

# BOMBAY HIGH COURT

Shiorani W/O Shriram Jaiswal

Vs.

State Of Maharashtra

Writ Petitions Nos. 2821 of 1981, 1312 of 1979 and 2372 of 1982

(M.K. Mukherjee, C.J., H.W. Dhabe and A.A.Desai, JJ.)

30.03.1993

## JUDGMENT

### **M.K. Mukherjee, C.J.**

1. In these three writ petitions the acquisition of lands under the provisions of section 126 of the Maharashtra Regional and Town Planning Act, 1966 ('Act' for short) is under challenge. Though the challenge is on various grounds, the common challenge in all of them is based on the interpretation of the above section.

2. When the writ petitions came up for hearing before a Division Bench of this Court, the learned Counsel appearing for the petitioners contended, relying upon the Division Bench of this Court in the case of *Sant Joginder Singh Kishinsingh v. State of Maharashtra*<sup>1</sup>, that as the declarations in question for acquisition in accordance with sub-section (2) of section 126 were made after the expiry of three years from the date of publication of the draft development plans, they were clearly illegal in view of the proviso to the said sub-section and therefore liable to be quashed. Though the above judgment fully supported the contention of the writ petitioners, the Bench could not agree with the same, particularly in view of the judgment of the Supreme Court in the case of *Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association*<sup>2</sup>, page 1, and referred the following question for determination by a Larger Bench:

"Is the power of the State Government to make fresh declaration for acquiring the land as per provisions of section 126(4) of the M.R.Transfer of Property Act restricted only in respect of draft regional plan, development plan or any other plan, which was published before 17-2-1971, being the date on which Amending Act, Maharashtra 14 (wrongly referred to as 21 in the reference) of 1971, was brought into force?"

and this Bench has now been constituted for the purpose.

3. To seek an answer to the above question, it will be profitable at this stage to extract section 126 of the Act:

<sup>1</sup>1989 Mh.L.J. 819

<sup>2</sup>1988(1) Bom.C.R. 578 (S.C.) : 1988 Mah. L.J

" 126(1). When after the publication of a draft Regional Plan, a Development plan or any other plan or town planning scheme, any land is required or reserved for any of the public purpose specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provided in section 113-A, acquire the land either by agreement or make an application to the State Government for acquiring such land under the Land Acquisition Act, 1894.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113-A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, no such declaration shall be made after the expiry of three years from the date of publication of the draft Regional Plan, Development Plan or any other plan.

(3) On publication of a declaration under the said section 6, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be---

(i) where the land is to be acquired for the purpose of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purpose of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and

(iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme :

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of the land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 :

Provided further that for purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (i) of section

40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.

(4) If a declaration is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1970), the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh."

4. In interpreting the above section in the case of Sant Joginder Singh, , the Division Bench first observed :

".....sub-section (4) provides that if a declaration is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1970), the State Government may make a fresh declaration for acquiring land under the Land Acquisition Act, 1894 in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value on the date of declaration in the Official Gazette made for acquiring the land afresh. From bare reading of the section, it is clear that it speaks of declarations not made and having been made the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning Act, 14 of 1971 indicates that sub-section (4) applies to the plans, which were existing prior to the Maharashtra Act, 14 of 1971, because there could not be any question of any declaration being made at that time of the plans, which have come into existence after the Amending Act 14 of 1971. The Amending Act is brought into force on 17-2-1971. The sub-section (4), therefore, deals with the plans, which were existing prior to 17-2-1971, because there could be declaration under section 261(1) or (2) of the Act which were in existence, but there cannot be any declaration of the plans, which were not existing then. The other provisions of sub-section (4) also indicate that the provisions of sub-section (4) apply to plans, which were existed prior to the Amending Act of 1971, because it also covers the cases where the declarations have also been made along with the cases where the declarations have not been made."

It next observed :

"The provisions of sub-section (4) were necessitated because the proviso was added simultaneously to sub-section (2), which provided that no declaration shall be made after the expiry of 3 years from the date of publication of Draft Regional Plan, Development Plan or any other plan. In the absence of provision made in the Statute; like that of sub-

section (4), the plans which were prepared; prior to 17-2-1971 i.e. prior to the Amending Act, the proviso would have made it difficult or impossible to take proceedings under section 126 of the Maharashtra Regional and Town Planning Act. As there was no provision prescribed regarding time limit for making declarations originally; there may be Municipal Councils; or other Authorities, who had not made such declarations or might have allowed the time to lapse, because there was no provision restricting the period; for; making the declaration. With a view to save such plans; from the rigours of the proviso, the provision of sub-section (4) is brought on Statute ..."

It lastly observed :

"The proviso is added by way of amendment in the year 1971 ; by the Amending Act. The intention of the Legislature is clear in adding proviso to sub-section (2). Previously there was no restriction, periodwise, provided in sub-section (2) of section 126 of the Act, but by adding proviso to sub-section (2), the intention of the Legislature is clear and it will have to be given full effect."

