
(2007) 02 BOM CK 0108

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 5828 of 2005

Kishor Wadotkar (Dr.)

APPELLANT

Vs

Director of Town
Planning and Others

RESPONDENT

Date of Decision: Feb. 26, 2007

Acts Referred:

- Maharashtra Regional and Town Planning Act, 1966 - Section 127, 38

Citation: (2007) 4 ALLMR 258 : (2007) 109 BOMLR 1412 : (2007) CriLJ 3645 : (2007) 4 MhLj 427

Hon'ble Judges: D.D. Sinha, J; A.B. Chaudhari, J

Bench: Division Bench

Advocate: A.V. Bhide, for the Appellant; N.S. Jog, Assistant Govt. Pleader for Respondent Nos. 1 and 3 and D.S. Dharaskar, for the Respondent

Judgement

D.D. Sinha, J.

Rule returnable forthwith. Heard finally by consent of Shri Bhide, learned Counsel for the petitioner, Mrs. Jog, learned Assistant Government Pleader for the respondent Nos. 1 and 3, and Shri Dharaskar, learned Counsel for the respondent No. 2.

2. Shri Bhide, learned Counsel for the petitioner, states that petitioner is owner of land bearing Survey No. 1, admeasuring 73 acres at Mouza Khel Chatari, Jalgaon Jamod. Out of the said land, land admeasuring 700 square metres of plot No. 5/2/22 was reserved for extension of dispensary in the development plan of city of Jalgaon Jamod of the year 1976. At the relevant time, Siddheshwar, father of the petitioner, in whose name land was, was alive and had served notice dated 22-4-2002 u/s 127 of the Maharashtra Regional and Town Planning Act, 1966 on the Planning Authority since period of more than ten years was lapsed, the Planning Authority was called upon to acquire the land within a period of six months from the date of receipt of the said notice. It is contended that since Planning Authority failed to acquire land in question or initiate proceedings for

acquisition before expiry of period of six months from the date of service of notice dated 22-4-2002, land in question shall be deemed to have been released from the reservation in view of Section 127 of the MRTP Act. It is submitted that this aspect is not disputed by the Director of Town Planning, which is evident from his order dated 2-6-2005.

3. The learned Counsel for the petitioner also submits that land in question is not released by the concerned Authority in favour of the petitioner only on the ground that under the revised development plan, same is again reserved for shopping complex. It is contended that right of the petitioner to get the land released from reservation after lapse of period of ten years and expiry of period of six months from the date of service of notice as contemplated u/s 127 of the MRTP Act cannot be taken away merely because in the revised development plan, land is again shown to have been reserved for construction of shops. It is submitted that this issue is concluded by the decision of this Court in [Kishor Gopalrao Bapat and Others Vs. State of Maharashtra and Another](#), . It is, therefore, submitted that the impugned order dated 2-6-2005 passed by the Director of Town Planning may be quashed and set aside and land of the petitioner may be released from reservation and made available for the purpose of development as otherwise permissible in the case of adjacent land under the relevant Development Plan.

4. Mrs. Jog, learned Assistant Government Pleader for respondent Nos. 1 and 3, has not disputed that in the order dated 2-6-2005 passed by the Director of Town Planning, the reasons given for not releasing the land of the petitioner in spite of the fact that period of ten years has been lapsed and no steps were taken to acquire the land within six months from the date of receipt of service dated 22-4-2002 is that land in question is again reserved for construction of shops in the revised development plan, which came into effect in the year 2005.

5. Shri Dharaskar, learned Counsel for the respondent No. 2, submits that it is no doubt true that land in question was initially reserved for extension of dispensary. However, in the revised development plan, which came into force on 19-12-2005, land in question is reserved for construction of shops and, therefore, petitioner is not entitled to get the land in question released from reservation merely because ten years" period has been lapsed and the Planning Authority could not acquire the land within a period of six months from the date of receipt of notice dated 22-4-2002 issued by the father of the petitioner under the provisions of Section 127 of the MRTP Act.

6. We have considered the contentions of the learned Counsel for the parties. The following facts are not in dispute:

The land admeasuring 700 square metres out of plot No. 5/2/22 of Mouza Khel Chatari, Jalgaon Jamod was reserved for extension of dispensary in the development plan of city of Jalgaon Jamod of the year 1976. Neither the Planning Authority nor Development Authority acquired the land for the said purpose either within the period of ten years from the date on which land was shown to be reserved for the said purpose in the

Development Plan of 1976 nor within a period of six months from the date of receipt of notice dated 22-4-2002 issued by the father of the petitioner. It is also clearly observed in the order dated 2-6-2005 passed by the Director of Town Planning that though notice dated 22-4-2002 was served on the Planning Authority u/s 127 of the MRTP Act, and Municipal Council had not taken any steps for acquisition of land within a stipulated period of six months from the date of service of such notice and though the reservation has been lapsed as per provisions of the MRTP Act, however, since in the revised development plan, the said land is again reserved for construction of shops, the petitioner is not entitled to get the land released from the reservation.

7. In the backdrop of the above referred facts, the issue involved in the present petition is:

whether after lapsing of reservation u/s 127 of the MRTP Act, the Planning Authority is entitled in law to again reserve the said land in the revised development plan for public purpose or the owner of the land is entitled to get the land released from reservation as per scheme of Section 127 of the MRTP Act?

This issue is no more *res integra* and is concluded by the decision of this Court in the case of *Kishor Gopalrao Bapat and Ors.* (cited *supra*). The relevant observations of this Court are in para (12) of the judgment, which read thus:

The above referred observations of this Court make it evident that once reservation is lapsed in view of contingencies mentioned in Section 127 of the MRTP Act, the necessary consequence under the scheme of Section 127 of the MRTP Act must follow. The land which is released from the reservation becomes available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. This right which is conferred or accrued to the owner of the land due to lapsing of reservation cannot be taken away by the Planning Authority by exercising power u/s 38 of the MRTP Act.

8. In view of settled legal position, it is evident that right accrued to the petitioner to get the land released from the reservation u/s 127 of the MRTP Act cannot be taken away merely because land in question is again shown to be reserved in the revised development plan. On the other hand, plain reading of provisions of Section 127 of the MRTP Act demonstrate that after lapsing of period of ten years, if the concerned Authority fails to take steps in respect of acquisition of land or does not acquire the land within a period of six months from the date of service of notice as contemplated u/s 127, reservation shall be deemed to have lapsed and land shall be deemed to be released from such reservation. As per the scheme prescribed u/s 127 of the MRTP Act, it is implicitly clear that once the period of ten years is lapsed and the Planning Authority has not taken steps to acquire the land within a period of six months from the date of service of notice, by virtue of deeming fiction, reservation shall be deemed to have been lapsed and land shall be deemed to have been released from such reservation. Similarly, right which is accrued to the owner of the land after lapsing of reservation cannot be taken

away by the Planning Authority by exercising power u/s 38 of the MRTP Act, by again reserving the land for the public purpose in the revised development plan. The issue is answered accordingly.

9. In view of the above referred facts and circumstances as well as law laid down by this Court in the case of Kishore Gopalrao Bapat and Ors. (cited supra), the impugned order dated 2-6-2005 passed by the Director of Town Planning is hereby quashed and set aside. The land in question shall be deemed to be released from reservation and shall be made available to the petitioner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

10. The rule is made absolute in the above terms. No order as to costs.