

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.928 OF 2015

Sow. Devkibai w/o Bhaskarrao Jogdand
Age: 60 Yrs., Occ. Household,
R/o. Nagar Road, Near LIC, Building
Beed, Tq. and Dist. Beed,
At present 'Anubandh',
D-2/6, Sinhgad Road, Pune
Through the Power of Attorney
Shri Bhaskarrao s/o Dhondiba Jogdand
Age: 63 Years, Occu. Business,
R/o. as above

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai-32
[Copy to be served on G.P.
High Court of Judicature of Bombay
Bench at Aurangabad]
- 2] The Collector,
Beed.
- 3] The Special Land Acquisition Officer,
Jayakwadi Project, Beed.
- 4] Municipal Council,
Beed, Dist. Beed,
through its Chief Officer

RESPONDENTS

...

Mr. P.D.Suryawanshi, Advocate for the Petitioner
Mr. M.B.Bharaswadkar, AGP for the Respondent Nos.1 to 3
Mr. G.K.Thigale [Naik], Advocate for the Respondent No.4.

...

**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 20.10.2015

Pronounced on: 28.10.2015

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard with the consent of the parties.

3] This Petition is filed, seeking direction to the respondent authorities to de-reserve the land in Survey No. 35 to the extent of 1 H. 52 R. Tarfgiram, Beed, belongs to the petitioner, which is reserved for High School and playground i.e. reservation No.29. In the alternate, it is prayed that, the respondent authorities may please be directed to acquire the land in Survey No.35 to the extent of 1 H. 52 R. Tarfgiram, Beed belongs to petitioner, if it is necessary, and give compensation to the petitioner within stipulated time. It is further prayed that, the respondent No.4 may please be directed to give the compensation for illegal possession over the land in Survey No.35, belongs to the petitioner from 04.03.1998 to 12.04.2005, considering the value of land as per ready reckoner with interest of Rs. 8% on it, till realization of amount.

4] We are confining adjudication of this Petition to the extent of prayer clause-B. So far prayer clause-C is concerned, adjudication of the said prayer may lead to disputed questions of fact, therefore, we are not inclined to

consider the said prayer, while exercising the writ jurisdiction. In that respect, the petitioner can avail appropriate remedy as available in law.

5] It is the case of the petitioner that, the petitioner and Sow. Rekha w/o. Babasaheb Baglane, Babasaheb Bhagwanrao Baglane, Dadasaheb Bhagwanrao Baglane are the owners of land Survey No.35 to the extent of their respective area, situated at Tarafgiram, Beed, which was, initially, reserved for residential zone as per plan sanctioned in the Year 1975. Thereafter, in a revised development plan, the said land was reserved for High School and playground for Municipal Council as reservation No.29. The petitioner has placed on record copy of the extract of development plan to the extent of reservation No.29. It is further the case of the petitioner that, the respondent No.4 had declared its intention to revise the development plan under Section 38 [1] r/w. Section 23 [1] of the Maharashtra Regional and Town Planning Act, 1966 [in short 'the MRTP Act'], and in the revised development plan, the reservation No.29 is shown for the purpose of High School and playground for private institution namely 'Gurudatta Shikshan Prasarak Mandal, Beed'. The petitioner had issued a notice dated 17.05.1991 to the Institution, asking that, whether such institution is a need of land to run its School. The said private Institution replied the same on 06.06.1991, contending that, the Institution is not interested to acquire the land of the petitioner to run its School, due to lack of funds with them. It is further the case of the petitioner that, the petitioner issued notice to

the respondent No.4 that, the school is not interested to acquire the land due to the non-availability of sufficient funds. In reply to the said notice, the respondent No.4 had informed to the petitioner that, the respondent No.4 is in need of the said land for the purpose of High School and playground.

