

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

**WRIT PETITION NO.9896 of 2014**

1. Vijay Jagannath Chaudhari,  
Age 40 years, Occ: Business,  
r/o Chalisgaon, Tal.Chalisgaon,  
Dist. Jalgaon.
2. Sanjay Vishwasrao Ahirrao,  
Age 40 years, Occ: business,  
r/o Chalisgaon, Tal.Chalisgaon,  
Dist. Jalgaon.

**...PETITIONERS**

**VERSUS**

1. The State of Maharashtra,  
Through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai-32.
2. The Director of Town Planning,  
Maharashtra State, Pune.
3. The Deputy Director of Town Planning,  
Nashik Division, Nashik.
4. The Chief Officer, Municipal Council,  
Chalisgaon, Tq. Chalisgaon,  
Dist. Jalgaon.

**...RESPONDENTS**

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Mr.D.M.Pingale, Adv., h/f Mr. Ajeet B.Kale, Advocate for  
petitioners.

Mr. S.K.Kadam, AGP for respondent State.

Mr. V.R.Dhorde, Adv., for respondent no.4.

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**CORAM: R.M.BORDE  
AND  
SUNIL P.DESHMUKH, JJ.**

**DATE : February 4th, 2015.**

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**ORAL JUDGMENT: (Per R.M.Borde, J.)**

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. The petitioner is owner and possessor of land bearing Survey No.378/2 (part) and 387/4, which property has been reserved under Final Development Plan prepared by Chalisgaon Municipal Council, being Reservation No.93, for public purpose i.e. a playground. The Final Development Plan has been published in the year 1989. The petitioner has purchased the property under reservation from original owner. The predecessor-in-title of the petitioner issued a notice dated 5.8.2013 as contemplated under Section 127 of the M.R.T.P.Act calling upon the Planning Authority either to acquire the property under reservation within the time stipulated under Section 127 of the Act, or to release the same, or in the event of failure, the property shall be deemed to have been released from reservation, allotment or designation, as provided under the relevant Final Development Plan.

3. The petitioner contends that inspite of issuance of notice, the Planning Authority did not take steps and no declaration as contemplated under Section 6 has been issued and, as such, the reservation, allotment or designation in the Final Development Plan in respect of the property in question shall be deemed to have lapsed. Petitioner also contends that part of the property earmarked for Development of the playground forming part of same survey number i.e. 389 to the extent of 37 R. has already been released from reservation in view of the judgment delivered by the Division Bench of this

Court in W.P.No.3328/2014 decided on 21st July, 2014 and, as such, it would be practically impossible for the Planning Authority to develop the site.

3. Learned counsel for petitioner, placing reliance on the judgment in the matter of **Girnar Traders (II) V/s State of Maharashtra & others reported in (2007) 7 SCC 555**, contends that the step required to be taken for acquisition of property, is issuance of section 6 notification and the planning authority has failed to take necessary steps and as such the property under reservation shall be deemed to have been de-reserved. The Supreme Court in the matter of **Girnar Traders** (supra) has observed thus :

54..... If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126 (2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under Sub Section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and

not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

57. It may be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRPT Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (C) of Section 126 (1) merely provides for a mode by which the State Government can be requested for acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub Section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under section 6 of the LA Act."

4. Section 127 of the MRTP Act provides that 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 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 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 case may be, Appropriate Authority to that effect; and if within one year 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, 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. In the instant matter, since planning authority failed to take steps for acquisition of land as contemplated under Land Acquisition Act so also planning authority did not acquire the property by entering into private negotiations with petitioner, the reservation, allotment or designation for the purpose specified in the plan in relation to the property, has come to an end and the land is available to the owner for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.

5. The petitioner has pointed out that in the final development plan prepared for Chalisgaon Municipal Council, two properties were earmarked for play ground being plot No.22, Reservation No.93, S.No.387 (part) and S.No.389 (part) to the extent of 1 hectare 03 ares. The owners of land S.No.387 (part) and S.No.389 (part) approached this Court seeking dereservation of the property. It was the contention raised by concerned petitioners in Writ Petition No.10492 of 2012 that in spite of issuance of notice as provided under Section 127 of the M.R.T.P. Act, no steps have been taken by the planning authority and as such, the reservation, allotment or designation specified in the final development plan has come to an end. On consideration of the contentions raised by petitioners, in Writ

Petition No.10492 of 2012, this Court, allowed the petition by order dated 16th April, 2013.

6. It is not a matter of dispute that major portion of the land under reservation has already been deleted from the reservation and remaining area to the extent of 637.69 Sq.Mtrs. cannot be utilised for the purposes of development by the planning authority. Even on this count also, the reservation, allotment or designation specified in the final development plan shall be deemed to have come to an end.

7. In this view of the matter, petition deserves to be allowed and same is accordingly allowed. Reservation, allotment or designation specified in the development plan in respect of land belonging to the petitioner shall be deemed to have come to an end and the land shall be deemed to have become available to the owner for the purpose of development as otherwise permissible in case of adjacent land under relevant plan. The Respondents are directed to issue notification as contemplated by Section 127(2) of the M.R.T.P. Act, as expeditiously as possible, preferably within a period of six months from today.

8. Rule is accordingly made absolute. There shall be no order as to costs.

**( SUNIL P.DESHMUKH )**  
**JUDGE**

**(R.M.BORDE)**  
**JUDGE**

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