

POONA TIMBER MERCHANTS AND
SAW MILL OWNERS ASSOCIATION

v.

STATE OF MAHARASHTRA AND ORS.
(Civil Appeal No. 2152 of 2008)

MARCH 27, 2008

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Maharashtra Regional and town planning Act, 1966: s.127- Scope and ambit of – Held: Similar matter referred to larger Bench – Held: In fitness of things, the present case also need to be heard along with those matters.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2152 of 2008.

From the final Judgment and Order dated 29.04.2005 & 02.05.2005 the High Court of Judicature at Bombay in Writ Petition No. 7846 of 2004.

WITH

Civil Appeal Nos. 2153-2156 of 2008.

T.R. Andhyarujina, R.F. Nariman, K.K. Venugopal Dushyant A. Dave. Shyam Divan, Arun Jaitley and S. Ganesh, S.C. Birla, Subrat Birla, Anil V. Antur Kar, Markand D. Adkar, Vijay Kumar, Vishwajit Singh, S. Udaya Kumar Sagar, Bina Madhavan, Hari Kumar G. (for M/s. Lawyer's Knit & Co.), Girish Godbole, Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah, Rahul Joshi, Syed Nagvi, Smieetta Inna, Rajesh Kamlakar Satpalkar, Rajesh Kumar, S.S. Shinde and V.N. Raghupathy for the Appearing parties.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. In all these cases certain provisions of the Maharashtra Regional and Town Planning Act, 1966 (in short the 'Act') call

A for determination. Basically the scope and ambit of Section 127 of the Act is the pivotal provision. Three writ petitions were disposed of by the common judgment. Writ petition no.7846 of 2004 was filed by M/s C.V. Shah and A.V. Bhat. Writ petition no.9644 of 2004 was filed by Tajuddin Mohammadbhai while
B writ petition no.5077 of 2004 was filed by Poona Timber Merchants and Saw Mill Owners Association. By the common judgment the High Court partly allowed the writ petition nos. 7846 and 9644 of 2004 while writ petition no.5077 of 2004 was dismissed. The High Court while granting partly relief in the writ
C petitions held as follows:

“(i) Writ Petition Nos. 7846 of 2004 and 9644 of 2004 are partly allowed.

D (ii) The designation of the subject land being survey no.577, Hissa No.1, Survey No.577, Hissa No.2, Survey No.577, Hissa No.3 and Survey No.578, Hissa No.1 (part) in revised Development Plan of Pune City notified no. 5.1.1987 for ‘Timber Industries’ is declared to have lapsed under Section 127 of the MRTP Act, 1966.

E (iii) Writ Petition no.5077 of 2004 is dismissed.

No costs.”

3. After hearing all these appeals were concluded, it is noticed that scope and ambit of Section 127 came up for
F consideration by this Court in Civil Appeal No.3703 of 2003, civil appeal no.3922 of 2007 as three-Judge Bench was hearing the matter. Justice P.K. Balasubramanyan as his Lordship was the then, inter alia, observed as follows:

G “When we interpret Section 127 of the Act, it is not possible to forget the impact of Section 126(l) of the Act. Obviously, the provisions have to be read harmoniously. The court can only postulate the question whether the authority under the MRTP Act has done which it possibly could, in terms of the statute. Therefore, while reading Section 127, we
H have to take note of the fact that the authority under the