6] It is further the case of the petitioner that, the proceedings for acquisition of the said land were not in progress, therefore, the petitioner had issued purchase notice dated 22.11.1995 under Section 49 of the the MRTP Act. In accordance with the provisions of Section 49 of the the MRTP Act, the mandate is that, to accept, to purchase the said land, or to revise it, within a period of six months from the date of receipt of the said purchase notice. Accordingly, the Government has informed to the petitioner by letter dated 29.06.1996 as well as respondent No.4 that, the Government has accepted the purchase notice and confirmed the same. The petitioner had tried his level best for submitting the representations time and again to the Municipal Council, Beed, to take the steps in respect of the acquisition of the said land. Accordingly, the respondent No.4 had applied by letter dated 25.07.1996 addressing to the petitioner, requesting to give the land by private negotiation.

7] It is further the case of the petitioner that, as per negotiation between the petitioner and others, and the respondent No.4, the agreement took place on 04.03.1998, and accordingly, the said agreement signed by the

respondent No.4 as well as the petitioner as a Power of Attorney on behalf of the above said persons. Accordingly, the respondent No.4 had also taken the possession of the above said land on 04.03.1998, by conducting panchanama and *Taba Pavti*. It is further the case of the petitioner that, the respondent No.4 had submitted a proposal to the Collector, Beed, for acquisition of above said land for High School and playground i.e. reservation No.29. The said proposal was registered and the Special Land Acquisition Officer had published a Notification under Section 4 of the Land Acquisition Act, to acquire the above said land. Thereafter, the proposal was submitted to the Divisional Commissioner, Aurangabad, for further steps to publish the Notification. But, till today, the Notification under Section 6 of the Land Acquisition Act, has not been published. The petitioner inquired about the proposal in the office of the Divisional Commissioner, Aurangabad, then the office had informed to him that, they have already informed to the Collector, Beed that, the matter is covered under the provisions of the MRTP Act, therefore, the Collector, Beed is empowered to proceed with the matter for acquisition of above said land.

8] It is further the case of the petitioner that, the respondent No.4 had taken possession of the above said land on 04.03.1998, but has not taken any action to acquire the land and to pay the compensation as per the request of petitioner. The Collector, Beed, directed the respondent No.4 to deposit 80% compensation amount, within a period of 15 days. But, the respondent No.4 had not deposited the

amount as per the direction of Collector, Beed. It is further the case of the petitioner that, as per provisions of Section 49 of the MRTP Act, once the purchase is accepted by the respondent No.1, the respondent No.4 should have acquired above mentioned land by private negotiation or through the Collector and to pay the compensation. But the respondent No.4 had not shown any initiative for private negotiation or to pursue the matter for acquisition through the Collector and / or to release the land by removing the reservation No.29. The possession of the land was taken by the respondent No.4 on 04.03.1998. The petitioner, thereafter, issued notice dated 05.08.2002 and requested to give 80% amount of total compensation, but the efforts of petitioner are in vain. The respondent No.3 had issued a letter dated 22.08.2002 to the respondent No.4, directing to deposit 80% compensation amount as per valuation @ Rs.2000/- per square meter i.e. total Rs.2,84,21,120/- within a period of 15 days including the solatium etc.

9] It is further the case of the petitioner that, in spite of directions given by respondent No.3, the respondent No.4 did not deposit the amount of compensation with respondent No.3. Therefore, the petitioner and other three had preferred Writ Petition No.5168/2002 before this High Court, seeking direction against the respondents to acquire the land, within a period of two months, and to release the compensation as per the Land Acquisition Act or if the respondent No.4 is not interested for the land for High School and Play ground i.e.

reservation No.29 shown in the development plan of Beed, then to remove the said reservation, and to release the land. It is further the case of the petitioner that, in Writ Petition No.5168/2002, the respondent No.4 had appeared before this Court and filed their affidavit-in-reply, contending therein that, the proceedings of land acquisition are pending with the respondent No.3, and respondent No.2 has issued letter dated 22.08.2002 directing to deposit an amount of Rs.2,84,21,120/- towards 80% compensation amount. It was further stated that, the said letter has placed before the general body of Municipal Council and the general body will take decision as to whether the property needs to be taken or the same has to be released from reservation. It is further the case of the petitioner that, Writ Petition No.5168/2002 was heard by this Court, and the same was disposed off by order dated 25.08.2003 as premature. However, while disposing of the said Writ Petition, the High Court observed that, the order dated 25th August, 2003 will not come in the way of the petitioner to take appropriate steps as permissible under the MRTP Act, 1966.

