SUPREME COURT OF INDIA

Satellite Developers Limited

Vs.

State of Maharashtra

C.A.No.2640 of 2016

(A.K.Sikri and Abhay Manohar Sapre,JJ.,)

27.04.2017

JUDGMENT

A.K.Sikri,J.,

1. This appeal has a chequered history with many rounds of litigations. At the same time, it may not be necessary to take a detailed stock of various litigations. It is simply because of the reason that the controversy is substantially narrowed down, which we are called upon to decide in these proceedings. However, a glimpse of the events that have taken place since the start of the dispute may be spelled out in order to have an idea of the nature of the dispute that had initially arisen and how the controversy has remarkably shrunk and stands before us in a totally truncated form. The short list of dates and event, therefore, would suffice, which we reproduce below:

2. On September 16, 1991, the appellant claimed rights over the property being C.S. No. 1/255 on Foras Road, Tardeo Division, Mumbai, admeasuring 10,394 sq.mts. Under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the 'MRTP' Act), the Municipal Corporation of Greater Bombay can requisition the land for development for the purposes specified under the said Act. In respect of the aforesaid land, a Draft Development Plan (DDP) was prepared by the Municipal Corporation in the year 1991. Under the said Plan, 3548.52 sq.mts. of land was reserved for recreation ground, 1355 sq.mts for maternity home and 5491.4 sq.mts. for housing the dishoused. However, later the reservation for recreation ground was reduced to 2000 sq.mts. The MRTP Act further provides for acquisition of such land, by agreement or under the Land Acquisition Act, 1894 in order to enable the Municipal Corporation to develop the land as per the DDP. If the steps in this behalf are not taken within the stipulated period, it results into lapsing of the land reserved for development. This was so provided under Section 127 of the MRTP Act, which reads as under:

> "127. Lapsing of reservation: 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 (1 of 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."

3. On February 06, 2003, the appellant served upon the respondent Corporation a purchase notice under Section 127 of the MRTP Act and called upon the Corporation to initiate acquisition proceedings in respect of land reserved for recreational ground. On February 27, 2004, Notification under Section 6 of the Land Acquisition Act, 1894, read with Section 126 of the MRTP Act was issued by respondent No.1. On June 21, 2006, by notice under Sections 9 and 10 of the Land Acquisition Act, respondent No.4 called upon the appellant to furnish details required as per the notice issued and also to record objections in respect of measurement of the subject land. On September 22, 2006, the appellants gave their No Objection for handing over the subject land against monetary compensation. On April 22, 2010, the appellant filed Writ Petition No. 1184 of 2010 wherein a prayer is made for a declaration of lapsing of the reservation. The appellant, however, also prayed for an alternative order in the nature of a direction to the respondents to acquire the land.

4. On July 21, 2010, the High Court disposed of the writ petition directing respondent No.4 to pass the final award within a month and granted liberty to the appellant to revive the writ petition in case of non-compliance by respondent No.4. It may be mentioned herein that the appellant had made a statement that it will not press prayer (a) in the writ petition for de-reservation of the subject land. The operative portion of the order of the High Court in this behalf reads as under:

> "4. We, therefore, dispose of the petition with a direction that respondent No.4 shall pass the award on or before 31st October, 2010 and make payment of compensation in accordance with the award within a month thereafter.
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> 5. In case the respondent No.4 does not comply with the aforesaid time limit, the petitioner will be at liberty to move this Court for appropriate directions. Liberty is also granted to the petitioner to revive the petition. This direction is given in view of the assurance from the petitioner's Counsel that petitioners will furnish the required documents to the authorities within reasonable time limit."

5. Thereafter, on October 25, 2010, the High Court extended the time for passing of the award by respondent No.4 till December, 31, 2010 and further extended the time to pay the

compensation to January 31, 2011. On March 31, 2011, the Municipal Corporation sought further three months time to comply with the above-mentioned order dated July 21, 2010. The High Court directed that 50% of the award amount be deposited in the Court. Respondent No.3 had signed an award on October 31, 2011 for 2000.25 sq.mts. of land to be acquired. The final compensation as per the award is Rs.14,48,19,014/- and proper documents were required to be submitted.

6. On July 17, 2012, the appellant filed another writ petition bearing No. 1600 of 2012 with a prayer to quash the award dated October 31, 2011 passed by respondent No.4 on the ground that the appellant was never called on before signing of the award and neither was the compensation amount paid by the Municipal Corporation to respondent No.3 as per the provisions of the Land Acquisition Act. Significantly, the appellant, apart from seeking orders of quashing of the award and de-reservation of the subject land, again sought to be compensated in terms of the Award. In spite of repeated extensions sought by the Municipal Corporation, it failed to pay the compensation to the appellant, as directed by the High Court by its order dated July 21, 2010.

