PRAKASH R. GUPTA

v.

LONAVALA MUNICIPAL COUNCIL & ORS.

(Civil Appeal No. 7801 of 2002)

DECEMBER 2, 2008

[MARKANDEY KATJU AND AFTAB ALAM, JJ.]

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:

s. 127 – Lapsing of reservation – Land not acquired within 10 years of final regional plan/final development plan coming into force – No steps taken for acquisition of land within six months of the service of notice by the land owner – HELD: The reservation having lapsed, land has to be released in favour of the land owner – Reference to s. 49 by High Court was totally misconceived and uncalled for – Judgment of High Court set aside – Land in question shall be released forthwith in favour of land owner.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7801 of 2002.

From the Judgment and Order dated 9.11.2001 of the High Court of Judicature at Bombay in Writ Petition No. 2945 of 2001.

R.F. Nariman, Shivaji M. Jadhav, Rahul Joshi, Brijkishor Sah, Lenin S. Hijam, Pramji Paul, Aparajita Singh (for V N. Raghupathy) Jayashree Wad, Ashish Wad, Chirag S. Dave, Satya Vikram, Sameer Abhyankar (for M/s. J.S. Wad & Co.) and Sanjay V. Kharde (for Asha G. Nair) for the appearing parties.

The following Order of the Court delivered:

A **ORDER**

1. Heard learned counsel for the parties.

2. This appeal has been filed against the impugned judgment of the Division Bench of the High Court, dated 9th B November, 2001. The detailed facts are given in the impugned judgment of the High Court and it is not necessary for us to repeat the same here except where necessary for deciding the appeal.

C 3. The appellant is the owner of the land in dispute. His land was reserved under a development plan for a certain college but that college got disaffiliated. Thereafter, a minor modification under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (in short, 'the Act') was issued and it D was said to be allotted to the present respondent No.3.

4. However, it appears that the land was not acquired within the ten year period mentioned in Section 127 of the aforesaid Act. Section 127 states as under:

E "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 F 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, 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 G 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, H 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." A

5. It is not disputed that the land was not acquired within ten years from the date on which the final Regional plan or final Development plan came into force and no proceedings for acquisition of such land under the Land Acquisition Act were commenced within the aforesaid period of ten years. After the said period of ten years, the appellant, who was the owner of the land, served a notice on respondent No.1 as required by Section 127 calling upon the said authority to acquire the said land within six months or take steps within that period, but neither was the land acquired within the further period of six months nor were any steps taken to acquire it. Hence, in our opinion, the reservation lapsed and the land has to be released in favour of the appellant. B C D

6. The High Court, however, has taken the view that in view of Section 49 of the Act, there is no lapse of the reservation. We do not agree. In our opinion, the scheme contemplated by Section 49 is totally different from that contemplated by Section 127. In Section 49, there is no period of ten years as mentioned in Section 127. In Section 49, the owner has to satisfy one of the three conditions mentioned therein which is not so in Section 127. Thus, reference to Section 49 by the High Court was, in our opinion, totally misconceived and uncalled for. E F

7. In view of the above, we allow this appeal and set aside the impugned judgment of the High Court and direct that the land in question shall be released forthwith in favour of the appellant. G

8. No order as to costs.

R.P. Appeal allowed.