

Sopan Trambak Wani Vs Director Of Town Planning Maharashtra State And Ors

Court: Bombay High Court

Date of Decision: Jan. 21, 2025

Acts Referred: Constitution of India, 1950 Article 226, 300A

Maharashtra Regional and Town Planning Act, 1966 Section 126, 126(1), 126(2), 127, 127(1)

Land Acquisition Act 1894 Section 5A, 6

Hon'ble Judges: A. S. Gadkari, J; Kamal Khata, J

Bench: Division Bench

Advocate: Ashutosh Gavnekar, Rohit Parab, C.G. Gavnekar, M.P. Thakur, G.H. Keluskar

Final Decision: Allowed

Judgement

A. S. G Adkari, J

1) Rule. Rule made returnable forthwith and with the consent of learned Advocates for the respective parties, the Petition is taken up for final hearing.

2) By this Petition under Article 226 of the Constitution of India, the Petitioner has prayed for writ of mandamus for direction to declare that, the land

owned by him bearing Survey No.228/1+2/2, (Final Plot No.91), admeasuring 0.30 Ares (300 sq.mtrs.), situated within the municipal limits of

Respondent No.6, stands lapsed and the same is available to the Petitioner and for other consequential reliefs.

3) Heard Mr. Gavnekar, learned Advocate for Petitioner, Smt. Thakur, learned A.G.P. for Respondent Nos.1 to 5 and Mr. Keluskar, learned

Advocate for Respondent No.6. Perused entire record.

4) Petitioner is the owner of land bearing Survey No. 228/1+2/2 (Final Plot No.91), admeasuring 0.30 Ares (300 sq.mtrs.) situated within the

jurisdiction of the Respondent No.6. The said plot of land has been shown to be reserved for Garden vide Site No. 110, as per the First

Development Plan sanctioned in the year 1970 for the city of Malegaon under the provisions of the Maharashtra Regional and Town Planning Act,

1966 (for short, "MRTP Act").

4.1) The First Revised Development Plan was sanctioned on 1st April 1986, which, came into effect, from the very same date. That,

the Second Revised Development Plan was published on 15th September 2006 in the Government Gazette. The said Second Revised Development

Plan was finalized for the city of Malegaon on 21stst August 2009 and came into force with effect from 12th October 2009. The Petitioner's

property was and is shown to be reserved for the purpose of garden under Site No. 110 under the said plan.

4.2) It is the case of the Petitioner that, though his property is reserved for public purpose, the Respondents did not take any steps to acquire the said

property, as contemplated under Section 126 of the MRTP Act and therefore the Petitioner issued notice dated 30th July 2020 to Respondent No.6,

which was duly served upon the Respondent No.6.

4.3) After receipt of the said notice dated 30th July 2020, it was placed for consideration before the General Body of Respondent No.6, in its meeting

dated 30th November 2021. The General Body of Respondent No. 6 considered the said notice and by its Resolution No. 267 recorded its inability to

acquire the land of the Petitioner for its poor / unsatisfactory financial condition.

4.4) The period of 24 months as contemplated under Section 127(1) of the said Act came to an end on 30th July 2022, however the Respondent No.6

i.e. the Planning Authority did not take any steps to acquire the Petitioner's said property.

4.5) Petitioner therefore filed present Petition on 17th January 2023 for the reliefs as noted hereinabove.

5) Mr. Gavnekar, learned Advocate for Petitioner submitted that, when a site is reserved for public purpose, it is incumbent that the proceedings be

initiated for compulsory acquisition of such land is required to be acquired by the Authorities within specified period, as contemplated under Section

126 of the said Act. That, in the event, no acquisition is made by the Planning Authority, owners of such sites can issue a notice calling upon the

Authority to confirm whether they intend to purchase property for the public purpose for which it is earmarked. That, if such a notice is confirmed by

the Authority, it is obligatory on such Authority to make an application to acquire such land within a period of 24 months from the date of confirmation

of notice, as contemplated under Section 127(1) of the said Act. That, if there is failure on the part of Appropriate Authority to make such application

within the aforesaid period, it is provided that, the land earmarked or designated for a particular purpose shall be deemed to have been lapsed and

the land shall be declared to be released from reservation or designation as the case may be and the said land shall become available to the owner for

the purpose of development, as otherwise in case of adjoining land in the relevant plan. He submitted that, in the present case, there is clear failure on

the part of Appropriate Authority to acquire the Petitioner's land, despite service of notice under Section 127(1) of the said Act and therefore the

reservation on the land of the Petitioner has lapsed. He therefore prayed that, the Petition may be allowed as per the prayer clauses in the Petition.

6) Smt. Thakur, learned A.G.P. appearing for Respondent Nos.1 to 5 submitted that, Mr. Kalpesh P. Patil, Assistant Director of Town Planning,

Nashik has filed Affidavit dated 17th January 2024 on behalf of Respondent Nos.1, 2, 3 & 5 and Mr. Nitin Sadgir, Sub-Divisional Officer, Malegaon,

District Nashik, has filed Affidavit dated 19th October 2023 on behalf of Respondent No.4. She drew our attention to the relevant paragraphs from

the said Affidavits. She submitted that, the facts stated in the said Affidavits are as per the record maintained by the said two Authorities.

