SUPREME COURT OF INDIA

Balaji Associates

Vs.

State of Maharastra

C.A.No.6661 of 2019

(N.V.Ramana,J., Mohan M.Shantanagoudar and Ajay Rastogi,JJ.,)

27.08.2019

JUDGMENT

N.V.Ramana,J.,

SLP(C)No.7481 of 2018

1. Leave granted.

2. This appeal, by way of special leave, was filed against the impugned final judgment and order dated 05.02.2018 in W.P. No. 5969 of 2017, passed by the High Court of Judicature at Bombay (Nagpur Bench) is tuated in the municipal limits of Nagar Parishad of the city of Morshi [hereinafter referred to as the "disputed

3. The brief facts which are necessary for the disposal of this case are that the appellant is a partnership firm and its partners are the joint owners of the land in the Survey No.7 Sub-division No.2, for a land admeasuring 3H 90R of Mouja Durgavada, Tq.Morshi, District Amravati, land"]. The final development plan for the city of Morshi was published on 11.07.2005 which came into force from 01.09.2005. In the aforesaid plan the appellant's land was reserved for shopping centre and garden, by reservation no. 22 and 23 respectively.

4. Under Section 127 of Maharashtra Regional and Town Planning Act, 1966 [hereinafter referred to as "the Act"], the owners could de-reserve a plot of land by serving a notice, after the lapse of 10 years from the date of such reservation i.e., 10 years from 01.09.2005 herein.

5. Accordingly, the appellant served the first notice, under Section 127 of the Act, on 13.07.2015 asking the municipality to either acquire the disputed land or permit them to develop the same in accordance with law. The aforesaid first notice was replied as being pre¬mature. Moreover, the appellant again on 31.08.2015 sent the second notice under Section 127 of the Act. At the outset we may note that the date of receival of the second

notice is heavily contested, being important we shall take up the same in due course.

6. Thereafter on 22.09.2015, respondent no. 2 directed respondent no. 3 to initiate the procedure required for acquisition of disputed land. On 30.11.2015 there was a General Body Meeting of the Municipal Council/Nagar Parishad, Morshi wherein it was decided that the disputed land was required for development of garden/park and necessary acquisition needs to be undertaken. For our purposes we need to observe the minutes of the meeting which is as under- As per Section 27 MRTP Act 1966, Survey no.7 of Mouja Durgavada Tq. Morshi, District Amravati reserved for Reservation no. 22 Shopping Centre and 23 Garden as per development Plan (Excluded Plan) of Morshi City a discussion on the received notice is done in the standing committee meeting of Nagar Parishad Morshi.
In this matter. Adv. G.K. Mundhada, Khaparde Garden issued a notice under Section 127 of MRTP Act, 1966 which has inward number 5081 on Dt. 14/07/2015 and Inward no. 57 on Dt. 2/9/2015 in Nagar Parishad Office inward record register. Finally, in this meeting after discussion it is decided that the said land is required by the Nagar Parishad. Hence proposal for land acquisition is to be presented in front of Collector Amravati. Also, the expenditure for said land should be done as per the Government defined guidelines of 13th Finance Commission and 14th Finance commission. Hence the standing committee is giving approval in majority for all the expenses to be incurred in future for acquisition of the said land. Resolution approved by Majority.

(Emphasis supplied)

7. Further on 14.01.2016, respondent no. 3 submitted a proposal for acquisition of the disputed land before the respondent no. 4 (Collector), on the basis of the resolution passed on 30.11.2015. However, respondent no. 4 informed respondent no. 3 that the aforesaid proposal was not in order and the same needs to be resubmitted. A fresh proposal was submitted by respondent no. 3, by letter dated 16.12.2016. It is brought to our attention that nothing has proceeded further and accordingly, acquisition has not taken place till this point of time.

8. Aggrieved by the fact that appellant was not allowed to enjoy the benefit of its ownership in the aforesaid disputed land, appellant through its partners filed a Writ Petition praying therein for a declaration that the reservation of their land has lapsed under Section 127 of the Act and other consequential relief.

