

PUKHRAJMAL SAGARMAL LUNKAD (D) THROUGH HIS A
LRS. AND OTHERS ETC.

v.

THE MUNICIPAL COUNCIL, JALGAON AND OTHERS
(Civil Appeal No. 491 of 2007) B

FEBRUARY 03, 2017

[MADAN B. LOKUR AND PRAFULLA C. PANT, JJ.]

Maharashtra Regional and Town Planning Act, 1966 – ss. 88, 126, 127 – Municipal Council, a planning authority under the Act, published Draft Development Plan in respect of certain lands including plots owned by the appellants and reserved them for public purpose – However, subsequently, Town Planning Scheme on the said Development Plan relating to the plots in question was prepared – Plea of appellants that the land reserved was not acquired within ten years, thus land shall be deemed to be released from reservation, allotment or designation and available back to owner as per s.127 of the Act – High Court dismissed the writ petitions filed by appellants – On appeal, held: In instant case, the prayer was made by the appellants in the writ petitions specifically in respect of Town Planning Scheme – s.127 does not apply to lands reserved for public purpose under Town Planning Scheme and as such, there was no lapsing of reservation of land u/s.127 of the Act – Further, from the order passed by the Arbitrator under Town Planning Scheme Rules, it is clear that compensation was determined in respect of land in question under Town Planning Scheme – No error in judgment passed by the High Court – Urban development – Land Acquisition Act, 1894. C
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Words and Phrases – ‘Town Planning’ – ‘Development Plan’ – ‘Scheme’; ‘Planning’ and ‘Planning Scheme’ – Meaning of – Maharashtra Regional and Town Planning Act, 1966 – s.2(9) and s.2(30). G

Dismissing the appeal, the Court

HELD: 1.1 The appellants contended that the Town Planning Scheme was approved by the State Government in January, 1993, based on a revised Development Plan submitted H

A by the Municipal Council in 1988, i.e., after reservation of land in
question already stood lapsed as the land owners had served the
notice under Section 127 of MRTP Act and six months period
had passed thereafter. This contention lacks substance for the
reason that the land in question was reserved in 1976 under Town
B Planning Scheme III. Development Plans are dealt with under
Chapter III, and Town Planning Schemes are dealt with under
Chapter V of MRTP Act. Section 126 of the Act which is part of
Chapter VII, deals with Plans as well as Schemes, but Section
127 does not refer to Town Planning Schemes. [Paras 10, 13]
[339-C-D; 340-A-B]

C 1.2 In the present case, the prayer is made by the
appellants in the Writ Petitions specifically in respect of Town
Planning Scheme No. III, which was finally sanctioned, as such,
no error in the impugned judgment passed by the High Court
D dismissing the Writ Petitions. From the copy of special notice
issued under Town Planning Scheme Rules and copy of order
passed by the Arbitrator in the aforesaid rules, it is clear that the
compensation was determined in respect of land in question under
Town Planning Scheme. The decision of the Arbitrator appears
to have been published in the Official Gazette and appeal was
dismissed. In the circumstances, no error in the order passed
E by the High Court. [Para 14] [340-C-E]

2. The landowners contended that the land is deemed to
have been released after 6 months of the issue of Notice u/s 127
of the MRTP Act. The contention cannot be accepted for the
reason that the decision relied by the landowners to contend that
F no steps were taken relates to the 'Development Plan' for which
the steps for acquisition had to be taken as per Section 126. In
the present case, before the scheme is implemented, the
procedure contemplated under Chapter V is followed to finalise
the scheme. The procedure includes the sanctioning of draft
G scheme, appointment of arbitrator, issuing notices to persons
affected by the scheme, determination of compensation by the
arbitrator and then the final award made by the arbitrator. In
respect of the land required under Town Planning Scheme except
the Development Plan, the steps under Section 126 may not
require to be resorted to at all. It is clear from the record that
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the Draft Town Planning Scheme was published in 1976, arbitrator determined the compensation in 1980, the appeal filed before the Tribunal was dismissed in 1987 and the scheme was sent to the Government for sanction in 1988 and it was finally sanctioned in 1993 by following the procedure under Chapter V which is a self contained code for the implementation of the Town Planning Scheme. [Para 15] [340-E-H; 341-A-B]

Girnar Traders v. State of Maharashtra and Others
(2007) 7 SCC 555 : [2007] 9 SCR 383 – referred to.

