appellant has issued the purchase notice under the said Section on 04.09.2002 to the respondent No.2 - Ministry of Railways stating that if, the Ministry of Railways is in need of the land in question, the same may be acquired by them, and if the same is not required, a clarification to that effect may be issued. After issuance of the said notice, the period of 6 months as prescribed under Section 127 of the MRTP Act, was expired on 3.3.2003, thus, the reservation of the land in question was deemed to be released. Having got no reply from respondent No. 2, the appellant again wrote a letter dated 2.10.2004 to respondent No.1 for de-reservation of the land if the same is not required by them.

4. On 1.11.2004, the respondent No. 2 - Ministry of Railways informed the Urban Development Department of State that there was no proposal for acquisition of reserved land for railway development works in the Railways in the near future.

5. The appellant, on 5.1.2005, wrote to the Urban Development Department of the State Government requesting for suitable steps in view of clarification letter dated 1.11.2004 issued by respondent No. 2 and requested it for expediting the process of deleting the reservation of the land in question. The Urban Development Department of the State Government has issued the notification on 24.5.2006 under Section 37(1) of the MRTP Act, proposing the modification to the Development Plan by deleting "Railway reservation" and adding "Reservation for DP Road". The land which was reserved earlier in the Development Plan for railway line, the period of 10 years and 6 months after issuing notice was lapsed, now proposed to be reserved for Development Plan Road. The same was followed by another notification issued by the State Government under Section 37(1) of the MRTP Act dated 5.8.2008 for modification of the land deleting from the Railway reservation and reserving the same for Development Plan Road.

6. Being aggrieved by the said notification dated 5.8.2008 proposing the modification of reservation of the land in question from the Railway line to Development Plan Road, the appellant approached the High Court by filing Writ Petition No. 2274 of 2011 challenging the correctness of the said notification by placing strong reliance upon Section 127 of the MRTP Act, contending that the

proposed modification by the Urban Development Department is impermissible in law as the State Government has no power to do so.

7. The High Court vide its order dated 12.12.2011 dismissed the writ petition by holding that the action of the State Government is only proposed modification and therefore, the writ petition cannot be entertained at this stage. However, the High Court has given liberty to the appellant to raise objections before the Urban Development Department of the State Government regarding the proposed modification. Further, it is observed by the High Court in the impugned order that the impugned notification was issued in the month of August, 2008, whereas the appellant has filed the petition in the month of August, 2009. In the absence of explanation by the appellant for filing a petition about one year after the issuance of impugned notification, therefore, the writ petition was also rejected on this ground. Hence, the civil appeal is filed by the appellant urging various grounds.

8. Mr. Shyam Divan, the learned senior counsel appearing on behalf of the appellant placed strong reliance upon the provision of Section 127 of the MRTP Act, in support of his legal contention that the land of the appellant involved in this case was reserved for the Development Plan by the State Government for acquisition by the Ministry of Railways for laying additional Railway tracks between "Thane and Kurla", which period of 10 years was expired long back and therefore, the proposed action to de- reserve and modify the same for the abovesaid purpose is not permissible in law.

9. It was further contended by the learned senior counsel that in view of the law laid down in *Prakash R. Gupta v. Lonavala Municipal Council and Ors.*[1] the land should have been acquired within 10 years from the date of sanctioned development plan. No proceeding for acquisition of the reserved land was commenced by the State Government and Railway department within the said period under Section 127 of the MRTP Act. The land involved in these proceedings having not been acquired by the respondents within stipulated time of 10 years, the reservation of the land for the purpose of railway under the provision of Section 127 of the MRTP Act has lapsed long back and hence the same stands released from reservation in favour of the appellant.

10. The learned senior counsel also contended that the High Court should have seen that once the right of the appellant under Section 127 of the MRTP Act, is accrued in favour of the appellant, any proposed modification of the plan in exercise of power by the State Government under Section 37 of the MRTP Act,

should not be allowed to render the right of the appellant under Section 127 of the MRTTP Act as otiose.

11. On the contrary, Mr. R.P. Bhatt, the learned senior counsel on behalf of the respondents sought to justify the impugned notification contending that the State Government is empowered to modify the Development Plan by deleting the earlier purpose for which the land was reserved, and can be modified for Development Plan Road. The said action is only proposed one and therefore, the appellant cannot have any grievance at this stage and can raise objections to the impugned notification before the State Government, the same will be examined and take appropriate decision in the matter. Therefore, he submits that the impugned order is not vitiated either on account of erroneous reasoning or error in law and the same need not be interfered with by this Court in exercise of its appellate jurisdiction in this appeal.

12. Having heard the learned senior counsel on behalf of both the parties and with reference to the abovesaid rival factual and legal contentions, we have carefully examined the same keeping in view the undisputed facts involved in this case. It is an undisputed fact that the respondent No. 1 has reserved the land in question for the Development Plan under the provisions of Section 127 of the MRTTP Act for the acquisition of the land in favour of Ministry of Railways for laying additional railway track between "Thane and Kurla". It would be apposite to extract Section 127 of the MRTTP Act for better appreciation of the claim of the parties, which deals with lapsing of reservation:-

"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 notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