10] It is further the case of the petitioner that, thereafter, the petitioner had filed Special Leave Appeal No.21921/2003 before the Hon'ble Apex Court, challenging the order dated 25.08.2003 passed by the High Court in Writ Petition No.5168/2002. The said SLP came to be disposed off by the Hon'ble Apex Court, vide order dated 13.08.2004, observing that, the petitioners are at liberty to take possession of the land, and the petitioners would be at

liberty to claim compensation for illegal occupation of the disputed property by the respondents, in accordance with law. It is further the case of the petitioner that, after decision of the Hon'ble Apex Court, the petitioner had issued legal notice to the respondent No.4, seeking compensation, and the respondent No.4 replied the same contending that, the proceedings of land acquisition are still continue, therefore, the compensation cannot be asked. After receipt of the said letter, the petitioner had submitted an application dated 17.03.2005 to the respondent No.2 asking information whether the proposal for acquisition is pending or not. The respondent No.3 issued letter dated 18.03.2005, informing that, the proposal for acquisition of land is lapsed, because after publication of Notification under Section 4 of the Land Acquisition Act, 1894, further Notification under Section 6 has not been published within a period of 1 Year, and the respondent No.4 failed to deposit 80% amount of compensation as directed. It is further the case of the petitioner that, the respondent No.4 has handed over possession of the land in favour of the petitioners on 12.04.2005. After receipt of possession of the land, the petitioner had decided to develop the said land, and prepared lay out plan. The petitioner had submitted lay out plan for its sanction to the respondent No.4 by application dated 26.04.2005.

11] It is further the case of the petitioner that, the respondent No.4 issued letter / order dated 30.05.2005, and refused to sanction lay out plan submitted by the petitioner on the ground that, the said land is shown under

reservation for High School and playground. Being aggrieved by the order dated 30th May, 2005, issued by the respondent No.4, the petitioner had filed an appeal before the respondent No.1, under Section 47 of the MRTP Act. However, the said Appeal came to be dismissed with observation that, if the proposal is submitted for cancellation of the subject reservation by the Municipal Council, that would be considered on merits. The said order in appeal was assailed by the petitioner, by filing Writ Petition No.6859/2009, in which Rule is issued, and the interim relief is granted.

12] It is further the case of the petitioner that, the respondent No.4 is not in need of land of the petitioner for the purpose of High School and Playground. The respondent No.4, in their affidavit-in-reply, which was filed before the Hon'ble Supreme Court, stated that, they did not require the land, and the petitioner can take the possession of the land, and accordingly, the possession of the land handed over by the respondent No.4 on 12.04.2005. However, the petitioner decided to develop the said land, sought permission from the respondent No.4. The respondent No.4 declined to grant permission for the lay out plan for developing the property. It is further the case of the petitioner that, the respondent No.3 has filed affidavit-in-reply wherein it is stated that, the valuation of proposed land is Rs.12,04,73,936/- and 2/3rd amount of land is Rs.8,03,15,957/-. The required amount is demarcated, *vide* letter dated 16.09.2013, but till this date, the Municipal Council has not deposited the amount. It is

further the case of the petitioner that, the petitioner has filed Writ Petition No.3407/2013. The said Writ Petition was disposed of by this Court, with observation that, it is open for the petitioner to issue notice under Section 127 of the MRTP Act even today, and accordingly, liberty was granted to the petitioner to issue notice under Section 127 of the the MRTP Act. Accordingly, the petitioner issued notice dated 4th October, 2013, under Section 127 of the the MRTP Act to the respondent about the land in Survey No.35 situated at Tarafgiram, Beed reservation No.29 and requested to declare the land in question is deleted from any reservation. The respondent No.4 has not taken any decision on it, therefore, the petitioner has submitted an application dated 14.10.2014 with the respondent authorities, requesting to delete the reservation. The respondent No.4, thereafter, had replied *vide* letter dated 22.12.2014, and informed the petitioner that, the Municipal Council, Beed, has submitted proposal for acquisition of land to the Deputy Collector, Jayakwadi Project, Beed. It is further the case of the petitioner that, the land in question is under reservation from 1990 and every time the respondent No.4 is avoiding to acquire the land by paying compensation to the petitioner, and also not taking steps to delete the land in question from reservation.

