

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

WRIT PETITION NO.8714 OF 2013

1. Sou Taibai Shamling Shinde,
Age 45 years, Occu.Agriculture
2. Sau. Asrabai Ashok Shinde,
Age 41 years, Occu. Agriculture

Both r/o Shrirampur,
Taluka Shrirampur,
District Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
through Town Planning
Department, Mantralaya,
Mumbai
2. The Collector, Ahmednagar,
District Ahmednagar
3. The Chief Officer,
Shrirampur Municipal Corpn,
Shrirampur, Tal.Shrirampur,
District Ahmednagar

..Respondents

- WITH -

WRIT PETITION NO.8715 OF 2013

1. Nivrutti s/o Baburao Bomble,
Age 76 years, Occu. Agriculture,
2. Dnyandeo s/o Baburao Bomble,
Age 60 years, Occu. Agriculture

Both r/o Gondhavani-Shirasgaon
road, Survey No.6/1 at Shrirampur
District Ahmednagar

..Petitioners

Versus

1. The State of Maharashtra
through Town Planning
Department, Mantralaya,
Mumbai

2. The Collector, Ahmednagar,
District Ahmednagar
 3. The Chief Officer,
Shrirampur Municipal Corpn.,
Shrirampur, Tal.Shrirampur,
District Ahmednagar
- ..Respondents

- WITH -

WRIT PETITION NO.8716 OF 2013

1. Vijayrao s/o Laxmanrao Sutavane,
Age 70 years, Occu. Agriculture,
 2. Vinod s/o Vijayrao Sutavane,
Age 39 years, Occu. Agriculture
 3. Sunil s/o Vijayrao Sutavane,
Age 52 years, Occu. Agriculture
 4. Rajendra s/o Vijayrao Sutavane,
Age 46 years, Occu. Agriculture,
- All r/o Gondhavani-Shirasgaon
road, Survey No.6/1 at Shrirampur
District Ahmednagar
- ..Petitioners

Versus

1. The State of Maharashtra
through Town Planning
Department, Mantralaya,
Mumbai
 2. The Collector, Ahmednagar,
District Ahmednagar
 3. The Chief Officer,
Shrirampur Municipal Corpn.,
Shrirampur, Tal.Shrirampur,
District Ahmednagar
- ..Respondents

Mr S.S. Kulkarni, Advocate for petitioners
Mr S.G. Karlekar, A.G.P. for respondents 1 and 2
Mr R.A. Tambe, Advocate for respondent No.3

**CORAM : R.M. BORDE AND
N.W. SAMBRE, JJ.**

DATE : 8th May 2015

JUDGMENT (Per N.W.Sambre, J.)

1. In all these three petitions since the issue involved is identical and the reliefs claimed are against the same authorities, with the consent of parties, the writ petitions are taken up together for final disposal at the admission stage.
2. Heard. Rule. Rule returnable forthwith.
3. All these petitions are by the land owners who are residing in Shrirampur of Ahmednagar district against the respondents-authorities claiming release of their lands from the reservation under Maharashtra Regional Town Planning Act for not complying the requirements under Section 127 of the Maharashtra Regional Town Planning Act (hereinafter referred to as 'the Act' for the sake of brevity).
4. The facts, as are necessary for deciding the writ petitions are as under :
5. In Writ Petition No.8714, the petitioners claim to be owner of land Survey No.5/10 `A' part and 5/10 `B' part bearing City Survey No.2122 total area ad measuring 1.86 hectares which was purchased by them on 27th December 2006. The property is for agricultural use of which the respondent No.3 Municipal Council has reserved 14.367 square meters for play ground in 1981.

6. Petitioners claimed to have issued notices on 14th September 2011 and 3rd November 2011 in relation to both the above referred survey numbers under Section 127 of the Act, 1966 for taking appropriate action at the end of respondent No.3 Municipal Council, Shrirampur.

7. In Writ Petition No.8715, the petitioners claim to be owner of land Survey No.6/1 bearing City Survey No.2123 total area ad measuring 10,000 square feet which was purchased by them in the year 1947. The property is for agricultural use of which the respondent No.3 Municipal Council has reserved 4548.50 square meters for play ground in 1991.

8. Petitioners claimed to have issued notices on 14th September 2011 and 3rd November 2011 in relation to both the above referred survey numbers under Section 127 of the Act for taking appropriate action at the end of respondent No.3 Municipal Council, Shrirampur.

9. In Writ Petition No.8716, the petitioners claim to be owner of land Survey No.6/2 bearing City Survey No.2123 total area ad measuring 5274.50 square meters. The property is for agricultural use, which the respondent No.3 Municipal Council has reserved for play ground in 1991.