7) Mr. Keluskar, learned Advocate appearing for Respondent No.6 submitted that, Mr. Shantaram T. Chaure, Town Planner (II) of the Town

Planning Department of Respondent No.6 has filed a detailed Affidavit dated 6th September 2023 and the facts mentioned therein are as per the

record maintained by the Respondent No.6. He on instructions fairly conceded to the fact that, the General Body of Respondent No.6 has passed the

said Resolution No. 267 dated 30th November 2021 asserting the fact that, the land of the Petitioner could not be acquired for want of poor /

unsatisfactory economical condition of the Respondent No.6.

8) Perusal of record indicates that, in their Affidavits (i) Mr. Kalpesh P. Patil, Assistant Director of Town Planning, Nashik (ii) Mr. Nitin Sadgir, Sub-

Divisional Officer, Malegaon, District Nashik and (iii) Mr. Shantaram T. Chaure, Town Planner (II) of the Town Planning Department of Respondent

No.6, except narrating the facts relating to inter office correspondence from one department to other, nothing else is mentioned. The pleadings in the

said Affidavits are pertaining to issuance of communications for joint measurement and demand of necessary finance from the Government for

acquisition of the properties within the jurisdiction of Malegaon Municipal Corporation and nothing more.

8.1) In para No.3 of Affidavit dated 6th September 2023, affirmed by Mr. Shantaram T. Chaure, Town Planner (II) of the Town Planning

Department of Respondent No.6, it is admitted that, the General Body of Respondent No.6 in its meeting dated 30th November 2021 considered the

proposal of acquisition of land under reservation at Site No. 110 i.e. the Petitioner's land and recorded that the Respondent No.6 is unable

to acquire the land in question because of the financial condition of Respondent-Corporation is not good.

9) Despite increasing the period from 6 to 24 months from the date of service of the purchase notice under Section 127(1) of the MRTP Act, the

Respondents have failed to take steps to acquire the property admittedly on account of its financial condition.

10) Perusal of record thus clearly discloses that, the Respondent No.6 has failed to take any steps to acquire the land of the Petitioner within the

stipulated period, as contemplated under the provisions of the MRTP Act.

11) The Hon'ble Supreme Court, in the case of Ginnar Traders Vs. State of Maharashtra & Others, reported in

(2007) 7 SCC 555, in para Nos. 54 to 58 has held as under :-

54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under

the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the

provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay vs. Dr. Hakimwadi Tenants' Assn., (1988 Supp SCC 55).

If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such

land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of

the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by

exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation

and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted

inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire

the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps

towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition

and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in

regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the

plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this

section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the

owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation

provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let

the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be

towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in

actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTTP Act by merely

moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the

step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are

required to be taken for acquisition of the land. On construction of Section 126, which provides for acquisition of the land under the MRTTP Act, it

is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act, Clause (c) of Section

126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an

application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126

leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by

the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes

the declaration under Section 6 of the LA Act.

58. The MRTTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTTP Act contains the provisions relating to preparation of

regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for

public purpose. The reservation of land for a particular purpose under the MRTTP Act is done through a complex exercise which begins with land use map, survey,

population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section

5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTTP Act. The acquisition commences with the publication

of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is

a sine qua non for the commencement of any proceedings for acquisition under the MRTTP Act. It is Section 6 declaration which would commence the acquisition

proceedings under the MRTTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTTP Act. Thus, unless and

until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

12) The Hon'ble Supreme Court in the case of Shirampur Municipal Council, Shirampur Vs. Satyabhamabai Bhimaji Dawkher & Others,

reported in (2013) 5 SCC 627, in para Nos.42, 43 & 46 has held as under :-

42. We are further of the view that the majority in Girnar Traders (2) Vs. State of Maharashtra, (2007) 7 SCC 555, 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.

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 300-A of the Constitution.

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. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are

accordingly dismissed.

13) After applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases to the case in hand, we are of the considered view

that, the Petition deserves to be allowed in terms of prayer clauses (a) & (b). The Petition is accordingly allowed and Rule is made absolute in terms

of prayer clauses (a) & (b).

14) The State Government to notify the lapsing of reservation of the Petitioner's land by publishing it in the Official Gazette, as per Section 127(2)

of the MRTP Act within a period of six weeks from the date of uploading of the present Order on the Official website of the High Court of Bombay.

15) It is clarified that, the Petitioner will be entitled to proceed with the development of the property and the Respondents will not delay the granting of

permissions as the notification in the Official Gazette is merely a ministerial act, as held by the co-ordinate Bench of this Court in the case of Arun

Motiram Nimkar Vs. Municipal Corporation of City of Amravati & Ors., reported in 2013 SCC OnLine 739 : (2013) 5 Bom CR 546.

16) All the concerned to act on an authenticated copy of thus Judgment.