

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

WRIT PETITION NO. 6485 OF 2014

Shri Nandkumar Mahadev Shinde ... Petitioner

V/s.

The State of Maharashtra & ors. ... Respondents

Mr. A.A. Karande for the petitioner.

Mr. Vikas Mali, AGP for respondents 1 to 3, 6 and 7.

Mr. S.M. Oak i/b. Mr. S.A. Joshi for respondents 4 and 5.

**CORAM : NARESH H. PATIL AND
S.B. SHUKRE, JJ.**

20th August, 2015.

P.C.

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner's land Gut No.7, Survey No. 339, CTS No. 1753 ad measuring 0.13 hectare was reserved under a development plan of the respondent no.4 Mangalwedha Municipal Council. The said land was reserved under the development plan sanctioned on 1st February, 1991 for the purpose of playground. The petitioner issued a notice on 15th June, 2005 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'MRTP Act, 1966' for short)

intimating the Planning authority that he is owner of the said land which was reserved in the sanctioned DP plan. The petitioner intimated and called upon the Municipal Council to initiate the proceedings for acquisition of said land. It was further intimated by the petitioner that if Planning authority failed to take steps within 180 days (six months) then the reservation would stand lapsed and the petitioner would be free to use the land and develop his property, in accordance with the provisions of Section 127 of the MRTP Act, 1966.

3. The petitioner issued one more communication dated 7th November, 2013 addressed to Chief Officer Nagar Parishad Mangalwedha seeking information consequent to the issuance of notice by the petitioner on 15th June, 2005. As the respondents Municipal Council failed to take steps, the petitioner approached this Court by filing petition on 11th June, 2014.

4. The respondent no.4 Municipal Council filed affidavit-in-reply through the Chief Officer. It is contended by the Chief Officer that the notice under Section 127 was addressed to the Chief Officer, Nagar Parishad, Mangalwedha and not to Mangalwedha Municipal Council which is the Planning authority. Another objection raised is that the petitioner failed to produce and annex documents showing his title or interest in the said land. It is contended that the Property Card would indicate and establish the ownership of the petitioner and not the 7/12 extract. The deponent raised issue of delay occurred in filing this petition. Affidavit-in-rejoinder has been filed by the petitioner on 12th December, 2014.

5. The Assistant Director of Town Planning, Solapur has also filed affidavit-in-reply. It is contended that consequent to the notice issued by the petitioner on 15th June, 2005 under Section 127 of the MRTP Act 1966, the Municipal Council resolved vide Resolution No. 433 dated 16th September, 2005 to acquire the said land. As additional documents were not provided, information was called from the respondent no.4.

6. Learned Counsel appearing for the petitioner submits that a valid notice in accordance with provisions of Section 127 addressed to the Planning authority was issued. Though the notice was addressed to Chief Officer, Municipal Council Mangalwedha, the Planning authority has acted upon the said notice and resolved to acquire the said land which establishes that the said notice was addressed to appropriate authority i.e. respondent no.4. It is submitted that the objection raised in respect of petitioner's ownership or interest in the subject land is not sustainable in view of the fact that the Municipal Council under notice issued by the petitioner resolved to acquire the land. The requirement of submission of title deeds and other relevant documents has been brought into operation by an amendment to the provisions of Section 127 of the MRTP Act, 1966. Learned Counsel further submitted that by issuing notice under Section 127 of the MRTP Act, 1966, petitioner has called upon the Planning authority to initiate acquisition proceedings. As the Municipal Council failed to take appropriate steps, the reservation shall be deemed to have lapsed. Learned Counsel for the petitioner placed reliance on the judgments in the case of **Vinod Kumar Singh v/s. Banaras Hindu University {1987 DGLS (Soft.) 812}**, **Budhia Swain v/s. Gopinath Deb**

