

LAXMIKANT & ORS.

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v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 1965 of 2022)

MARCH 23, 2022

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**[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]**

*Maharashtra Regional and Town Planning Act, 1966 – s.126 – Land reserved for public purpose in 2002 – After expiry of ten years, land owners served notice calling upon the respondents to acquire the land but still the land was not acquired – Land owners filed writ petition before High Court seeking direction to respondent to treat their land as released from the development plan and that reservation for playground be declared to have lapsed to the extent of the land owned by them – High Court held that the reservation of land in the development plan stood lapsed as no declaration under s.126 was published, however, the Planning Authority was given one year time to acquire the land reserved – Instant appeal filed by land owners against the restriction of one year put by High Court giving additional time to respondents to acquire the land – Held: Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction cannot be kept open-ended for indefinite period – The Statute has provided a period of ten years to acquire the land under s.126 of the Act – Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No. 42 of 2015 – Such time-line is sacrosanct and has to be adhered to by the State or by the Authorities under the State – The State or its functionaries cannot be directed to acquire the land as the acquisition is on its satisfaction that the land is required for a public purpose – If the State was inactive for long number of years, the Courts would not issue direction for acquisition of land, which is exercise of power of the State to invoke its rights of eminent domain – In view thereof, direction to acquire land within a period of one year is in fact contravening the time-line fixed under the Statute – Consequently, direction to acquire the land within one year is set aside – Land acquisition.*

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**A         Allowing the appeal, the Court**

- HELD:** Once the Act does not contemplate any further period for acquisition, the Court cannot grant additional period for acquisition of land. The land was reserved for a public purpose way back in 2002. By such reservation, the land owner could not
- B use the land for any other purpose for ten years. After the expiry of ten years, the land owner had served a notice calling upon the respondents to acquire the land but still the land was not acquired. The land owner cannot be deprived of the use of the land for years together. Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction
  - C cannot be kept open-ended for indefinite period. The Statute has provided a period of ten years to acquire the land under Section 126 of the Act. Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No. 42 of 2015. Such time line is sacrosanct and
  - D has to be adhered to by the State or by the Authorities under the State. The State or its functionaries cannot be directed to acquire the land as the acquisition is on its satisfaction that the land is required for a public purpose. If the State was inactive for long number of years, the Courts would not issue direction for acquisition of land, which is exercise of power of the State to
  - E invoke its rights of eminent domain. In view thereof, the direction to acquire land within a period of one year is in fact contravening the time line fixed under the Statute. [Paras 7, 8, 9][301-B-F]

*Municipal Corporation of Greater Mumbai & Ors. v.*

*Hiraman Sitaram Deorukhar& Ors. (2019) 14 SCC*

- F **411; Bangalore Medical Trust v. B.S. Muddappa & Ors.**  
**(1991) 4 SCC 54 : [1991] 3 SCR 102 – referred to.**

**Case Law Reference**

- |   | <b>(2019) 14 SCC 411</b>  | <b>referred to</b> | <b>Para 1</b> |
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| G | <b>[1991] 3 SCR 102</b>   | <b>referred to</b> | <b>Para 5</b> |
|   | <b>CIVIL APPELLATE JURISDICTION : Civil Appeal No.1965 of 2022.</b>   |                    |               |
| H | From the Judgment and Order dated 06.08.2021 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.6266 of 2019. |                    |               |

Shashibhushan P. Adgaonkar, Rana Sandeep Bussa, Gagandeep Sharma, Omkar J. Deshpande, Ms. Ruchi Rathi, Advs. for the Appellants. A

Aniruddha Joshi, Rahul Chitnis, Sachin Patil, Aaditya A. Pande, Geo Joseph, Ms. Shwetal Shepal, Shirish K. Deshpande, Ms. Rucha Pravin Mandlik, Advs. for the Respondents.

The Judgment of the Court was delivered by B

**HEMANT GUPTA, J.**

1. The challenge in the present appeal is to an order dated 6.8.2021 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, holding that the reservation of land in the Development Plan stands lapsed as no declaration under Section 126 of the Maharashtra Regional and Town Planning Act, 1966<sup>1</sup> was published. However, the Planning Authority was given one year time to acquire the land once reserved relying upon the judgment of this Court reported as *Municipal Corporation of Greater Mumbai & Ors. v. Hiraman Sitaram Deorukhar & Ors.*<sup>2</sup>. C