Case Law Reference

[2007] 9 SCR 383 referred to Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 491 of 2007.

From the Judgment and Order dated 23.12.2004 of the High Court of Judicature at Bombay, bench at Aurangabad in Writ Petition Nos. 1924 and 1925 of 1992 & Writ Petition No. 1228 of 2001.

Ravindra Keshavrao Adsure, Ajit Babanrao Kale, Anand Landge, Dr. Kailash Chand, Anish R. Shah, A. Radhakrishnan, Advs. for the appellants.

H. P. Raval, Sr. Adv., Shivaji M. Jadhav, Nipun Saxena, Anando Mukherjee, Mahaling Pandarge, Nishant Ramakantrao Katneshwarkar, Advs. for the respondents.

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed against judgment and order dated 23.12.2004, passed by the High Court of Judicature of Bombay, Bench at Aurangabad, whereby said Court has dismissed the Writ Petition No. 1924 of 1992. And for the reasons given in the said order, the other two Writ Petition Nos. 1925 of 1992 and 1228 of 2001 were also dismissed.

2. In the above Writ Petitions (Nos. 1924 of 1992 and 1925 of 1992), Town Planning Scheme in respect of survey No. 431/A (new plot No. 287) and survey No. 431/B (new plot No. 288) situated at Mehrun area within the limits of Municipal Council Jalgaon, was sought to be quashed.

A 3. Brief facts of the case are that appellants were admittedly
owners of survey No. 431/A-1, A-2 and A-3 and survey No. 431/B. On
15.12.1971, Jalgaon Municipal Council which is a Planning Authority
under the Maharashtra Regional and Town Planning Act, 1966 (for short
"MRTP Act"), published Draft Development Plan in respect of certain
B lands including the aforementioned plots owned by the appellants and
reserved the same for public purpose, renumbering them as plot No. 288
in reservation site No. 107 (for garden) and plot No. 287 reserved in site
Nos. 104 and 105 (for the purposes of construction of library, maternity
home and dispensary). Final Development Plan was sanctioned in
respect of above area which came into operation on 16.12.1974.
C According to the appellants, this date is the starting point for taking steps
for acquisition within a period of ten years under MRTP Act, as the
owners got restricted/prevented from carrying out any developmental
activities over their land. It is pleaded by them that the procedure for
acquisition of the land reserved for public purpose is provided under
D Chapter VII, which allowed at the relevant point of time only two modes
of acquisition under Section 126 (1) of the MRTP Act, namely – (i) by
agreement, and (ii) by making an application to the State Government
for acquiring such land under Land Acquisition Act, 1894.

E 4. Section 127 of the MRTP Act, provides that if any land
reserved, allotted or designated for any purpose specified in any plan
under the Act, is not acquired by agreement within ten years from the
date on which the final Regional Plan or final Development Plan came
into force or if proceedings under 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
F Authority or Appropriate Authority, as the case may be, and if within six
months of such notice, the land is not acquired or no steps, as aforesaid,
are commenced for the acquisition, the reservation, allotment or
designation shall be deemed to have lapsed, and thereupon the land shall
be deemed to be released from the reservation, allotment or designation,
G 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.

