

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

WRIT PETITION NO. 6974 OF 2010

1. Shri Ramchandra Shankar Joshi
Age: 77 yrs., Occ.: retired,
Himself and Power of Attorney Holder
of petitioner Nos.2 to 3.
2. Shri Moreshwar Shankar Joshi,
Age:83 yrs., Occ.: Retired.
3. Shri Laxman Shankar Joshi,
Age: 65 yrs., Occ.: retired.
4. Shri Ulhas Shankar Joshi,
Age: 64 yrs., Occ.: retired.

All residing at Datar ali, Pen,
Taluka Pen, Dist. Raigad.

... Petitioners.

V/s.

1. The State of Maharashtra,
Through Secretary Urban
Development Department,
Mantralaya, Mumbai 400 032.
2. The Collector of Raigad,
At Alibaug, District Raigad.
3. Pen Municipal Council,
Having its office at Pen,
District: Raigad.

... Respondents.

S.S.Patwardhan I/b. Aparna More for the petitioners.

P.G.Sawant, AGP for respondent Nos.1 and 2.

N.N.Bhadrashete for respondent No.3.

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

RESERVED ON : **24th July 2015.**

PRONOUNCED ON : **24th August 2015.**

JUDGMENT : (Per Naresh Patil, J.)

The petitioners seek direction to the respondents to forthwith release the land bearing Gat No.370, Hissa No.1 situated at taluka- Pen, district- Raigad from reservation No.7 (Garden).

2. It is the contention of the petitioners that they are owners of the land situated within the limits of the Pen Municipal Council. The said land admeasures 0-42-07 + 0-04-0 R. In the development plan, which came into force on 3rd March 1989, the said land was reserved by the municipal council for the purpose of garden as reservation No.7. The petitioners contend that on 2nd February 2009, a notice was issued under section 127 of the Maharashtra Regional and Town Planning Act, 1966 ("Act of 1966" for short). It is stated that the said notice was received by respondent No.3. In spite of receipt of notice, no steps were taken by respondent No.2. The petitioners claimed to have issued another notice

to respondent No.1 on 11th March 2010 and requested for issuance of notification under section 127(2) of the Act of 1966. The petitioners state that the respondents did not take any action for purchasing the petitioners' land in terms of notice issued under section 127 of the Act of 1966.

3. The learned counsel for the petitioners submits that in view of settled position of law, after receipt of notice under section 127 of the Act of 1966 if the State fails to take proper action then the subject reservation would stand lapsed. The learned counsel submits that in the affidavit-in-reply filed by respondent No.3- Council a stand is taken that the said notice is not in compliance with the provisions of section 127 of the said Act. Learned counsel submits that a technical view need not be taken which would frustrate the cause of the petitioner.

4. Learned counsel appearing for respondent No.3 submits that for claiming relief of lapsing of reservation, a proper and valid notice issued under section 127 is essential requirement of law. In the present case, the said notice does not conform to the basic requirements. Hence such a notice cannot be a basis for claiming relief of lapsing of reservation. Learned counsel further submits that in the development plan of 1989 the petitioners' land was reserved for garden. In a meeting, dated 4th January 1997, it was resolved to develop the said plot by entering into agreement with the owner of the said land. The petitioners by their application dated 10th May 2000 informed respondent No.3 that they are willing to accept the compensation at the market rate and hand over the possession of the said land or they be provided alternate plot within the municipal

council area. It is submitted that vide letter dated 21st July 2000, respondent No.3 requested the petitioners to hand over possession of the said land as the petitioners had agreed to accept the compensation at the market rate. The total amount towards valuation was determined at Rs.34,69,695/-. The municipal council requested the petitioners to transfer the said land at the market rate. However, the petitioners refused to transfer the said land. In a general body meeting held on 23rd January 2008 it was resolved to acquire the said land through the Collector, Raigad. Accordingly, intimation was given to Deputy Director, Town Planning, Kokan Division by a letter dated 24th January 2001. By letter dated 16th July 2008 a request was also made to the Collector, Raigad for acquiring the said land. By communication dated 11th August 2008, the office of the Collector informed respondent No.3 that the proposal submitted was incomplete and further informed to submit the proposal after complying with various compliances referred to in the said letter. Learned counsel relied upon the affidavit sworn by the Chief Officer of respondent No.3- Council on 24th August 2011.

5. The learned counsel appearing for the petitioners has relied upon judgments of Supreme Court in the cases of *Girnar Traders v. State of Maharashtra*, 2007 (7) SCC 555; *Beohar Rajendra Sinha v. State of M.P.*, 1969 (1) SCC 796; *Mohinder Gupta v. Frontier Construction Company*, 2010 (15) SCC 551 and judgment of this Court in the case of *Nagpur Cable Operators Association v. Commissioner of Police Nagpur*, 1995 (2) Mh.L.J. 753.

The Apex Court in the case of *Girnar Traders* (supra) has observed as under:

“56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.”