13] The learned counsel appearing for the petitioner submits that, the respondent No.4 acquired the land admeasuring 1 Acre 20 Guntha very adjacent to the land in question from the petitioner for school. But till today, not a single room, the respondent No.4 has

constructed over the said area. It is submitted that, the respondent No.4 has reserved number of pieces of land in Beed City, however, the respondent No.4 has no money to pay money to the land owners. It is submitted that, even the respondent No.4 has no money to pay salary to its employees and for repairing schools. It is submitted that, the petitioner has obtained ready reckoner rate of the land in question, which shows that, the rate is of Rs.11550/- per square meter for the land in question, and the petitioner is ready to give the land in question to the respondent No.4, considering the ready reckoner rate of the land. It is submitted that, the petitioner is fighting from 1991 for deleting reservation No.29 over the land in Survey No.35 situated at Tarafgiram, Beed. However, neither the respondent No.4 is ready to take land in question or to pay amount as per the ready reckoner, neither to delete the reservation in spite of notice issued by the petitioner under Section 127 of the the MRTP Act.

14] The learned counsel appearing for the petitioner invited our attention to the various documents placed on record, including the copy of sale deed by which the petitioner has purchased the said land in the Year 1991, and also the document in respect of execution of Power of Attorney.

15] In pursuance to the notices issued to the respondents, the respondent No.4 has filed affidavit-in-reply on 5th April, 2015, and also additional affidavit-in-reply on 15th October, 2015. The learned counsel appearing for

the respondent No.4 relying upon the averments in the affidavit-in-reply submits that, since the land of the petitioner is affected by reservation, *vide* Notification No.TPS-3396/CR-180/96-UD-9, dated 08.09.1997 came into force dated 15.10.1997. It is submitted that, the site No.29 has been reserved in the sanctioned development plan for High School and playground. Since, the draft development plan has been sanctioned *vide* Notification Exh.R-1, the provisions of Section 127 sought to be invoked by the petitioner in 1995 i.e. prior to sanctioning of development plan, is of no consequence for two important reasons, first on account of filing of making an application by Municipal Council for acquisition, and subsequent, Notification dated 26.06.2000 for acquisition of land of the petitioner. Thus, as per requirements of Section 127, the Municipal Council Beed, has made an application for acquisition of land to the Competent Authority, with an amount of Rs.1,59,73,995/-. It is further submitted that, due to subsequent letters of respondent Nos. 2 and 3, the reservation could not be continued. It is submitted that, the provisions of Section 127 of the Act has no application to the facts of the present case, as the petitioner has not annexed any title documents with the alleged notice under Section 127. The non-compliance, as such, is fatal to the case, and on this ground alone, the Petition is liable to be dismissed.

16] It is further submitted that, by virtue of the taking of effective steps, and depositing of the amount of Rs.1,59,73,995/- with SLAO, the reservation over the land cannot be said to have lapsed. It is submitted that, the

essential condition i.e. making of an application to acquire land, *vide* submission of complete proposal has been fulfilled *vide* letter dated 19.07.2005 well within time by the respondent No.4. It is submitted that, the final sanctioned development plan has come into force, it has attained an irreversible stage and petitioner's case for grant of development permission, cannot be considered as the site is affected by the reservation, as per the sanctioned development plan. It is submitted that, the Municipal Council has already taken effective step for acquisition on 19.07.2001, whereby proposal along with amount of Rs.1,59,73,995/- is submitted, and balance amount of Rs.1,15,71,446/- is sought to be paid through the scheme of Government i.e. UD-6. Thus, the notice itself was not tenable, and as such, on this ground alone, the Petition is liable to be dismissed. It is further submitted that, the alleged notice dated 4th October, 2013 does not contain signatures of owners of the property. The alleged GPA holder of owners, claim to be GPA holder. The said GPA holder had already sold these properties *vide* registered sale deed dated 6th May, 1991, to one Mrs.Devaki Bhaskar Jogdand and Mrs. Rekha Babasaheb Baglane. Both these purchasers are not arraigned as parties to the present petition and the copies of alleged notice also do not contain signatures of these persons. Thus, the notice itself is not maintainable for defect of compliance with the various provisions of Section 127 of MRTP Act. It is submitted that, copy of the sale deed, which was submitted on record before the High Court, was not annexed with the notice. It is further submitted that, the documents submitted before