H 5. The appellants' case is that on 15.12.1984 ten years stood
expired from the date coming into operation of final Development Plan,
and the respondents failed to acquire the land. As such, the original

appellants/land owners sent a notice under Section 127 of the MRTP Act to the Planning Authority, Jalgaon Municipal Council on 7.10.1986, but even after receipt of such notice, the Municipal Council failed to take steps for acquisition of the appellants' land reserved for public purpose within the period of six months, and consequently, the land stood released from the reservation. But when in spite of repeated representations no orders were passed by the Planning Authority releasing the land, the appellants filed Writ Petition Nos. 1924 of 1992 and 1925 of 1992 qua survey Nos. 431/A and 431/B respectively, seeking writ of mandamus to quash the reservation of the appellants' land for Town Planning Scheme. A B

6. On the other hand, on behalf of the Planning Authority/Jalgaon Municipal Council, it is stated that larger area of land including the land in question was subsequently reserved on 09.09.1976 for public purposes under the Town Planning Scheme III, and Sections 126 and 127 of MRTP Act have no application in the present case. The scheme started way back year in 1976 and Arbitrator was appointed under the Act and he passed award on 20.03.1980 and compensation of ' 1,20,000/- for plot no. 287 (Old No. 431A) and ' 1,51,700/- for plot no. 288 (old No. 431B) was determined. The appeal to the Tribunal regarding compensation was dismissed. It is further stated that the land stood vested under Section 88 of the MRTP Act. On behalf of the respondents, it is also pointed out that advance possession of the land was voluntarily delivered by the appellants to the Municipal Council on 21.2.1981 and compensation determined by the Arbitrator was deposited. (Appellants have responded to the above plea by stating that the advance possession was delivered only in respect of a small strip of land used for twenty feet wide road). C D E

7. It is not out of context to mention here that the revised Development Plan for Town Planning Scheme No. III was submitted by the Municipal Council on 01.03.1988, which the State Government sanctioned on 06.01.1993 and in said scheme the land in question was reserved for "civic centre". The State Government approved the said final Town Planning Scheme on 29.5.1993/31.5.1993. It has also come on record that at one stage, on the representation of the appellants in the year 1984, the Municipal Council submitted proposal for deletion of land from reservation for development plan, but the same was rejected by the State Government. F G

8. The High Court, after hearing the parties, opined that the H

A Development Plan proposals are executed by the local authority either
 by compulsory land acquisition, or by preparing and executing Town
 B Planning Scheme for different parts of the town so that when all proposals
 are carried out, there would be harmony and the town is developed in
 planned manner. The High Court further observed that in making a
 Town Planning Scheme the lands of all persons covered by the Scheme
 are treated as if they are to be in a pool. The Town Planning Officer
 then proceeds to reconstitute the plots for residential buildings and reserves
 C certain lands for public purposes. The reconstituted plots are allotted to
 land owners with change in shape and size. The Arbitrator under the
 MRTP Act lays out new roads, reserves land for recreation grounds,
 D schools, markets, green belts and similar public purposes. The object of
 the Scheme being so to provide amenities and benefit to the residents,
 the area in occupation of individual land holders is reduced. The result
 is that there is shifting of plots of land, roads, means of communication.
 As such, the rearrangement of titles in the various plots requires financial
 E adjustments to be made and the owners who are deprived of their land
 are compensated. The High Court, discussing the provisions of Bombay
 Town Planning Act and that of the MRTP Act, has held that Section 126
 of MRTP Act providing for acquisition could only be resorted to, in relation
 to the cases covered by exclusionary clause used in Section 88 (a) of
 the Act, and it further held that Section 127 does not apply to lands
 reserved for public purpose under Town Planning Scheme, and, as such,
 there is no lapsing of reservation of land under Section 127 of the Act,
 and dismissed the writ petitions.

9. We have examined the matter and considered the rival
 submissions of learned counsel for the parties.

F 10. Before further discussion, we think it just and proper to look
 into the definitions of 'Development Plan' and 'Town Planning Scheme'.
 Section 2(9) of MRTP Act defines the term 'Development Plan' and
 reads as under:

G *'Development Plan' means a Plan for the Development or
 re-development of the area within the jurisdiction of a
 Planning Authority and includes revision of development plan
 and proposals of a Special Planning Authority for
 development of land within its jurisdiction'.*

H The expression Town Planning Scheme is not defined in the Act

but under sub-section 2(30) the word 'Scheme' is defined as: A

'Scheme' includes a plan relating to a Town Planning Scheme'.