6. The learned counsel appearing for respondent No.3 placed reliance on the judgment of this Court in the case of *C.V.Shah & A.V.Bhat v. State of Maharashtra*, 2006 (3) Bom.C.R. 216, wherein the Division Bench of this Court has observed in para-17 as under:

“17. The notice contemplated in section 127 is a notice requiring the Planning Authority or the Development Authority or the Appropriate Authority, as the case may be, to acquire the land which is reserved, allotted or designated for public purpose in the final development plan. The notice is given by the owner or the person having interest in the land that is reserved, allotted or designated for the particular purpose in the development

plan because such land has not been acquired by consent or no proceedings for acquisition have commenced under the MRTP Act, 1966 or the Land Acquisition Act within 10 years of the coming into force of final development plan or final regional plan. The very fact that notice is given for acquisition or in other words for compulsory purchase by the owner or the person interested in such land would lead to show that the land is reserved, allotted or designated in the final development plan/final regional plan and that in respect of which no acquisition has taken place by agreement within 10 years from the date of coming into force of the final development plan or final regional plan or in respect of which the acquisition proceedings have not commenced either under the MRTP Act or under the Land Acquisition Act. The expression "serve notice to that effect" cannot be construed to mean that in the notice it is mandatorily required to be stated that the subject land is reserved/designated/allotted in the development plan and that the land has not been acquired within 10 years from the date on which the final regional plan or final development plan came into force or that no proceedings in relation to that land for acquisition has commenced either under the MRTP Act or under the Land Acquisition Act within 10 years. The object of the notice under section 127 is to inform the Authority mentioned therein to acquire the land which is designated, reserved or allotted in the final development plan. The notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms. Form of notice under section 127 is not prescribed. In our view, therefore, the notice under section 127 shall meet the sufficient compliance if notice describes the land in sufficient clarity and requires the Planning Authority or the Development Authority or the appropriate authority,

as the case may be to acquire or compulsorily purchase the land so reserved, allotted or designated in the development plan.”

7. It is a settled position of law that notice contemplated under section 127 of the Act of 1966 is to be given by the owner or the person having interest in the land which is reserved, allotted or designated for the particular purpose in the development plan. The object of the notice under section 127 is to inform the Authority mentioned therein to acquire the land which is designated, reserved or allotted in the final development plan. It is further settled position in law that form of notice under section 127 is not prescribed. Therefore such notice shall meet sufficient requirement in describing the land in clear terms and require the planning authority or development authority or the appropriate authority, as the case may be, to acquire or compulsorily purchase the land so reserved, allotted or designated in the development plan. In case such a notice in a proper form is served on the concerned authority and no steps are taken within six months from the date of service of such notice, the reservation/ allotment/ designation shall be deemed to have lapsed and the land shall be deemed to have been released from the said reservation.

8. Therefore, the precondition for the land owner or the person interested to claim benefit under the provisions of section 127 of the Act 1966 would be to give proper notice describing the land in sufficient clarity and intimating the concerned authority in clear terms.

9. In the present case, we have perused the contents of the notice. It states that the subject land which is described in the notice was reserved under reservation No.7 in the development plan with effect from 3rd March 1989. In the next paragraph, it is mentioned that for a period of 10 years no steps have been taken in accordance with the provisions of Act of 1966 and the Land Acquisition Act, 1984. The petitioners further stated in the said notice that in these circumstances, the reservation concerning the subject land gets lapsed. In the last paragraph, it is stated that necessary steps be taken for cancellation of reservation and note be taken accordingly. The said notice is dated 2nd February 2009. Reading of this notice makes it very clear that it cannot be termed as notice contemplated under section 127 of the Act of 1966. On the other hand, the record placed before us by respondent No.3 shows that certain communications were exchanged between the land owners and the appropriate authority for purchasing the said land by paying compensation at market rate. One of such communication is dated 10th June 2000 addressed by the petitioners to the Chief Officer of respondent No.3 and another dated 21st July 2000 addressed by the Chief Officer to the petitioners. By communication dated 1st March 2005, the petitioners informed the Chief Officer that the subject land is owned by them and is a tenanted property which is to be acquired by the municipal council by private negotiations. On 23rd January 2008, the municipal council adopted resolution in respect of the subject land wherein it was decided that as Special Economic Zone was to be created in Pen taluka there was lot of demand to the properties which are situated in the municipal area. Therefore the land owners i.e. the petitioners herein were not inclined to

hand over the land to the municipal council by private negotiations. This correspondence further shows intention of the parties in respect of the subject land. Shri A.G.Girkar, the Assistant Director of Town Planning, Alibaug has filed affidavit-in-reply on behalf of respondent No.1 and requested that the writ petition be dismissed.

10. In the facts, we are of the view that the subject notice does not meet the requirements of the provisions of section 127 of the Act of 1966. It suffers from want of requisite details. The issue raised herein is squarely covered by the judgment of the Division Bench of this Court in the case of **C.V.Shah & A.V.Bhat** (supra). There is no merit in the petition.

11. Petition is dismissed. Rule stands discharged.

(S.B. SHUKRE, J.)

(NARESH H. PATIL, J.)