REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1999 OF 2008

PRAFULLA C. DAVE & ORS. ... APPELLANT (S)

VERSUS

MUNICIPAL COMMISSIONER & ORS. ... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. The question arising for determination in the present appeal has been succinctly formulated by the High Court in the following terms:

"Whether, the plan first prepared and notified under Section 21 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act') is the final development plan and the

plan prepared under Section 38 is only a revision of the final development plan proposed under Section 21 of the MRTP Act and as such, the notice contemplated under Section 127(2) of the MRTP Act and the period prescribed is from the publication of the development plan first notified under Section 21 and not the revised development plan under Section 38?"

2. To answer the aforesaid question, a brief conspectus of the statutory framework under the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the 'MRTP Act') will be necessary.

3. The preamble to the Act suggests that the MRTP Act was enacted, inter alia, ".....to make better provisions for the preparation of development plans with a view to ensuring that town planning schemes are made in a proper manner and their executions is made effective....." .

4. Section 2 of the MRTP Act contains the definition clause. A Development Plan is defined by sub-section (9) of Section 2 to mean "a plan for the development or re-

development of the area within the jurisdiction of a Planning Authority [and includes revision of a development plan and proposals of a special planning authority for development of land within its jurisdiction]".

5. Chapter III, inter alia, deals with preparation, submission and sanction of development plan. Section 21 provides that not later than three years after commencement of the Act every planning authority shall carry out a survey, prepare an existing land-use map and prepare a draft development plan for the area within its jurisdiction. A publication in the official gazette or in such other manner as may be prescribed stating that the draft development plan has been prepared is also contemplated. The draft development plan is required to be submitted by the State Government for sanction.

6. Section 22 provides for the contents of the development plan and is in the following terms :-

> "**Contents of Development Plan**:- A Development plan shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated, and also

indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-

(a) proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational;

(b) proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious buildings and government and other public buildings as may from time to time be approved by the State Government;

(c) proposals for designation of areas for open spaces, playgrounds, stadia, zoological gardens, green belts, nature reserves, sanctuaries and dairies;

(d) transports and communications, such as roads, high-ways, park ways, railways, water-ways, canals and airports, including their extension and development;

(e) water supply, drainage, sewerage, sewage disposal, other public utilities, amenities and services including electricity and gas;

(f) reservation of land for community facilities and services;

(g) proposals for designation of sites for service industries, industrial estates and any other development on an extensive scale;

(h) preservation, conservation and development of areas of natural scenery and landscape;

(i) preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value 1[and of heritage buildings and heritage precincts];

(j) proposals for flood control and prevention of river pollution;

(k) proposals of the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to acquisition for public purpose or as specified in a Development plan, having regard to the provisions of section 14 or for development or for securing use of the land in the manner provided by or under this Act;

(l) the filling up or reclamation of low lying, swampy or unhealthy areas, or levelling up of land;

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority including imposition of fees, charges and premium, at such rate as may be fixed for conditions and restrictions in regard to by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a

> plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act."

7. Section 23 which really ought to have preceded the earlier Sections i.e. Sections 21 and 22 contemplate that a planning authority, before carrying out a survey and preparing an existing land-use map, shall by a Resolution make a declaration of its intention to prepare a development plan. Such declaration is required to be published in the official gazette and also in the local newspaper inviting suggestions or objections from the public within a period of not less than sixty days from the date of publication in the official gazette. The appointment of a planning officer to carry out a survey and prepare an existing land-use map is provided for by Section 24 of the MRTP Act. Under Section

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25, the planning authority or the officer appointed by it under Section 24 is required to carry out a survey of the lands and prepare an existing land-use map within six months from the date of publication of the intention to prepare a development plan. Section 26 provides for preparation of the draft development plan within two years from the date of notice under Section 23 and publication of the same in the official gazette calling for objections and suggestions to be submitted within thirty days from the date of publication in the gazette. Such objections are required to be forwarded to a Planning Committee constituted under the Act for consideration and report. Modifications or changes in the draft development plan may be made by the planning authority after receipt of the report of the Planning Committee which modifications are again required to be notified in the official gazette for information to the public. Thereafter under Section 30, the draft development plan alongwith a list of modifications or changes proposed in the said draft plan under Section 28(4) is required to be submitted to the State Government within a period of six

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months. Sanction of the State Government is to be accorded under Section 31 within six months from the date of receipt of the draft plan from the planning authority. It would be significant to note that under sub-section (5) of Section 31 if a development plan contains any proposal for the designation of any land for a purpose specified in Section 22(b)(c) (already extracted) and such land does not vest in the planning authority, the State Government shall not include such land in a development plan unless it is satisfied that the planning authority will be able to acquire such land either by private agreement or by compulsory acquisition not later than ten years from the date on which the development plan comes into operation.

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8. Section 37 of the MRTP Act provides for modification of a final development plan of such nature which will not change the character of the plan. Such modification has to be preceded by notice in the official gazette inviting objections and suggestions. Hearing of such objections is contemplated by Section 37(1) before submission of the proposal for modification to the State Government for

sanction. Section 37 also contemplates *suo moto* modification by State Government subject to observance of the same procedure. Under sub-section (2) the State Government may sanction a modification which is again required to be published in the official gazette.

9. Section 38 deals with the revision of a final development plan, already in operation. Such revision is contemplated on the expiry of 20 years from the date of coming into operation of a development plan. As the scope, purport and effect of the provisions contained in Section 38 is the bone of controversy in the present case, the same may be extracted below.

> "**38. Revision of Development Plan**
>
> At least once in [twenty years] from the date on which a Development plan has come into operation, and where a Development plan is sanctioned in parts, then at least once in [twenty years] from the date on which the last part has come into operation, a Planning Authority may [and shall at any time when so directed by the State Government], revise the Development Plan [(either wholly, or the parts separately)] after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction, and the provisions of sections 22, 23, 24, 25, 26, 27, 28, 30 and 31 shall,

> so far as they can be made applicable, apply in respect of such revision of the Development plan."

10. Section 38 clearly sets out the point of time at which a revision of an approved plan already in operation can be made. Such revision may involve a fresh survey and preparation of fresh land-use map. Section 38 further makes it clear that in revision of a development plan the provisions of Sections 22 to 31 except Section 29, so far as they can be made applicable, shall apply.

11. The other relevant provisions of the MRTP Act which would require to be noticed are Sections 126 and 127. Under Section 126 after publication of a development plan if any land is required or reserved for any of the public purposes specified in such plan, the planning authority or any other appropriate authority may acquire the land, inter alia, by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894. There are two other modes of acquisition, namely, by agreement and by allotment of transferable development rights. The same, however, would not be relevant for the purpose of the

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present case and, therefore, need not be noticed. Acquisition of land under the Land Acquisition Act, 1894 is to be made by issuing a declaration in the official gazette in the manner provided in Section 6 of the Land Acquisition Act, 1894. Such declaration is required to be made within one year from the publication of the development plan. However, sub-section (4) provides that if such a declaration is not made within a period specified or if the other contingencies provided for in the said sub-section exist, the State Government may make a fresh declaration in which event the market value of the land will be determined as on the date of the fresh declaration under Section 6 of the Land Acquisition Act.

12. Section 127 deals with lapsing of reservations and being at the core of the controversy arising in the present case, will require to be extracted below-

> "**Lapsing of reservations**:- 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."

13. Section 127 of the MRTP Act is free from any ambiguity. If the 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 or development plan had come into force or if proceedings for the acquisition of such land under the MRTP Act or under the Land Acquisition Act are not commenced within the said period of ten years, the owner or any person interested in the land may serve notice to the concerned

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authority and if within six months from the date of service of such notice the land is not acquired or no steps are taken for its acquisition, the reservation, allotment or designation is deemed to have lapsed and the land is deemed to be released from such reservation, allotment or designation and becomes available to the owner.

14. In the present case the land belonging to the appellants measure about 83 Ares and is situated at village Aundh, District Pune, Maharashtra. The said land was included in a development plan of the city of Pune notified on 8th July, 1966 and shown to be kept under reservation for a public purpose i.e. garden. The land was not acquired by resorting to any of the modes under Section 126 at any point of time prior to the sanction of a revised development plan dated 5th January, 1987 which continued the reservation of the land for the same purpose i.e. garden. The final revised development plan dated 5th January, 1987 was preceded by a draft revised plan which was published in the year 1982. No notice under Section 127 of the MRTP Act was issued by the owner and any person interested in the land and served

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on any authority under the Act at any point of time prior to the purchase of the land by the appellants from the original owners in the year 1989. After such purchase, the appellants filed Writ Petition No. 5467 of 1989 on 29th August, 1989 before the Bombay High Court for deletion and de-reservation of the land. Thereafter, the appellants served a notice dated 5th October, 1989 under Section 127 of the MRTP Act calling upon the Pune Municipal Corporation to acquire the land within a period of six months from the date of receipt of the notice. As no action was taken by the Municipal Corporation, the appellants submitted a layout plan to the Corporation on 5th October, 1990 which was rejected on 29th October, 1990. Against the aforesaid rejection made by the Corporation, the appellants filed an appeal under Section 47 of the MRTP Act. In the meantime, the writ petition i.e. W.P No.5467 of 1989 filed by the appellants was disposed of with a direction that the appeal filed by the appellants be expeditiously decided. The said appeal came to be rejected on 14th July, 2003 on the ground that notice under Section 127 of the MRTP Act was

premature as it was issued before the completion of the period of ten years from the date of the revised development plan.

15. Assailing the said order passed in the appeal, the writ petition was filed wherein the issue arising was formulated by the High Court in the terms already set out. The answer provided by the High Court in the writ proceeding being adverse to the appellants, the instant appeal has been filed.

16. We have heard Shri Jayant Bhushan, learned senior counsel appearing for the appellants and Shri Shekhar Naphade, learned senior counsel appearing for the respondents.

17. On behalf of the appellants it is contended that the period of ten years under Section 126 of the Act has to be reckoned from the date of coming into force of the initial final development plan and not the revised development plan made under Section 38 of the Act. Any other view, according to the learned counsel, would amount to a perpetual deprivation of the owner of land which, at the

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same time is also not being put to use for the public purpose specified in the development plan. Section 127 of the Act, it is contended, is a beneficial provision in so far as the land owner is concerned calling for a liberal interpretation of its effect. Learned counsel has also drawn attention to the provisions of Section 31(5) of the MRTP Act which contemplates that in so far as reservation of land for public purposes specified in sub-section (b) and (c) of Section 21 is concerned inclusion of such land in the Development Plan should not be made unless the authority is reasonably confident of acquiring the land within a period of ten years. Learned counsel has, therefore, submitted that the legislative intent was to give the authority under the Act a maximum of ten years to acquire the land earmarked for a public purpose or at least to initiate steps for such acquisition failing which the reservation would lapse. Reliance has been placed on a decision of this Court in ***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd.& Ors.***[1] in support of the contentions made by them.

[1] 2003 (2) SCC 111

18. In reply, Shri Naphade has submitted that the scheme of the Act would suggest that a revised plan prepared under Section 38 tantamounts to a complete development plan contemplated in Sections 21 to 30 of the Act. The legislative scheme takes into account that development is a dynamic process and cannot be frozen by strict prescriptions of time. Once the final development plan is revised under Section 38 the period of ten years would necessarily run from the date of coming into force of such revised plan. Any other interpretation, according to the learned counsel, would render all provisions of the Act dealing with the revised plan otiose. Shri Naphade has also argued that in the event a revised plan under Section 38 is sanctioned and brought into force the relevant date for determination of compensation would stand transposed to the fresh dates of the declaration under Section 6 of the Land Acquisition Act which would ensure payment of a fair compensation to the land owner. This is by virtue of Section 126(4) of the Act and, according to Shri Naphade, is how the balance between public interest and the interest of the land owner is maintained under the

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provisions of the Act. In so far as the decision in **Bhavnagar University** (supra) is concerned, Shri Naphade has submitted that there are certain provisions of the MRTP Act which are not embodied in the provisions of the Gujarat Act that was considered in **Bhavnagar University** (supra). Specifically it is pointed out that the provisions similar to Sections 37, 49 and 50 of the MRTP Act which provide alternative escape routes to the land owners are absent in the Gujarat Act. It is on the aforesaid broad basis the decision in **Bhavnagar University** (supra) has been sought to be distinguished.

19. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised

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thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or provisions for acquisition is not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan

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under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the

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happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in ***Municipal Corporation of Greater Bombay***

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vs. Dr. Hakimwadi Tenants' Association & Ors.[2] in the following terms :

> "If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."

20. In fact the views expressed in **Bhavnagar University (supra)** in para 34 is to the same effect:

> "The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse."

21. The facts of the present case makes it plainly clear that the notice under Section 127 by the appellants was issued only two years after the final revised plan under Section 38

[2] 1988 Supp. SCC 55

had come into operation. The rejection of the appellants' plea before the appellate authority under Section 47 of the Act as well as the rejection of the writ petition filed by the appellants before the Bombay High Court was, therefore, fully justified. Consequently, we find no reason to interfere with the impugned order dated 20th September, 2007 passed by the High Court of Bombay. Accordingly, the appeal is dismissed. However, in the facts and circumstances of the case, we make no order as to costs.

.....J.
[RANJAN GOGOI]

.....J.
[R.K. AGRAWAL]

NEW DELHI,
DECEMBER 03, 2014.

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