According to concise Oxford English Dictionary 'scheme' means a systematic plan or arrangement for attaining some particular object or putting a particular idea into effect. In the same dictionary, term 'planning' means planning and control of the construction, growth, and development of a town or other urban area. As such, we may say that the term 'Planning Scheme' means, a systematic plan with an object of planning and control of the construction, growth and development of a town. We also think it relevant to mention here that Development Plans are dealt with under Chapter III, and Town Planning Schemes are dealt with under Chapter V of MRTP Act. Section 126 of the Act which is part of Chapter VII, deals with Plans as well as Schemes, but Section 127 does not refer to Town Planning Schemes. B
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11. Effect of final Town Planning Scheme is provided in Section 88 of the MRTP Act which reads (as it existed before 2014), as under: D

"88. Effect of final scheme - On and after the day on which a final scheme comes into force-

(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances; E

(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator;

(c) the Planning Authority shall hand over possession of the final plots to the owners to whom they are allotted in the final scheme." F

12. It is stated that draft Development Plan relating to plots in question was initially published on 15.12.1971 which was sanctioned by the State Government on 11.04.1974 and finally Development Plan was operationalised on 16.12.1974. But the Town Planning Scheme based on the said Development Plan relating to the plots in question is stated to have been prepared on 09.09.1976, and thereafter finalized and sanctioned on 29.05.1993/31.05.1993. G

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A 13. Learned counsel for the appellants argued that the Town
Planning Scheme was approved by the State Government in January,
1993, based on a revised Development Plan submitted by the Municipal
Council in 1988, i.e., after reservation of land in question already stood
lapsed as the land owners had served the notice under Section 127 of
B MRTTP Act on 07.10.1986 and six months period had passed thereafter.
This argument on scrutiny lacks substance for the reason that the land in
question was reserved in 1976 under Town Planning Scheme III. We
have already discussed above that Section 127 does not refer to Town
Planning Schemes.

C 14. In the present case the prayer is made by the appellants in
the Writ Petitions specifically in respect of Town Planning Scheme No.
III, which was finally sanctioned, as such, we find no error in the impugned
judgment passed by the High Court dismissing the Writ Petitions. From
the copy of special notice dated 25.04.1980 in form No. 4 issued under
Town Planning Scheme Rules (filed as Annexure-B with the additional
D documents) and copy of order dated 16.05.1980 passed by the Arbitrator
in the aforesaid rules, it is clear that the compensation was determined
in respect of land in question under Town Planning Scheme. The decision
of the Arbitrator appears to have been published in the Official Gazette
dated 20th August, 1980, and appeal was dismissed. In the
E circumstances, we find no error in the order passed by the High Court.

F 15. The landowners further relied on the case of *Girnar Traders
Vs. State of Maharashtra and Others*¹ to contend that the land is deemed
to have been released after 6 months of the issue of Notice u/s 127 of
the MRTTP Act. The contention of the landowners cannot be accepted
for the reason that the decision relied by the landowners to contend that
no steps were taken relates to the 'Development Plan' for which the
steps for acquisition had to be taken as per Section 126. In the present
case, before the scheme is implemented, the procedure contemplated
under Chapter V is followed to finalise the scheme. The procedure
includes the sanctioning of draft scheme, appointment of arbitrator, issuing
G notices to persons affected by the scheme, determination of compensation
by the arbitrator and then the final award made by the arbitrator. In
respect of the land required under Town Planning Scheme except the
Development Plan, the steps under Section 126 may not require to be
resorted to at all. It is clear from the record that the Draft Town Planning

H ¹ (2007) 7 SCC 555

Scheme was published in 1976, arbitrator determined the compensation in 1980, the appeal filed before the Tribunal was dismissed in 1987 and the scheme was sent to the Government for sanction in 1988 and it was finally sanctioned in 1993 by following the procedure under Chapter V which is a self contained code for the implementation of the Town Planning Scheme. A

16. For the reasons as discussed above, we do not find any force in this appeal. Accordingly, the same is dismissed. No order as to costs. B

Ankit Gyan

Appeal dismissed.