5. It appears that when the Division Bench was dealing with the case of Sant Jogindar Singh, its attention was not drawn to the judgment of the Supreme Court earlier delivered in the case of Municipal Corporation of Greater Bombay, 1988(1) Bom.C.R. 578 (S.C.) where the Supreme Court had to interpret section 127 of the Act, which reads as follows :

"127. 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."

6. While so doing the Supreme Court read section 126 in juxtaposition and observed as under :

"..... it must be borne in mind that the period of six months provided by section 127 upon the expiry of which the reservation of the land under a Development Plan lapses is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By enacting section 127 the

legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual.

An analysis of section 126 would reveal that after publication of a draft regional plan, a development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified therein, the Planning Authority, Development Authority or as the case may be, any Appropriate Authority may, except as provided in section 113-A, at any time acquire the land either by agreement or make an application to the State Government for acquisition of such land under the Land Acquisition Act, 1894. Sub-section (2) thereof provides that the State Government may on receipt of the application contemplated by section 126(1) or if Government (except in cases falling under section 49 and except as provided in section 113-A) is itself of opinion that any land included in such plan is needed for any public purpose, it may make a declaration to that effect in the final Gazette, in the manner provided in section 6, Land Acquisition Act, in respect of the said land. The rule is subject to an exception. Proviso to section 126(2) interdicts that such declaration shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan. Sub-section (3) deals with the procedure to be followed for acquisition under section 6, Land Acquisition Act."

The Court then extracted sub-section (4) of section 126 and stated :

"The conjoint effect of sub-sections (1), (2) and (4) of section 126 is that if no declaration is made within the period referred to in sub-section (2), that is to say, before the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, the compensation payable to the owner of the land for such acquisition, in that event, shall be the market value on the date of the fresh notification under section 6, Land Acquisition Act, i.e. the market value not at the date of notification under section 4(1), Land Acquisition Act, but the market value at the date of declaration under section 6. That is one of the safeguards provided under the Act."

The Court further states :

"Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by section 127 providing the reservation of the land under a development scheme shall; lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice is an integral part of the machinery created by which acquisition of land takes place.

The word 'aforesaid' in the allocation of the words 'no steps as aforesaid are commenced for its acquisition' obviously refer to the steps contemplated by the State Government under sub-section

(2) thereof, if it is satisfied that the land is required for the implementation of a regional plan, development plan or any other town planning scheme, followed by the requisite declaration to that effect in the official gazette, in the manner provided by section 6, Land Acquisition Act, is to freeze the prices of the lands affected. The Act lays down the principles of fixation by providing firstly, by the proviso to section 126(2) that no such declaration under sub-section (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub-section (4) of section 126 that if a declaration is not made within the period referred to in sub-section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under section 6 and not the market value at the date of the notification under section 4 and thirdly, by section 127 that if any land reserved, allotted or designated for any purpose in any development plan is not required by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed."

7. From the above observations of the Supreme Court it is patently clear that the proviso to sub-section (2) and sub-section (4) of section 126 have not been brought into the statute book to put an absolute embargo upon making of future declarations beyond the period of three years but to furnish a different yardstick for quantifying the compensation to be paid to the owners in case the declarations are made beyond that period.

8. We reach the same conclusion from the Objects and Reasons for which the Legislature made the above additions to section 126 by Maharashtra Amending Act 14 of 1971, as the statement of the same reads as follows :

"Under section 126(3) of the Act, the market value payable in respect of acquisition of land is the market value prevailing on the date of the notification designating an area as the site for new town or the publication of the draft Development Plan or draft Town Planning Scheme. It has been noticed that in many cases there is an interval of several years before the date of publication of a draft Development Plan and the date of notification under section 126. It is, therefore, proposed that no declaration for acquiring

the land shall be made after the expiry of three years from the date of publication of the plan etc. and that the market value shall be as on the date of such publication. This is in line now with the provisions of the Land Acquisition Act, 1894. Provision is also made for making a fresh declaration in cases where such declaration has not been made within such period; but in such cases the market value shall be the one on the date of such fresh declaration."

9. For the foregoing reasons it must be held that the law laid down by this Court in the case of Sant Joginder Singh (supra) is not correct. There are other difficulties also which will have to be encountered if the interpretation given to section 126 in the above case is allowed to have its full play. It would mean that in respect of plans made after February 17, 1971 the State Government will have to acquire the lands mentioned therein before the expiry of three years from the date of their publications and on its failure to do so, it will not be able to acquire the same under the provisions of the Act any more, whereas in respect of the plans which were in existence prior to February 17, 1971, the State Government may in future can acquire that land at any time without any limitation. Another difficulty will be that the reservation, allocation or designation in respect of the lands covered under the plans under sub-section (1) shall continue even on the expiry of the period of three years, as the provisions of section 126 do not provide that upon the failure of the State Government to make declaration under sub-section (2) within that period, such reservation, allocation or designation will lapse, but the State Government will be perpetually barred from acquiring the land under the Act.

10. On the conclusions as above, we answer the reference in the negative.

11. Let the writ petitions be now placed before the appropriate Bench for hearing in accordance with law.

Order Accordingly.