13. It is also an undisputed fact that after 10 years, notice dated 4.9.2002 served by the appellant under Section 127 of the MRTP Act upon the respondent No.1 stating that if, the reserved land was needed for the notified purpose, Railway department may acquire the same by adopting acquisition proceedings, but if the same is not acquired, the clarification to that effect be issued. Thereafter, on 3.3.2003 the period of 6 months as prescribed under the provision of Section 127 of the MRTP Act, after issuance of the above notice by the appellant and served on the respondent No.1, was also lapsed long back. Therefore, the reservation of the land in favour of the Railway was deemed to be released under the above said provision of the MRTP Act. The respondent No. 2-Ministry of Railways informed the Urban Development Department of the State Government on 1.11.2004 stating that there was no proposal for acquisition of the land in the Railways in the near future, is evident from the undisputed fact of the correspondence made between the Ministry of Railways and the Urban Development Department of the State Government, which would clearly go to show that the land reserved even after 10 years and on expiry of service of notice of 6 months there was no intention on the part of the State Government to acquire the reserved land for the purpose reserved in favour of the Railways department to form the Railway tracks between "Thane and Kurla". In that view of the matter, the land reserved for the purpose under Section 127 of the MRTP Act, is lapsed and the appellant is entitled for developing the land as it likes. The State Government instead of clarifying to the notice issued by the appellant, has proceeded further to initiate proceedings under Section 37 of the MRTP Act, proposing the modification in the Development Plan by deleting Railway reservation and adding reservation for Development Plan Road. Section 37(1) of the MRTP Act, which deals with modification of Final Development Plan reads thus:- "37.Modification of final Development Plan - (1) Where a modification of any part of or any proposal made in, a final Development Plan is of such a nature that it will not change the character of such Development Plan, the Planning Authority may, or when so directed by the State Government shall, within sixty days from the date of such direction, publish a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification not later than one month from the date of such notice; and shall also serve notice on all persons affected by the proposed modification and after giving a hearing to any such persons, submit the proposed modification (with amendments, if any), to the State Government for sanction.

1A) If the Planning Authority fails to issue the notice as directed by the State Government, the State Government, shall issue the notice and thereupon, the

provisions of sub-section (1) shall apply as they apply in relation to a notice to be published by a Planning Authority."

14. By a careful reading of the provisions of Sections 127 and 37(1) of the MRTP Act, which are extracted as above abundantly make it clear that the State Government is not empowered to delete the reservation of the land involved in this case from Railway use and to modify the same for Development Plan Road in the Development Plan after expiry of 10 years and 6 months notice period was over as the appellant has acquired the valuable statutory right upon the land and the reservation of the same for the proposed formation of Railway track was lapsed long back. Further the respondent No. 2 vide its letter dated 1.11.2004 has stated that there is no proposal for acquisition of land for the purpose of which it was reserved.

15. Section 127 of the MRTP Act, which fell for consideration before the three Judge Bench of this Court in the case of Shrirampur Municipal Council, Shrirampur v. Satyabhamabai Bhimaji Dawkher & Ors.[2] wherein the contention of the appellant that the majority judgment in the case of Girnar Traders (2) v. State of Maharashtra[3] need to be considered by larger Bench as the same is contrary to Section 127 and Municipal Corpn. Of Greater Bombay v. Hakimwadi Tenants' Asson.[4] case, was rejected. The Court opined that the same is not contrary to Section 127 of the MRTP Act and further held that there is no conflict between the judgments of the two- Judge Bench in Hakimwadi Tenants' Asson. (supra) and the majority judgment in Girnar Traders (2) (supra) case. Further, the three Judge Bench judgment in Shrirampur Municipal Council, Shrirampur (supra) at paras 45 and 46 supported the observation of Constitution Bench in Girnar Traders (3) v. State of Maharashtra[5] case relating to Section 127 of the MRTP Act, which read thus:-

"45. In our view, the observations contained in para 133 of Girnar Traders (3) unequivocally support the majority judgment in Girnar Traders (2).

46. As a sequel to the above discussion, we hold that the majority judgment in Girnar Traders (2) lays down correct law and does not require reconsideration by a larger Bench..."

16. From the above, it is clear that the majority view in Girnar Traders (2) (supra) is held to be good law. Therefore, the case of Girnar Traders (2) (supra) is binding precedent under Article 141 of the Constitution of India upon the respondent No.1. The relevant paragraph 133 from Girnar Traders (3) is extracted hereunder:-

"133. However, in terms of Section 127 of the MRTP Act, if any land reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final development plan comes into force or if a declaration under sub-section (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of service of such notice, the land is not acquired or no steps, as aforesaid, are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land would become available to the owner for the purposes of development. The defaults, their consequences and even exceptions thereto have been specifically stated in the State Act. For a period of 11 years, the land would remain under reservation or designation, as the case may be, in terms of Section 127 of the MRTP Act (10 years + notice period)."

17. In view of the above said statement of law declared by this Court in the cases referred to supra, after adverting to the judgment of majority view in Girnar Traders (2) case (supra) is accepted in Shrirampur Municipal Council, Shrirampur (supra), wherein it is held that the Girnar Traders (2)(supra) case is not conflicting with the Hakimwadi Tenants' Asson. case (supra), the statement of law laid down in the above referred cases are aptly applicable to the fact situation. Therefore, we have to hold that the impugned notification is bad in law and liable to quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTP Act and interpretation of the above said provision made in the case of Girnar Traders (2) (supra), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months notice served upon the State Government.

18. In view of above, the order passed by the High Court as well as the impugned notification issued by the State Government are vitiated in law and liable to be set aside and quashed and we order accordingly.

19. The appeal is allowed. The impugned order is set aside and consequently Rule issued. The impugned notification dated 5.8.2008 is also quashed as the period of 10 years from the date of reservation in the Development Plan and 6 months notice served by the appellant on the respondent No. 1 is also over, the reservation of the land is lapsed. No costs.

[1] (2009) 1 SCC 514

[2] (2013) 5 SCC 627

[3] (2007) 7 SCC 555

[4] (1988) Supp SCC 55

[5] (2011) 3 SCC 1