IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1387 OF 2008

Hasmukhrai V. Metha ... Appellant

Versus

State of Maharashtra and others ...Respondents

J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against order dated 17.7.2007 whereby the High Court of Judicature at Bombay has discussed the Writ Petition No. 2266 of 2004, seeking direction either to release the appellant's land situated in Village Sheel, District Raigad in terms of Section 49 read with Section 127 of Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act"), from reservation and allow the appellant to develop the property for residential use, or, in alternative, to declare the appellant's land stood acquired for the purposes of

Agricultural Produce Market Committee (for short "APMC") and Truck Terminal (for which it was reserved).

2. In brief, factual matrix of the case is that the appellant Hasmukhrai Vanmalidas Mehta owns land in Survey No. 16, Hissa No.3 and Survey No. 18, Hissa No. 4, situated in Village Sheel, Taluka Khopoli, District Raigad in the State of Maharashtra. On 14.02.1990, he applied to the Planning Authority seeking permission to carry out development of land with necessary documents as required under Section 44 of MRTP Act. The appellant was granted permission and issued commencement certificate dated 03.04.1990 by respondent No.4 (Chief Officer, Khapoli Municipal Council) under Section 45 of said Act read with Section 89(4) of Maharashtra Municipalities Act, 1965. The Development Plan of Khopoli Municipal Council was sanctioned by the Government, vide Order No. TPS/1476/32/UD-5 dated 17.12.1976. It is pleaded on behalf of the appellant that the land in question, belonging to the appellant, was included in the residential zone in the sanctioned plan of 15.1.1977. It is

further pleaded that on 15.7.1991, the Chief Town Planning Officer granted 'No Objection Certificate' for utilization of the land for non-agricultural purpose. From communication dated 15.7.1991, made by respondent No. 4 it reveals that Development Plan for residential purpose was sanctioned, and commencement certificate was issued by him on 19.6.1992 for construction. Development charges amounting Rs.1,92,490/- were also recovered from the appellant by getting served notice dated 31.07.1998, for use of land for residential purpose.

3. However, on 14.1.1999 the appellant was informed by the respondent No. 4 that a fresh development scheme of Khopoli town has been prepared which includes appellant's survey Nos. 16/3 and 18/4 as a part of land reserved for Agriculture Produce Market Yard (for short "APM Yard") and for Truck Terminal. Reacting to it, on 17.8.2000 the appellant served a purchase notice under Section 49 of the MRTP Act as the land in question was already in the sanctioned plan left in 1977 for residential purposes. In

reply to this, Director, Town Planning, vide his communication dated 16.3.2001, though confirmed receiving of the purchase notice, but directed the appellant to contact APMC, Khopoli. The Director, Town Planning wrote separate letter to Chief Officer of Municipal Council of Khopoli that the proceedings of land acquisition for APM Yard be initiated within one year from 16.3.2001 failing which it would amount to release of the land from the reservation for APM Yard. Consequently, Khopoli Municipal Council wrote a letter on 23.4.2001 to APMC to immediately initiate acquisition proceedings and to act on purchase notice served by the appellant. The appellant himself wrote a letter to respondent No. 5 (APMC) requesting for initiation of acquisition proceedings. Another letter was sent on 6.7.2001 by the respondent No. 4 to respondent No. 5 calling upon it to take necessary steps for acquisition of the appellant's land. However, no steps were taken for one year, i.e., by 15.3.2001. Respondent No. 4 again reminded respondent No. 5 between September, 2001 to March, 2002 to complete the acquisition proceedings. When nothing was

done, the appellant again on 5.7.2002 sought revalidation of the permission for construction earlier allowed to him. After running from pillar to post, the appellant made a representation dated 13.2.2003 to the Secretary, Urban Development, Government of Maharashtra, on the above issue, but to no avail. Ultimately, the appellant filed writ petition in February, 2004 complaining that the respondents are neither acquiring land belonging to the appellant nor releasing the same from reservation for APM Yard, and sought necessary directions from the High Court.

4. By impugned order the High Court, by its two paragraphs order, dismissed the writ petition by observing that notice dated 17.8.2000 given by the writ petitioner (present appellant) invoking the provisions of Section 49 of the MRTP Act is of no help as the Development Scheme by then was not finalized. It is further observed by the High Court that Section 127 of the MRTP Act contemplates that the land be acquired by the Planning Authority within a period of 10 years after reservation, but in the present case,

plan was finalized in March, 2003, as such before the expiry of ten years elapsed, no benefit can be given to him.

5. We have heard learned counsel for the parties at length and perused the papers on record.

6. Before further discussion, we think it just and proper to quote the relevant provisions of law applicable to this case. Section 49 of the Maharashtra Regional and Town Planning Act, 1966 reads as under: -

> "**49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases**:- (1) Where-
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> (a) any land is designated by a plan as subject to compulsory acquisition, or
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> (b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or
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> (c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clauses (a), (b) (c) or (d) claims-

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated,

the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice") requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any, in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning

Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) ******* (deleted by Mah. Act 6 of 1976)

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the

owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan."