the High Court does not disclose any registered document of General Power of Attorney, and as such, the Petition is also filed by a person having no title or interest in the property. Thus, on account of non-joinder of necessary parties i.e. owners, the Petition is liable to be dismissed.

17] We have heard the learned counsel appearing for the petitioner, the learned AGP appearing for the respondent Nos. 1 to 3, and the learned counsel appearing for the respondent No.4 at length. With their able assistance, we have perused the pleadings in the Petition, and annexure thereto, and all other documents placed on record, and also affidavit-in-reply and additional affidavit-in-reply filed by the respondent No.4. It is not in dispute that, the petitioner has given notice to the respondent No.4 under Section 127 of the MRTP Act. The copy of the said notice is placed on record. The said notice is issued on 4th October, 2013. It appears that, the respondent No.4 has replied the said notice by letter dated 22.12.2014 addressed to the petitioner. It is stated in the said letter that, the land belongs to the petitioner in Survey No.35 to the extent of 1.52, is reserved under reservation No.29 for secondary school and playground. Accordingly, the proposal for acquisition of land was submitted to the Collector, Beed, on 19th July, 2005. Accordingly, the Deputy Collector, Jayakwadi Project, Beed has initiated the land acquisition proceedings, and the said authority has asked the respondent No.4 to deposit 75% amount in advance, and in view of the aforesaid developments and since the acquisition proceedings are in progress, the land cannot be

deleted from the reservation, the petitioner cannot be allowed to develop the said land. Upon perusal of the contents of the said letter, it is abundantly clear that, the respondent No.4 did not dispute the ownership of the petitioner of the land, which is subject matter of this Writ Petition. On the contrary, the respondent No.4 Authority has accepted that, the land belongs to the petitioner from Survey No.35 to the extent of 1.52 Acre is reserved under reservation No.29 for the secondary school and play ground. Therefore, by way of filing affidavit-in-reply and additional affidavit-in-reply, the respondent No.4 cannot question the title of the land. The petitioner has placed on record sale deed, showing the purchase of land by the petitioner in the Year 1991. The date of issuance of purchase notice i.e. 4th October, 2013 is not in dispute. One year period from the issuance of such notice have come to an end. It is undisputed that, till today, the declaration under Section 6 of the Land Acquisition Act r/w. Section 126 of the MRTP Act, has not been issued, as no steps are taken for acquisition i.e. declaration under section 6 of the Land Acquisition Act r/w. 126 of MRTP Act, within 12 months from the date of receipt of the purchase notice by the respondent No.4, the reservation lapses as has been held in the case of *State of Maharashtra Vs. Bhakti Vedanta Book Trust and others*¹ and in another Judgment of the Apex Court in the case of *Girnar Traders Vs. State of Maharashtra*².

Even during the course of hearing, the learned

1 [2013] 4 SCC 676

2 [2007] 7 SCC 555

counsel appearing for the respondent No.4 fairly conceded that, the respondent No.4 has no sufficient funds to acquire the land of the petitioner, and to pay him compensation as per the ready reckoner.

17] In that view of the matter, the Writ Petition succeeds. The same is allowed. It is hereby declared that, the reservation, designation or allotment provided under the development plan of the respondent No.4 Municipal Council in respect of the subject property, has lapsed and the same shall be now available to the petitioner for the purpose of development or otherwise, as is permissible in the case of the adjacent land under the relevant plan. The State Government is hence directed to take necessary steps for notifying the lapsing of the reservation in the *Official Gazette* as expeditiously as possible and preferably within six months from today.

18] Rule is accordingly made absolute in above terms. Writ Petition stands disposed of.

Sd/-
[A.M.BADAR]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE