Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 11258 OF 2017
(Arising out of SLP(C) No.30524 of 2014)

MUNICIPAL CORP. OF GREATER MUMBAI & ORS. Appellant(s)

VERSUS

HIRAMAN SITARAM DEORUKHAR & ORS. Respondent(s)

WITH
CIVIL APPEAL No(s). OF 2017
(Arising out of SLP(C) No. of 2017)
(Arising out of SLP(C) No.....CC No. 18016 of2016)

WITH
CIVIL APPEAL No(s) OF 2017
(Arising out of SLP(C) No. of 2017)
(Arising out of SLP(C) No.....CC No. 17953 of 2016)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The facts in short giving rise to the present appeal indicate that way back in the year 1967 the disputed property was reserved for a garden in the development plan, prepared under the provisions of Maharashtra Regional and Town Planning Act, 1966 (in short 'the MRTP Act'). The said development plan was revised in the year 1991-1992. The reservation of the disputed property was further continued

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Date: 2017.09.07 15:48:08 IST
Reason:

for the purpose of a garden. On 5.10.1992, the respondent No's 2 to 12 and deceased named Sitaram V. Deorukhkar entered into an agreement for sale dated 5.10.1992, in favour of respondent No. 13. On 18.10.1992, the power of attorney had been executed in favour of respondent no. 13 to institute a suit in relation to the property. Power of attorney served a notice for purchase under Section 127 of the MRTP Act on 25.07.2007. The Municipal Corporation gave its approval to initiate the purchase proceedings of the land. On 19.10.2007, Improvement Committee, passed resolution No. 126 and recommended to the corporation to acquire the land of Village Borivali reserved for public purpose i.e. for the garden. On 21.01.2008, a proposal was submitted to the collector for the acquisition of the land in question. Thus the Corporation submitted that it had taken the effective steps within six months from the date of the purchase notice for an acquisition of the land as per the then prevailing time limit. On 25.2.2008, the Petitioner- Attorney had been informed that his application for permission to allow development on land under reference could not be considered under the provisions of the MRTP Act. Consequently, a writ petition was preferred by the respondent Nos. 1 to 13 in the High Court i.e. W.P.No. 2535 of 2008. Prayer made in the writ petition was that the reservation may be quashed and set aside as it had lapsed, and permission may be given to them to develop the said property in accordance with the Rules and Regulations of the

Corporation. The High Court by the impugned order held that the reservation had lapsed, and that the land is deemed to have been released from the reservation, and that the area reserved for the garden has become available to the owner thereof for the purpose of development. Hence the Corporation has preferred the appeal.

We have heard learned counsel appearing for the parties at length. No doubt about it that a bare reading of Section 127 of the MRTP Act makes it clear that reservation would lapse in case acquisition is not completed within ten years from the date on which a final Regional plan or final Development plan comes into force or if declaration under sub section (2) or (4) of Section 126 is not published in the official gazette within such period, the owner or any person interested in the land may serve notice for purchase on the Planning Authority, Development Authority, or as the case may be to Appropriate Authority; and if within six months from the date of the service of such notice, the land is not acquired or no steps 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 at the relevant time.

The Municipal Corporation had filed a Map (Annexure P-4) which indicates that the area marked with the green

color is reserved for the purpose of the garden, whereas the area marked with red cross marks in the green color portion is disputed portion which is encircled by the other area reserved for the garden. The land under appeal is 3090 Sq. yard, whereas the total area reserved for the garden, is 90,500 Sq. yard. The area in question had been reserved for garden and it appears that Municipal Corporation had taken the steps which were in their hands in order to preserve the area as such. However, there was a failure on the part of the State Authorities to act timely and to issue a declaration under Section 6 of the Land Acquisition Act as required under the provisions contained in Section 126 of the MRTP Act.

It cannot be disputed that reservation made under Section 127 of the MRTP Act stands lapsed. At the same time area had been reserved for the garden.It could not have been permitted to lapse due to inexplicable reasons. This court had considered the question as to the duty of the State Authorities to preserve the open spaces for public parks in *Bangalore Medical Trust* vs. *B.S. Muddappa & Ors.* [(1991) 4 SCC 54]. In the said case, this Court had considered the question whether area reserved for a public park can be permitted to be converted for other purposes. The State Government's by the subsequent order had allotted the area reserved for public parks to a Medical Trust, for the purposes of constructing a hospital. This Court has pointed out the importance of open spaces for public parks in

