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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4238 OF 2008

Kalgonda Nemgonda Patil & Ors.

..Petitioners

-Versus-

The State of Maharashtra & Ors.

..Respondents

.....

Mr. Pratap Patil for the Petitioners.

Mr. V. S.Gokhale, AGP, for the Respondent No.1.

Mr. Shivajirao Masal for the Respondent Nos.2 and 3.

.....

**CORAM: A. S. OKA AND
REVATI MOHITE DERE, JJ.**

DATE :- 24th JUNE 2015.

PC.:

Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the 2nd and 3rd respondents and the learned AGP for the State.

2] The Regional Plan for Sangli-Miraj Region under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') was sanctioned by the State Government on 15th March, 1985 and the same was brought into force with effect from 30th May, 1985. In this petition, we are concerned with land bearing survey no.197/2+3 at Kupwad. In the said sanctioned Regional Plan, the said land was reserved

for the purpose of administrative-cum-shopping complex. The sanctioned Regional Plan was modified by Government Resolution dated 17th November, 1995 by deleting the reservation for administrative-cum-shopping complex. While sanctioning the said modification, a layout plan for the said area admeasuring 150 Hectare which was earlier reserved for administrative-cum-shopping complex was prepared which is a part of the sanctioned Regional Plan. The said land claimed by the petitioners was reserved as a 'playground' as Site No.1. Initially the Development Authorities for the said reservation were the Kupwad Municipal Council and Zilla Parishad, Sangli. By Government Resolution dated 9th February, 1988, the area of Kupwad was merged with the area of Sangli-Miraj and Kupwad Municipal Corporation established under the provisions of the Maharashtra Municipal Corporations Act, 1949. That is how on formation of the said Corporation, it became the Development Authority/Appropriate Authority for the reservation of 'playground'.

3] As no steps were taken for acquisition of the said land within a period of 10 years from 10th November, 1995, the petitioners served a notice under section 127 of the MRTP Act to the said Municipal Corporation on 13th August, 2007. The petitioners are relying upon the Resolution No.192 passed by the General Body of the said Municipal

Corporation on 28th January, 2008. The subject of submitting the proposal for acquisition of the said land was placed before the General Body of the Municipal Corporation. The proposal for acquisition was turned down by the General Body.

4] The contention of the petitioners is that as no steps for acquisition of the said land were taken within a period of 6 months from the date of service of notice under section 127 in accordance with unamended section 127 of the MRTP Act, the reservation shall be deemed to have been lapsed.

5] The stand taken in the affidavit in reply of Ms. Sadhana Pradeep Naik, the Deputy Director of Town Planning, Pune Division, is that the Revised Draft Development Plan under section 26 of the MRTP Act has been prepared and published in which the same reservation for playground has been shown. It is stated that the Revised Draft Development Plan has been submitted to the State Government in accordance with section 30 of the MRTP Act for its approval. It is further stated that the Revised Draft Development Plan has not been sanctioned by the State Government. In the affidavit, it is stated that with effect from the year 2005, the said Municipal Corporation is the Acquiring Body for the said reserved land. There is an affidavit filed by Shri Shrirang B. Patil,

Deputy Commissioner, of the said Municipal Corporation in which it is stated that on 17th January, 2008, the General Body of the Respondent-Corporation has rejected the proposal for acquisition.

6] After having heard the parties, we find that it is an admitted position that the said land has been reserved for the public purpose of 'playground' in the sanctioned Regional Plan as amended on 17th November, 1995. It is also an admitted position that on inclusion of area of Kupwad within the limits of said Corporation, the said Corporation is the Appropriate Authority for acquisition of the said land. The stand taken by the State Government is from the year 2005, the said Corporation is the Appropriate Authority to acquire the land. Therefore, a notice dated 13th August, 2007 was rightly served by the petitioner to the Appropriate Authority, namely, Commissioner of the said Municipal Corporation. On 17th January, 2008, the Municipal Corporation passed a Resolution by which it was decided not to acquire the said land.

7] As far as the interpretation of the unamended section 127 as it existed till the Maharashtra Act 16 of 2009 came into force is concerned, the law is no more res-integra. The latest decision on this point is in the case of *Shrirampur Municipal Council V/s. Satyabhamabai Bhimaji*

Dawkher¹. The Apex Court has reiterated the law laid down in its earlier majority view in the case of **M/s. Girnar Traders V/s. State of Maharashtra & Ors.²** The Apex Court after considering the unamended section 127 of the MRTP Act held that steps can be taken for acquisition of a reserved land only by a publication of a notification either under sub-section (2) or sub-section (4) of section 126 of the MRTP Act read with section (6) of the Land Acquisition Act, 1894. Admittedly, no steps have been taken in the present case as the Appropriate Authority has decided not to acquire the said land.

8] Therefore, the legal consequences provided in section 127 shall follow and the said land is deemed to have been released from the reservation. As far as the draft Revised Development Plan pending for approval of the State Government is concerned, the petitioners are free to point out to the State Government the legal effect of this judgment and the order.

9] Hence, the petition succeed and we pass the following order:-

(i) We declare that the reservation provided on the said land more particularly described in paragraph 2 of the petition for playground in the sanctioned Regional Plan as modified on 17th November, 1995 stands

1 (2013) 5 SCC 627

2 2007 (7) SCC 555

lapsed and the said land shall become available to the owners thereof for the purpose of development as otherwise permissible in the case of adjacent land under the relevant sanctioned Regional Plan;

(ii) The State Government shall issue a formal notification in official gazette declaring the lapse of reservation. Such notification shall be issued within a period of 3 months from today;

(iii) In the light of the judgment and the order, it will be open for the petitioners to make a fresh application to the Planning Authority for grant of a development permission. If such application is made, the same shall be decided in the light of what is held by this Court in this judgment and order;

(iv) Rule is made absolute on above terms.

(v) No orders as to costs.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)