7. Writ Petition No. 1184 of 2010 was finally heard and decided on May 08, 2013. The High Court, after narrating the aforesaid events, found that the respondents did not act with due diligence, even after service of notice upon them under Section 127 of the Act. At the same time, the High Court was of the view that since the remedy under Article 226 of the Constitution of India was in the nature of prerogative remedy and the extraordinary jurisdiction of the High Court was purely discretionary, in the facts of the present case, it was not necessary to exercise the jurisdiction under Article 226 of the Constitution. The High Court, therefore, refused to grant prayer (a) based on notice dated February 06, 2003 given by the appellant to the respondents under Section 127 of the MRTP Act. In the process, the High Court observed that the appellant had waived the effect of its notice under Section 127 inasmuch as it was regularly following up with the respondents to complete the acquisition proceedings and claim compensation against the same. The High Court has also held that as Writ Petition No. 1600 of 2010 was pending, the question regarding validity of the award can be argued therein.

8. The present appeals were filed questioning the validity of the aforesaid judgment dated May 08, 2013 passed by the High Court. The matter was taken up from time to time. As pointed out in the beginning, since the controversy has been narrowed down, because of the positive attitude shown by both the parties, it is not necessary to discuss the legal nuances.

9. The Municipal Corporation has placed on record the Notification dated May 10, 2016 issued by the Urban Development Department of the Government of Maharashtra. It has offered to settle the matter on the terms contained in the said Notification. This Notification provides for a 70/30 policy whereby the Chief Officer may allow the owner to develop the reservation on 70% of the land and after handing over it to the planning authority free of cost then remaining 30% land may be allowed to be developed as per adjoining use, subject to the following terms/conditions:

"(a) The owner shall be entitled to develop remaining 30% land for the uses permissible in adjoining zone with full permissible FSI of the entire plot and permissible TDR potential of the entire plot.

(b) The Municipal Chief Officer, if required, shall allow the TDR for the unutilised FSI if any (after deducting in-situ FSI as mentioned in Sr.No.(i) above) which shall be utilised as per the TDR utilisation regulations.

(c) No reservation shall allow to be developed partly."

10. Time was given to the appellant to respond to the said suggestion. The appellant, while maintaining that the DDP had lapsed in view of the provisions contained in Section 127 of the Act, responded to the aforesaid proposal of the Municipal Corporation vide it is letter dated December 26, 2016 by stating that the appellant was ready to consider developing 40% of the plot as a Recreation Garden for the city at their own cost if 60% of the balance plot is available to it for development, subject to two conditions, viz., (i) as per MCGM policy, 100% of FSI/ development potential of the entire plot is allowed to be constructed on the 60%; and (ii) any open space deficiency in the planning of the building thereon be condoned without payment of any premium therefor.

11. When the matter was heard, both the parties were agreeable to resolve the dispute, but pressed their respective stance. The appellant submitted that the proposal quoted in its letter dated December 26, 2016 be accepted, whereas the Municipal Corporation impressed upon this Court to dispose of the matter in terms of Notification dated May 10, 2016. While taking their respective positions in the manner aforesaid, Mr. Sidharth Luthra, learned senior counsel appearing for the appellant, and Mr. Mukul Rohatgi, learned Attorney General appearing for the Municipal Corporation, agreed that they would leave it to the Court to take any appropriate and suitable decision in the matter.

12. We have considered the matter. Strictly speaking, the Policy is not applicable in the instant case. However, both the parties want that to be the basis for resolving the controversy. For this reason, the appellant is not pressing its challenge predicated on Section 127 of the MRTP Act. However, at the same time, it wants some modification of policy terms in its favour. This constructive approach of both the parties commends to us. Having regard to the peculiar facts of this case and that the Municipal Corporation has defaulted in certain respects, we are of the view that ends of justice would be sub-served if we allow the owner/ appellant to develop the reservation of 60% of land and after handing over it to the Planning Authority free of cost, then remaining 40% land is allowed to be developed as per the adjoining use, subject to the conditions that are mentioned in the Policy dated May 02, 2016.

13. This order is passed in exercise of our powers under Article 142 of the Constitution and without treating this as a precedent. It may not be considered as tweaking with the Policy as the same is, otherwise, not applicable. That is taken as a yardstick for resolving the dispute as both the parties agreed for it. We also make it clear that the appellant would not be called

upon to pay any penalties and the award passed in the case would not come in the way of the parties.

14. The civil appeal is disposed of in the aforesaid terms.

15. No costs.