2. A final Development Plan was published under Section 31(6) of the Act on 2.1.2002 which came into force on 18.2.2002 in respect of land including the land owned by the appellants such as Latur Reservation Site bearing No. 217 for playground. The appellants purchased the land bearing Plot Nos. 1, 2, 9 & 10 admeasuring 1394.05 square meters out of Survey No. 73, admeasuring 6500 square meters on 21.11.2002. Though the Development Plan was finalized, but the same was never implemented nor any action was taken for acquisition of the land under the Land Acquisition Act, 1894. After expiry of ten years, the appellants issued notice on 16.8.2016 under Section 127 of the Act so as to purchase the reserved land within one year of the date of the notice. Such notice was acknowledged by the respondent Municipal Corporation on 20/22.8.2016 to submit measuring plan showing reservation thereon including the area owned by the appellants. D E F

3. It was thereafter that the appellants filed a writ petition before the High Court for a writ of mandamus directing the respondents to treat the land of the appellants bearing Survey No. 73 as released from the Development Plan of Latur Municipal Corporation and that reservation of Site No. 217 for playground be declared to have lapsed to the extent G

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<sup>1</sup> For short, the ‘Act’

<sup>2</sup>(2019) 14 SCC 411 H

- A of the land owned by the appellants and that the land is available for the residential use of the appellants. In the counter affidavit filed by the Municipal Corporation, it was *inter alia* submitted that the proposal was submitted to respondent No. 2 i.e., the Collector, Latur to take effective steps for acquiring the land bearing Survey No. 73 as the land was reserved for playground. The proposal was returned by the Competent Authority but no effective decision has been taken over the said proposal.

4. Thus, it was beyond dispute that the land once included in the Development Plan under Section 31(6) of the Act was not acquired within the period of ten years and within additional period of one year

- C after purchase notice was submitted by the appellants on 16.8.2016 and, in fact, not till the writ petition was decided by the High Court. The Municipal Corporation is not aggrieved against the declaration granted by the High Court of the fact that the reservation of the land stands lapsed. It is only the land owner who has come in appeal before this Court against the restriction of one year put by the High Court giving
- D additional time to respondents to acquire the land.

5. This Court in *Municipal Corporation of Greater Mumbai* was examining the reservation of land for a garden in a Development Plan in the year 1966 but the same was not acquired even after purchase notice was served by the land owner. However, relying upon the judgment

- E of this Court reported as *Bangalore Medical Trust v. B.S. Muddappa & Ors.*<sup>3</sup> and some other judgments, it was held that the land reserved for public park cannot be permitted to be converted for other public purposes.

6. We have heard learned counsel for the parties and find that the liberty given by the High Court to acquire the land within an additional

- F period of one year is not contemplated by the statute. This Court in *Bangalore Medical Trust*, a Public Interest Litigation, interfered with the decision of the Bangalore Development Authority to convert the land reserved for public parks for the purposes of construction of a hospital. It was in these circumstances that this Court intervened, indicting the land reserved for public parks to be used for other purposes.

G 7. This Court in *Municipal Corporation of Greater Mumbai* held that the authorities have been given a duty to act as a *cestui que* trust (beneficiary of the trust) with respect to public park and had thus directed to acquire land under the Right to Fair Compensation and

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H <sup>3</sup>(1991) 4 SCC 54

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a period of six months. Such direction was given under Article 142 of the Constitution of India keeping in view the facts of the case. Such direction and period for acquisition of land is not a law declared by this Court which is to be treated as binding precedent for this Court and the subordinate courts subordinate in terms of Article 141 read with Article 144 of the Constitution. Therefore, once the Act does not contemplate any further period for acquisition, the Court cannot grant additional period for acquisition of land. The land was reserved for a public purpose way back in 2002. By such reservation, the land owner could not use the land for any other purpose for ten years. After the expiry of ten years, the land owner had served a notice calling upon the respondents to acquire the land but still the land was not acquired. The land owner cannot be deprived of the use of the land for years together. Once an embargo has been put on a land owner not to use the land in a particular manner, the said restriction cannot be kept open-ended for indefinite period. The Statute has provided a period of ten years to acquire the land under Section 126 of the Act. Additional one year is granted to the land owner to serve a notice for acquisition prior to the amendment by Maharashtra Act No. 42 of 2015. Such time line is sacrosanct and has to be adhered to by the State or by the Authorities under the State.

8. The State or its functionaries cannot be directed to acquire the land as the acquisition is on its satisfaction that the land is required for a public purpose. If the State was inactive for long number of years, the Courts would not issue direction for acquisition of land, which is exercise of power of the State to invoke its rights of eminent domain.

9. In view thereof, the direction to acquire land within a period of one year is in fact contravening the time line fixed under the Statute. Consequently, the direction to acquire the land within one year is set aside. The appeal is allowed.