7. Another relevant provision, i.e., Section 127 of the MRTP Act (as it existed prior to amendment in 2009) is reproduced 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."

8. Learned counsel for the appellant argued that the High Court has erred in law in dismissing the writ petition in which the appellant had fairly sought direction either to acquire the land or to release the same. It is further submitted that the land cannot be held up for indefinite period, and the State is bound either to acquire the land within the period provided under Section 126 read with Section 127 of the MRTP Act, or to release the same.

9. In reply to this, on behalf of the State, it is contended that notice could have been served by the writ petitioner/ appellant only after expiry of ten years of the Development Plan, and the respondents were not required to take note of the purchase notice given by the appellant within the period of ten years.

10. Above reply, in our opinion does not answer as to why steps have not been taken for acquisition for last twenty years.

11. We think it pertinent to mention here that APMC, respondent No. 5, even after service of notice, has not cared to contest this appeal. Also, we think it relevant to mention that till date no steps appear to have been taken for acquisition of the land in question or to release the same. The land of appellant, in our opinion, can not be held up, without any authority of law, as neither the same is purchased till date by respondent authorities, nor acquired under any law, nor the appellant is being allowed to use the land for last more than twenty years.

12. In ***T. Vijayalakshmi and others*** **v.** ***Town Planning Member and another***[1], this Court, in paragraphs 13 and 15, has observed as under: -

> "**13.** Town Planning legislations are regulatory in nature. The right to property of a person would include a right to construct a building. Such a right, however, can be restricted by reason of a legislation. In terms of the provisions of the Karnataka Town and Country Planning Act, a comprehensive development plan was prepared. It indisputably is still in force. Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind.

[1] (2006) 8 SCC 502

> Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force.
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> Xxx xxx xxx
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> **15.** The law in this behalf is explicit. Right of a person to construct residential houses in the residential area is a valuable right. The said right can only be regulated in terms of a regulatory statute but unless there exists a clear provision the same cannot be taken away. It is also a trite law that the building plans are required to be dealt with in terms of the existing law. Determination of such a question cannot be postponed far less taken away. Doctrine of legitimate expectation in a case of this nature would have a role to play."

13. In ***Girnar Traders* v. *State of Maharashtra and others***[2], this Court, per majority, in paragraphs 32, 54 and 56 has held as under: -

[2] (2007) 7 SCC 555

"**32.** If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.

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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* v. *Dr. Hakimwadi Tenants Assn.*[3]. 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

[3] 1988 Supp SCC 55

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.

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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 MRTP 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."

14. In view of the principle of law laid down by this Court, as above, we are of the view that in the present case since neither steps have been taken by the authorities concerned for acquisition of the land, nor the land of the appellant is purchased under purchase notice, nor he is allowed to use the land for last more than twenty years, the land will have to be released as the appellant cannot be deprived from utilizing his property for an indefinite period.

15. Inaction on the part of APMC and bonafide act of appellant are apparent from the documents on record. In this connection, we think it relevant that from the copy of letter dated 15.7.1991 (Annexure P/2) it is clear that Khopoli Municipal Council granted permission for demarcation of the Survey No. 16, Hissa No. 3 and Survey No. 18, Hissa No. 4 of Village Sheel, and allowed that the plot be used by the appellant for residential purpose, subject to other conditions mentioned in the letter. Another document on record, is copy of letter dated 23.4.2001 (Annexure P/8) sent by the Chief

Officer of Khopoli Municipal Council to the Chairman, Agriculture Produce Market Committee, wherein at the end of the letter, it is expressly mentioned that if action of acquisition of land not started within time limit mentioned under MRTP Act, 1966, the Committee (APMC) would be responsible for lapse of reservation of the land. Also, Report dated 21.4.2003 (Annexure P/14) of Town Planning and Valuation Department addressed to the Principal Secretary of the Urban Development Department of State of Maharashtra shows that the Committee (APMC) and the State Government were reminded of the fact regarding the requirement of acquisition proceedings and the fact that it is yet not known that any action for land acquisition was taken till the report was submitted or not. Necessity of early action was reiterated in the letter. However, it appears that no one bothered on the issue to take steps for acquisition.

16. In the above circumstances, having considered submissions of the learned counsel for the parties and after going through the documents on record and further

considering the law laid down by this Court, as discussed above, we find that the High Court has erred in law in dismissing the writ petition.

17. Accordingly, we allow the appeal and set aside the impugned order passed by the High Court. Since no steps appear to have been taken till date for last more than twenty years either for acquisition or for purchase of the land under MRTP Act, 1966 by the authorities concerned, as such, the land in question stands released from reservation under Section 127 of the MRTP Act.

.....J.
[Vikramajit Sen]

.....J.
[Prafulla C. Pant]

New Delhi;
December 03, 2014.