10. Petitioners claimed to have issued notices on 14th September 2011 and 3rd November 2011 in relation to both the above referred survey numbers under Section 127 of the Maharashtra Regional Town Planning Act, 1966 for taking appropriate action at the end of respondent No.3 Municipal Council, Shrirampur.

11. In all these petitions, the petitioners further claimed that the reservation made in the year 1981 under development plan for the Shrirampur city was sanctioned by the Director, Town Planning, Pune vide notification dated 9th August 1991 and said development plan came into force on 31st October 1991. In all these petitions the petitioners claimed that within twenty years, the respondent No.3 Municipal Council was required to take appropriate steps for acquisition of the lands and to pay compensation to the petitioners and as the respondent No.3 not taken any steps to acquire the lands, they have caused notices in question by enclosing copies of 7/12 extracts of their lands. The petitioners further claimed that neither notification under Section 126 (2) of the Act which is equivalent to Section 6 of the Land Acquisition Act is issued till date nor any compensation is paid to the petitioners, as such the petitioners have prayed for declaration that their lands be released from the acquisition and respondents be directed to issue notification of de-reserving the lands of the petitioners.

12. The claim of the petitioners was resisted by the respondent No.2 by filing a detailed reply in which the respondent-Collector has objected the claim of the petitioners on the ground that on 21st August 2012, proposal was forwarded to the respondent No.2 - Collector by the Municipal Council along with necessary documents for the purpose of acquisition. It is further stated that appropriate financial provision for the payment of compensation was made in the budget of respondent No.3 Municipal Council for the year 2013-14 and it is also stated that the respondent No.3 - Municipal Council has shown its willingness to deposit 2/3rd of the amount of compensation before the publication of

Section 6 notification. According to respondent No.3 there were certain shortcomings which are required to be fulfilled by respondent No.3 Municipal Council in the proposal for acquisition and according to them, the same will be done at the earliest.

13. Respondent No.2 further stated that appropriate steps in the matter of acquisition will be taken at the earliest, particularly having regard to the policy of the government mentioned in the Government Resolution dated 1st December 2014 and as such, prayed for dismissal of the writ petitions.

14. In the light of the rival claims as made before this Court, this Court has examined the conduct of respondents No.2 and 3 in the matter of compliance of requirement under Section 126 and 127 of the Act. It is required to be noted that Section 126 of the Act deals with acquisition of the land required for public purpose earmarked in the development plan. The same further empowers the authority for taking recourse to acquisition proceedings for the lands which are reserved as per the development plan. Section 127 of the Act provides that lapsing of reservation.

15. In view of judgment of Apex Court in **Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and ors.**, in Civil Appeal No.2750 of 2013 arising out of SLP (C) 3014 CC No.17030 of 2012, the apex Court has already dealt with object intention and impression of Section 126 and 127 of the Act. What is required to be noted here is the Apex Court, in above referred judgment, while applying the judgment of Apex Court in **Girnar**

Traders Vs. State of Maharashtra and ors., reported in **(2007) 7 SCC 555**, while dismissing the appeal preferred by respondent No.3 Municipal Council, has endorsed the view taken by the High Court in the matter of release of lands of concerned land owner for not complying with the provisions of Section 126 of the Act in view of Section 127 of the Act.

16. In the present case also it is noticed that the reservation of the land of the petitioners as is mentioned by the petitioners was from the year 1991. Petitioners have issued notices under Section 127 of the Act well within time for acquisition of the land and the respondent No.3 Municipal Council has not taken any steps viz. issuance of notification under Section 126 (3) of the Act (at par with Section 6 of the Land Acquisition Act) till this date.

The said act on the part of respondent - Municipal Council is contrary to scheme of Section 126 and 127 of the Act and as a consequence of non compliance thereof, petitioners are entitled for deservation of their land, particularly in the background of observations made by apex Court in the matter of Shrirampur Municipal Council Vs. Satyabhamabai and Girnar Traders Vs. State of Maharashtra (cited supra).

17. In view of above, in our opinion, no fruitful purpose will be served in considering the efforts of respondent Nos.2 and 3 for acquisition of the lands that too at such belated stage, however, it will be always open for the respondent No.3 - Municipal Council to take recourse to such steps as are available in law in case they need the present lands.

18. As such, petitions succeed. Writ Petitions are allowed in terms of prayer clause (B). Rule made absolute accordingly.

(N.W. SAMBRE, J.)

(R.M. BORDE, J.)

vvr