9. The High Court by order dated 05.02.2018 dismissed the impugned writ petition on two major premises. First, the High Court was of the opinion that the second notice was sent prematurely thereby the necessary procedures required under Section 127 of the Act for de-reserving the land were not satisfied. Second, as the second notice dated 31.08.2015 was not satisfactory, therefore there was no need for further elaboration on steps, taken for acquiring the land, to be followed by the municipality as required under Section 127 (1) and (2) of the Act.

10. Aggrieved by the aforesaid dismissal, the appellant has approached this Court.

11. Having observed the facts, we need to briefly notice the appellant's contention herein. Appellant contends that the second notice dated 31.08.2015 was received by the respondent authorities only on 02.09.2015 and not on 01.09.2015. Appellant rely extensively on the minutes of the meeting which records the aforesaid fact and claims that their notice was not premature. Further, the appellant contends that the concerned authorities have not taken adequate steps to acquire the aforesaid land in accordance with the mandate provided under Section 127 of the Act which consequentially entails de-reserving the aforesaid land.

12. On the other hand, the learned counsel for the respondents contend that on reading of the provisions of Section 127 (1) of the Act it is clear that, an owner or a person interested in the land would be entitled to serve a notice only after completion of the period of 10 years from the date on which the Final Developmental Plan comes into force. In this case, since the Final Developmental Plan had come into force on 01.09.2005, the notice dt. 31.08.2015 is served on the respondent no. 3 before the completion of the stipulated period of 10 years from the date of coming into force of the Final Developmental Plan. Therefore, they contend that the High Court has rightly observed the period of 10 years, as mentioned in the aforesaid provision of Section 127 of the Act, is finally yet to complete before service of notice under Section 127 and hence the said notice under Section 127 issued by the appellant on respondent no. 3 (Municipal Council, Morshi) would be treated as premature. Also, the respondent no. 3 has submitted a land acquisition proposal to the respondent no. 4. Hence, they argue that the High Court has passed order to safeguard the interest of general public at large and has thoroughly and judiciously stated that the provision for lapsing does not become a tool to defeat the very purpose of the Act.

13. Having heard the arguments, we need to observe Section 127 of the Act, which reads as under- 127. Lapsing of reservations.-

> Lapsing of reservations.- 309[(1) 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 310[or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development authority or, as the case may be, the Appropriate Authority to that effect; and if within 311[twenty-four 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.
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> 312[(2) on lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the

Official Gazette.] 309 Section 127 re-numbered as sub-section (1) by Mah. Act No.16 of 2009, dated 25th June, 2009.

310 Substituted for "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" by Mah. Act No.16 of 2009, dated 25th June, 2009.

311 Substituted for "twelve months" by the Maharashtra Regional and Town Planning (Third Amendment) Act, 2015 (Mah. Act No.42 of 2015), dated 31-12-2015 (w.e.f. 29-08-2015), s.7.

312 Sub-Section (2) added by Mah. Act No.16 of 2009, dated 25th June, 2009.

14. It is the contention of the respondents that the second notice was pre-mature as the notice under Section 127 of the Act, is required to be served after completion of the stipulated time. They place their reliance on the acknowledgment signed by the Municipality, while receiving the post which records the event of receival as 01.09.2015. While the appellant rely on the Minutes of the meeting of the General Body, to point the factual discrepancy, wherein the letter is stated to have been received only on 02.09.2015.

15. In our considered opinion, the writ courts, usually, should not indulge themselves in such factual findings. However, this case has been dragged too long and any further delay would unduly affect the right to enjoy property and benefits thereof. In any case, this case turns on the aspect of admission on the part of the respondents, that the second notice was received on 02.09.2015. There is no gain saying that the respondents have not denied that their own General Body Meeting Resolution has accepted that the date of receival was 02.09.2015. In this context we need to accept the same. We may note that the High Court has ignored the aforesaid aspect, to rely exclusively on the acknowledgment. In the afore-stated circumstances, reliance on the acknowledgment would not be safe. Having come to this understanding, we can conclude that the second notice can be said to have reached the Municipality on 02.09.2015, after the expiry of the stipulated period.

16. Having decided the first aspect, we need to now turn our attention to a different aspect under Section 127 (1) of the Act, regarding the satisfaction of the actions undertaken by the Municipality, to acquire or steps taken for acquiring, within the stipulated period of 24 months from the service of notice. We may note that the aforesaid time period of 24 months under Section 127 of the Act, given to the municipal authorities, was increased from 6 months to 12 months by an Amending Act in 2009 (Mah. Act No. 16 of 2009); further, this time period was increased from 12 months to 24 months in 2015 (Mah. Act No. 42 of 2015 w.e.f 29.08.2015). From the aforesaid amendments, it can be noted that the legislative intent was to provide sufficient time for the Municipalities to acquire the land as

per the Developmental Plan needed for effective town planning.

17. In any case, the respondents herein have admitted that the fresh proposal was forwarded from the office of respondent no. 3 on 16.12.2016, and the same is currently being processed through the Office of Land Acquisition Officer, Amaravati. From the aforesaid narration, there is no gain saying that the appellant has been denied its right to enjoy benefits of its possession by this protracted litigation. Mere forwarding of the proposal, would not be sufficient under Section 127 (1) of the Act, as the concerned provision distinguishes between 'step of acquisition of land' from 'step for acquisition of land'.

18. In this context, we may refer to the case of *Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher and Ors*[1]., wherein a three Judge Bench of this Court has observed that-

> 42. We are further of the view that the majority in Girnar Traders (211 had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.
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> 43. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution.

1. *Girnar Traders (2) v. State of Maharashtra*[2],

(emphasis supplied)

In line with the observations of this Court, we hold that the authorities have not taken sufficient steps towards acquisition in this case. As the 24 months' time period stipulated under the law has elapsed, therefore the necessary procedures under Section 127 (1) of the Act, stand satisfied for de-reserving the disputed land.

19. The respondents have finally argued that the fulfilment of requirements under Section 127 (1) of the Act does not automatically de-reserve the land, rather it's a discretion, under sub-section 2 of Section 127 of the Act, bestowed on the Government to choose the land to be de-reserved and publish the same in the Official Gazette. Such mandatory reading of the sub-section 2 of Section 127 of the Act, would give unfettered power in the hands of the State to pick and choose. This Court needs to effectively balance the power of eminent domain and the constitutional right of property, which mandates a rational reading of the law, wherein the declaration in the Official Gazette is only consequential and the State needs to follow, if the conditions under sub-section 127 (1) stands satisfied. The usage of 'On lapsing of reservation, allocation or designation of any land under sub-section (1)' in the sub-section 2 of Section 127, clearly points towards the aforesaid interpretation. Moreover, the usage of 'shall', also indicates the imperative nature of the sub¬section, which makes the Government duty bound to publish the same. [refer *Labour Commr. M. P. v. Burhanpur Tapti Mill Ltd. & Ors*[3]., In this case, we are of the opinion that the requirement under Section 127 (1) are fully satisfied.

20. Our attention has been drawn to certain adverse remarks passed by the High Court against the advocate, who appeared before it for the appellant herein, as contained in line numbers 1 to 7 and 76 to 79 of paragraph 5 of the impugned judgment. In our considered opinion, such adverse remarks were uncalled for, un-necessary and therefore, the same stand expunged from the record.

21. In the light of the aforesaid observations, the inevitable conclusion is that the reservation of the appellant's land in question has lapsed and the land has become available to the appellant to be developed as otherwise permissible. Appeal, therefore deserves to be allowed and is accordingly allowed in terms of prayer. The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of Section 127(2) of the Act which shall be done as expeditiously as possible and preferably within a period of 4 months from today.

22. Appeal stands allowed in the above said terms. No order as to costs.

Judgment Referred.

[1]*(2013) 5 SCC 0627*
[2]*(2007) 7 SCC 0555*
[3]*AIR 1964 SC 1687*