MRZ P Act can only make an application for acquisition under the Land Acquisition Act and nothing more. Therefore, when Section 127 of the MRTP Act says that 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 shall be deemed to lapse. We have to see what the Authority under MRTP Act has done. The first part of the provision above quoted is unambiguous and that is a case where the land is actually acquired. Or, in other words, the acquisition is complete. The second limb above quoted shows that it is possible to avert the lapse of the scheme if steps as aforesaid are commenced for its acquisition. The step that the authority under the MRTP Act can commence, is the step of applying to the State Government to acquire such land under the Land Acquisition Act. After all, the legislature has given the authority a locus poenitentiae for invoking the machinery for acquisition under the Land Acquisition Act. Therefore, when a purchase notice is received by it, in all reasonableness, what it can do is to make an application to the State Government to make the acquisition within six months of the receipt of the purchase notice. Is it necessary or proper to whittle down the locus poenitentiae given to ensure that even at the last moment the lapsing of the scheme can be averted by the authority under the MRTP Act or even after ten years it can seek the acquisition of the land on the receipt of the purchase notice? It is in that context that in *Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants Association & Ors.* (supra) this Court approved the view of the Bombay High Court that it is enough if the application is made by the Authority for acquisition of the land. Suppose, immediately on receipt of a purchase notice, the authority under the MRTP Act makes an application to the Government to acquire the land and for administrative reasons or otherwise it takes the Government time to initiate the proceeding and the six

A
B
C
D
E
F
G
H

A months expire in between, can it be postulated that the reservation has lapsed? In that case we will be compelling the authority under the MRTP Act to do something that it has no power to do. According to me such an interpretation of the provision would be unreasonable and should be avoided. Here, the application has been made according to the respondents by the Chief Engineer as authorised by the local authority and to say that the letter written by him is unauthorised or is not adequate compliance of Section 127 of the MRTP Act appears to me to be unwarranted especially when we keep in mind the laudable objects of the MRTP Act.

The MRTP Act serves a great social purpose and the approach of the court to an interpretation must be to see to it that the social purpose is not defeated as far as possible. Therefore, a purposive interpretation of Section 127 of the Act so as to achieve the object of the MRTP Act is called for.

I would, therefore, hold that there has been sufficient compliance with the requirement of Section 127 of the MRTP Act by the authority under the Act by the acquisition initiated against the appellant in the appeal arising out of SLP(C) No.11446 of 2005 and the reservation in respect of the land involved therein does not lapse by the operation of Section 127 of the Act. But since on the main question in agreement with my learned Brothers I have referred the matter for decision by a Constitution Bench, I would not pass any final orders in this appeal merely based on my conclusion on the aspect relating to Section 127 of the MRTP Act. The said question also would stand referred to the larger Bench.”

4. By a separate judgment Brother P.P. Naolekar for himself and Brother B.N. Agrawal, inter alia, noted as follows:

“For this and the other reasons assigned by our learned brother, we are in agreement with him that the question involved requires consideration by a larger Bench and,

accordingly, we agree with the reasons recorded by my A
learned brother for referring the question to a larger Bench.
However, on consideration of the erudite judgment pre- B
pared by our esteemed learned brother Balasubramanyan,
J., regretfully we are unable to persuade ourselves to agree
to the decision arrived at by him on interpretation of Section B
127 of the MRTP Act and also reference of the case to a
larger Bench. Section 127 of the MRTP Act is a special
provision and would be attracted in the peculiar facts and
circumstances mentioned in the Section itself. The Section C
provides a procedure for the land owner to get his land
de-reserved if steps are not taken by the State Government
within the stipulated period and the relief which the owner
of the land is entitled to is also provided therein. The steps
to be taken for acquisition of land as provided under D
Section 127 of the MRTP Act have to be taken into consi-
deration keeping in mind the time lag between the period
the land is brought under reservation and inaction on the
part of the State to acquire it. Section 127 of the MRTP
Act is a unique provision providing remedial measure to E
the owner of the land whose land is under the planning
scheme for a long period of time, which would be inter-
preted in the facts and circumstances of each individual
case. It does not have any universal application and, there-
fore, the applicability thereof would depend on the facts of
each case. S.L.P.(C) No.11446 of 2005 titled M/s. S.P.
Building Corporation and Anr. v. State of Maharashtra and F
Others, is required to be decided by this Bench only and,
therefore, we propose to decide as follows."

5. In the fitness of things we, therefore, are of the view that
these cases need to be heard along with CA no.3703 of 2003
and CA no.3922 of 2007. G

6. The matter may be placed before Hon'ble the Chief
Justice of India for necessary orders.

D.G.

To be heard with C.A. Nos 3703 of
2003 and C.A. No. 3922 of 2007. H