{1999 DGLS (Soft.)551}, Surayya Afzal Khan v/s. Raza Shah Fakir Takiya {2006 (Supp.) Bom. C.R. 670}, Shri Rajendra Rameshwardas Gindodiya v/s. State of Maharashtra & ors. {2014 BCI (0) 179}, Vikramsinh Jaysingrao Ghatge v/s. Municipal Council & ors. {2014 (6) Bom. C.R. 842}, Mohammed Shaffi Usmanasaheb Kokani & ors. v/s. Nashik Municipal Corporation & ors. {2014 (5) Bom. C.R. 785}, C.V. Shah & A.V. Bhat v/s. State of Maharashtra & ors. {2006 (3) Bom.C.R. 216}.

7. Learned Counsel appearing for respondent no.4 submits that in the affidavit the Planning authority has raised objections which be considered as valid objections for rejecting the prayer of the petitioner. Learned Counsel submits that neither the petitioner has submitted title documents alongwith the notice nor has made out a case for lapsing of reservation. It is submitted that there is abnormal delay in approaching this Court. There is delay of eight years. Therefore, on that ground alone the petition be dismissed on account of laches.

8. Learned AGP has supported the contentions of the Counsel appearing for the Municipal Council.

9. We have perused the notice under Section 127 of the MRTP Act, 1966. We have also perused the judgments relied upon. The petitioner had disclosed in the notice that he is the owner of the subject agricultural land. The land was reserved under the DP plan. The petitioner issued notice under Section 127 of the MRTP Act, 1966 by calling upon the Planning authority to initiate acquisition proceedings in respect of the

subject land. A clear intimation has been given to the planning authority to the effect that failure to take such steps within six months period would result in lapsing of reservation.

10. Admittedly, the Municipal Council acted upon the notice issued by the petitioner and in a General Body meeting passed a Resolution No. 433 on 16th September, 2005. We have perused the resolution. The Municipal Council resolved to acquire the said land of the petitioner as described in the reservation and the notice issued by the petitioner. It is further mentioned in the said resolution that failure to acquire the land within six months would result in lapsing of reservation. It indicates that Municipal Council had understood and appreciated that the notice issued was under Section 127 of the MRTP Act, 1966. The Planning authority did not raise any objection in respect of ownership of the subject land. That objection which is raised now was waived by the Municipal Council at the relevant time. On behalf of Municipal Council objection was raised that notice was not addressed to the Planning Authority. The said notice was addressed to Chief Officer, Nagar Parishad Municipal Council Office Mangalwedha. Accepting the submissions of learned Counsel appearing for respondent no.4 would be taking too technical view of the matter as the Municipal Council acted upon the notice issued by the petitioner and passed resolution No. 433. Therefore, said objection is not sustainable.

11. We are of the view that the petitioner had issued a notice in accordance with the provisions of Section 127 of the MRTP Act, 1966. The Municipal Council had acted on the said notice and had accordingly passed resolution on 16th September, 2005 to acquire the subject land.

The fact remains that the subject land could not be acquired in accordance with law.

12. We have considered the submissions advanced on the plea that the petition deserve dismissal on account of laches. It was submitted by the learned Counsel appearing for the Municipal Council that there is delay of 7-8 years in approaching this Court. In the facts we are of the view that the consequences of non-compliance of the mandatory provisions of Section 127 of the MRTTP Act confers indefeasible right on the petitioner. Such a right cannot be defeated on account of petitioner approaching after lapse of 7-8 years. The fact remains that the reservation stood lapsed, on the Municipal Council, failing to act in accordance with the provisions of law. The petition, therefore, deserves to be allowed.

13. It is declared that the reservation of land bearing Gut No.7, Survey No. 339 and CTS No. 1753 reserved for playground in Development Plan had lapsed. The said land stands de-reserved accordingly and made available for the use or development by the owner, the petitioner herein.

14. Rule is made absolute in the above terms.

(S.B. SHUKRE, J.)

L.S. Panjwani, P.S.

(NARESH H. PATIL, J.)