Bangalore Medical Trust's case ***(supra)*** **and held thus:**

> **"23.The scheme is meant for the reasonable accomplishment of the statutory object which is to promote the orderly development of the City of Bangalore and adjoining areas and to preserve open spaces by reserving public parks and play grounds with a view to protecting the residents from the ill-effects of urbanisation. It is meant for the development of the city in a way that maximum space is provided for the benefit of the public at large for recreation, enjoyment, 'ventilation' and fresh air. This is clear from the Act itself as it originally stood. The amendments inserting Sections 16(1)(d), 38A and other provisions are clarificatory of this object. The very purpose of the BDA, as a statutory authority, is to promote the healthy growth and development of the City of Bangalore and the area adjacent thereto. The legislative intent has always been the promotion and enhancement of the quality of life by preservation of the character and desirable aesthetic features of the city. The subsequent amendments are not a deviation from or alteration of the original legislative intent, but only an elucidation or affirmation of the same.**
>
> **24. Protection of the environment, open spaces for recreation and fresh air, play grounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and play grounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens.**
>
> **25. Reservation of open spaces for parks and play grounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill effects of urbanisation.**
>
> **26. In Agins vs. City of Tiburon [447 us 255 (1980)],the Supreme Court of the United States upheld**

a zoning ordinance which provided `... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as ..... pollution, ... destruction of scenic beauty. disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said:

> ".... The State of California has determined that the development of local open-space plans will discourage the "premature and unnecessary conversion of open-space land to urban uses". The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill- effects of urbanization. Such governmental purposes long have been recognized as legitimate.

The zoning ordinances benefit the appellants as well public by serving the city's interest in assuring careful and orderly development of residential property with provision for open-space areas.

28.Any reasonable legislative attempt bearing a rational relationship to a permissible state objective in economic and social planning will be respected by the courts. A duly approved scheme prepared in accordance with the provisions of the Act is a legitimate attempt on the part of the Government and the statutory authorities to ensure a quiet place free of dust and din where children can run about and the aged and the infirm can rest, breath fresh air and enjoy the beauty of nature. These provisions are meant to guarantee a quiet and healthy atmosphere to suit family needs of persons of all stations. Any action which tends to defeat that object is invalid. As stated by the U.S. Supreme Court in Village of Belle Terre v. Bruce Boraas: {L Ed p. 804: US P.9):

> ".... The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people".

See also Village of Euclid v. Ambler Realty Company, 272 U.S. 365 1926. See the decision of the Andhra Pradesh High Court in T. Damodhar Rao & Ors. v. The Special Officer, Municipal Corporation of Hyderabad & Ors., AIR 1987 AP 17 1.

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th Century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, `gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentiality a commercial venture, a profit oriented industry. Service may be its morn but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blue print without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development acts of different States require even private house-owners to leave open space in front and back for lawn and fresh air. In 1984 the BD Act itself provided for reservation of not less than fifteen per cent of the total area of the lay out in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may given rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, there- fore, that by conversion of a site reserved for low lying into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

This court has laid down that public interest requires some areas to be preserved by means of open spaces of parks and play grounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities. Once the area had been reserved, authorities are bound to take

steps to preserve it in that method and manner only. These spaces are meant for the common man, and there is a duty cast upon the authorities to preserve such spaces. Such matters are of great public concern and vital interest to be taken care of in the development scheme. The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted.

The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanisation. It is in the public interest to avoid unnecessary conversion of 'open spaces land' to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection.

It could be legitimately expected of the authority to take timely steps in which they have failed. Their inaction tantamount to wrongful deprivation of open spaces/garden to

public. This Court in Animal and Environment Legal Defence Fund v. Union of India & Ors. (1997) 3 SCC 549 has laid down that there is duty to preserve the ecology of the forest area. This Court has enunciated the doctrine of the public trust based on ancient theory of Roman Empire. Idea of this theory was that certain common property such as lands, waters and airs were held by the Government in trusteeship for smooth and unimpaired use of public. Air, sea, waters and the forests have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. The American courts in recent cases expanded the concept of this doctrine. The doctrine enjoins upon the Government to protect the natural resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. The aforesaid concept laid down by this Court in M.C. Mehta v. Kamal Nath & Ors. (1997) 1 SCC 388 and this Court held that the State Government has committed patent breach of public trust by leasing the ecologically fragile land to the Motel management.

This Court in Vellore Citizens Welfare Forum v. Union of India & Ors. AIR 1996 SC 2715 had laid down that protection of environment is one of the legal duties. While setting up the industries which is essential for the economic development but measures should be taken to reduce the risk for community by taking all necessary steps for protection of environment. In M.C. Mehta v. Union of India

(1987) Supp. SCC 131, certain directions were issued by this Court regarding hazardous chemicals. Relying partly on Article 21, it was observed that life, public health and ecology are priority and cannot be lost sight of over employment and loss of revenue. This Court in Subhash Kumar v. State of Bihar & Ors. (1991) 1 SCC 598 has held that right to pollution-free air falls within Article 21. In M.C. Mehta v. Kamal Nath (2000) 6 SCC 213, it was held that any disturbance to the basic environment, air or water and soil which are necessary for life, would be hazardous to life within the meaning of Article 21 of the Constitution. Precautionary principle had been developed by this Court in M.C. Mehta v. Union of India & Ors. (1997) 3 SCC 715 which requires the State to anticipate, prevent and attack the causes of environmental degradation.

This Court in Municipal Council, Ratlam v. Vardhichand & Ors. (1980) 4 SCC 162 has observed that the nature of judicial process is not purely adjudicatory function. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes fragile. This Court has laid down that once directive principles have found statutory recognition, the financial or such other disability cannot exonerate the authority from statutory liability. They cannot take the defence to defy their duties under the law by urging in self-defence a self-created bankruptcy or perverted expenditure budget.

In the light of aforesaid principles, it is shocking in the instant case that in spite of prayer having been made on behalf of the Municipal Corporation, the State Government did not issue a declaration under Section 126 of the MRTP Act. Thus the provisions for open spaces in the statutory scheme were in effect made a statutory mockery. The authorities were bound to act with circumspection and to act timely to take steps to issue the requisite declaration as per development plan. They were well aware of the consequences. The inaction was impermissible in such an issue of great public importance, having constitutional imperative under Article 21 read with Article 48A and further it was in breach of fundamental duty imposed under Article 51A(g) to protect natural environment, and having the potential to lead to the derogation of the public interest. Such inaction is intolerable, and the area ought to be preserved for park only. More so, considering its situation that it is encircled by garden area, the court cannot be a moot spectator and permit statutory provisions to become a mockery by inaction or lethargy on the part of the unscrupulous authorities. No reason is coming forth as to why steps were not taken by the concerned authorities to act in the public interest, as per the statutory mandate, and as per development plan. The duty is cast upon the authorities to act as *cestui que* trust with respect to the public park. As a matter of fact, Authorities ought to have

issued forthwith a requisite declaration and ought to have completed the proceedings. Be that as it may, since there is lapse of reservation, and the land is still required for public park, and since now the provisions of Right to Fare Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') have come into force, obviously the compensation has to be paid in accordance with the provisions contained in the said Act. In the circumstances, we direct that the land shall continue to be reserved and to be used for the public garden. However, the compensation shall be determined and paid in accordance with the principles laid down in the 2013 Act.

Thus, we set aside the order passed by the High Court. Let compensation be determined after hearing the interested parties and it shall be decided within a period of six months from today. The appeals are accordingly allowed. No order as to costs.

.....J.
(ARUN MISHRA)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI;
AUGUST 24, 2017

ITEM NO.1 COURT NO.11 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 30524/2014

(Arising out of impugned final judgment and order dated 17-06-2013 in WP No. 2535/2008 passed by the High Court Of Judicature At Bombay)

MUNICIPAL CORP. OF GREATER MUMBAI & ORS. Petitioner(s)

VERSUS

HIRAMAN SITARAM DEORUKHAR & ORS. Respondent(s)

WITH
S.L.P.(C)...CC No. 18016/2016 (IX)
(and IA No.65299/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.78384/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)
S.L.P.(C)...CC No. 17953/2016 (IX)
(and IA No.65295/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.78475/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.78478/2017-EXEMPTION FROM FILING O.T.)

Date : 24-08-2017 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) **Mr. R.P. Bhatt, Sr. Adv.**
Mr. Atul Chitale, Sr. Adv.
Mr. Pravin Naik, Adv.
Mr. Gurjyot Sethi, Adv.
Ms. Shivangi Khanna, Adv.
Mr. Suchitra Atul Chitale, AOR

Mr. Dhruv Mehta, Sr. Adv.
Mr. Ashish Wad, Adv.
Mrs. Jayashree, Adv.
Ms. Paromita Majumdar, Adv.
Ms. Sukriti Jaggi, Adv.
M/s. J S Wad And Co, AOR

For Respondent(s) **Mr. C.U. Singh, Sr. Adv.**
Mr. Dilpreet Singh, AOR

Mr. Devansh V. Mohta, Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. Amit B. T., Adv.
Mr. N. Nayak, Adv.
M/s. S.M. Jadhav And Company, AOR

Mr. Kunal A. Cheema, Adv.
Mr. Yogesh Ahirrao, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are disposed in terms of the signed order.

Pending application, if any shall stand disposed of.

(NEELAM GULATI) **(TAPAN KUMAR CHAKRABORTY)**
COURT MASTER (SH) **BRANCH OFFICER**
(signed order is placed on the file)

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WITH
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(and IA No.65299/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.78384/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)
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(and IA No.65295/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.78475/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.78478/2017-EXEMPTION FROM FILING O.T.)

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Mr. Atul Chitale, Sr. Adv.
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Mr. Dhruv Mehta, Sr. Adv.
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Mrs. Jayashree, Adv.
Ms. Paromita Majumdar, Adv.
Ms. Sukriti Jaggi, Adv.
M/s. J S Wad And Co, AOR

For Respondent(s) **Mr. C.U. Singh, Sr. Adv.**
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Mr. Devansh V. Mohta, Adv.
Mr. Shivaji M. Jadhav, Adv.
Mr. Amit B. T., Adv.
Mr. N. Nayak, Adv.
M/s. S.M. Jadhav And Company, AOR

Mr. Kunal A. Cheema, Adv.
Mr. Yogesh Ahirrao, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

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COURT MASTER (SH) **BRANCH OFFICER**

(signed order is placed on the file)