

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.195/2015

Bhirulal(Bherulal) s/o Premchand Patil &
others.

..Petitioners..

Versus

The State of Maharashtra & two others.

..Respondents..

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Shri Girish S.Rane, Advocate for the Petitioners.

Smt.P.V.Diggikar, AGP for the Respondent Nos.1 & 3.

Shri S.S.Patil, Advocate for Respondent No.2.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

**ORDER RESERVED ON: 21.11.2016
ORDER PRONOUNCED ON: 15.12.2016**

ORDER :

1] Shri Rane, learned counsel for the petitioners states that the petitioners are the owners and possessors of land bearing Survey No.484/5A to the extent of 2800 Sq.Meters situated at Mehrun Tq.Jalgaon Dist.Jalgaon. The said land was reserved as an open space in the development plan of Jalgaon city, which came into effect from 1.5.1983. Thereafter, the development plan was

revised with effect from 15.2.1993 and the writ land of the petitioners was reserved for park / garden. The learned counsel submits that on or about 5.4.1999, the petitioners through their Advocate had issued notice u/s 127 of the Maharashtra Regional Town Planning Act requesting the Municipal Corporation to acquire the said property. No steps are taken by the respondent – Corporation for acquisition. As such, the present writ petition is filed. The learned counsel submits that the notice u/s 127 of the MRTPA Act has been served upon the respondent – Corporation on 7.4.1999. The learned counsel submits that since 27 years, the land of the petitioners is under reservation. No steps are taken for acquisition. Even the Assistant Director, Town Planning, Jalgaon, had directed the Chief Officer, Municipal Council, Jalgaon, to take steps for acquisition of the property within six months pursuant to the notice issued by the petitioners. However, no steps are undertaken for acquisition. The learned counsel submits that the land of the petitioners cannot be kept under reservation in perpetuity. The same shall stand released. The learned counsel relies upon the judgment of the Apex Court in the

case of *Hasmukhrai V. Mehta v. State of Maharashtra & others* (**AIR 2015 SC (Supp) 487**).

2] Mr.Patil, learned counsel for the Municipal Corporation submits that the notice u/s 127 of the MRTTP Act can be given by the owner / occupant of the property if the steps for acquisition are not taken within 10 years of the publication of the development plan. The revised development plan was published and came into effect from 15.2.1993 and that would be the starting point of limitation to compute 10 years. The original development plan would not survive and the same cannot be of any help to the petitioners for computing the period of 10 years. The learned counsel relies upon the judgment of the Apex Court in the case of *Prafulla C. Dave & others v. Municipal Commissioner & others* reported in **(2015) 11 SCC 90**. The learned counsel further submits that as the notice itself is defective and not complying with the conditions incorporated u/s 127 of the MRTTP Act, no right would accrue to the petitioners pursuant to the said notice. According to the learned counsel, the said land is meant for garden i.e for public purpose. The notice is also not issued by all the co-sharers. All

these aspects need to be considered.

3] We have also heard learned AGP appearing for the respondent – State.

4] The factual matrix as narrated above is not disputed. It also cannot be a matter of debate that for computing 10 years period as enshrined u/s 127 of the MRTP Act, the starting point would be a revised development plan. In the present case, it would be 15.2.1993.

5] It needs to be considered that the property of the petitioners is under reservation since 1983. As yet, no steps have been taken by the respondents for acquisition of the said property. For long slumber of 27 years, the said property is under reservation.

6] We have asked the learned counsel for the respondent – Corporation as to whether the said property has been developed as a garden, the answer was in the negative. Even it is stated that as yet, no steps are also taken for acquisition of the said property except writing a letter / making proposal to the Collector. The respondent Corporation has come with a case that the Corporation is ready to award TDR to the petitioners for

the said land in lieu of compensation. The petitioners have refused to accept the TDR in lieu of compensation for the said land.

7] The only question would be that whether this Court would come to the aid of the petitioners for de-reservation of the said land.

8] In case of *Prafulla Dave* (supra), it has been held that if pursuant to the initial development plan, no action is taken by the owner / occupant of the property and revised development plan comes into effect, the parties naturally would be governed by the revised development plan and 10 years will have to be computed from the revised development plan.

9] Whereas in the case of *Hasmukhrai*, referred to supra, the Apex Court was considering a case wherein the property of the owner was under reservation since 1999. The notice was served in the said case on 17.8.2000. IN the said case, earlier the property was shown in the residential zone in the development plan sanctioned in 1977. Thereafter, in the revised development plan, the said property was shown as reserved for Agricultural Produce Market Yard. The revised development plan was

prepared on 14.1.1999. The notice u/s 49 was issued on 17.8.2000. The request was made to acquire the said property, however, no steps were taken for one year and thereafter the petition was filed. The Apex Court in the said case has observed as under:-

"14. In view of the principle of law laid down by this Court, as above, we are of the view that in the present case since neither steps have been taken by the authorities concerned for acquisition of the land, nor the land of the appellant is purchased under purchase notice, nor he is allowed to use the land for last more than twenty years, the land will have to be released as the appellant cannot be deprived from utilizing his property for an indefinite period.

15. Inaction on the part of APMC and bonafide act of appellant are apparent from the documents on record. In this connection, we think it relevant that from the copy of letter dated 15.7.1991 (Annexure P/2) it is clear that Khopoli Municipal Council granted permission for demarcation of the Survey No. 16, Hissa No. 3 and Survey No. 18, Hissa No. 4 of Village Sheel, and allowed that the plot be used by the appellant for residential purpose, subject to other conditions mentioned in the letter. Another document on record, is copy of letter

dated 23.4.2001 (Annexure P/8) sent by the Chief Officer of Khopoli Municipal Council to the Chairman, Agriculture Produce Market Committee, wherein at the end of the letter, it is expressly mentioned that if action of acquisition of land not started within time limit mentioned under MRTP Act, 1966, the Committee (APMC) would be responsible for lapse of reservation of the land. Also, Report dated 21.4.2003 (Annexure P/14) of Town Planning and Valuation Department addressed to the Principal Secretary of the Urban Development Department of State of Maharashtra shows that the Committee (APMC) and the State Government were reminded of the fact regarding the requirement of acquisition proceedings and the fact that it is yet not known that any action for land acquisition was taken till the report was submitted or not. Necessity of early action was reiterated in the letter. However, it appears that no one bothered on the issue to take steps for acquisition.

16. In the above circumstances, having considered submissions of the learned counsel for the parties and after going through the documents on record and further considering the law laid down by this Court, as discussed above, we find that the High Court has erred in law in dismissing the writ petition.

17. Accordingly, we allow the appeal and set

aside the impugned order passed by the High Court. Since no steps appear to have been taken till date for last more than twenty years either for acquisition or for purchase of the land under MRTP Act, 1966 by the authorities concerned, as such, the land in question stands released from reservation under Section 127 of the MRTP Act."

10] In the present case, the property of the petitioners is under reservation since 1983. In the year 1983, writ land is shown reserved as open space and in the revised development plan in the year 1993 for the purpose of garden. Purchase notice is given in the year 1999. The Assistant Director, Town Planning, had also written letter to the Chief Officer of the Municipal Council asking the Municipal Council to send the proposal for acquisition within six months. The said letter / proposal is also not disputed. Even the Chief Officer of the Municipal Council communicated the petitioners that as the proposal has already been sent to the Collector, the notice u/s 127 would not be binding. Even if we assume notice u/s 127 was issued after six years and before completion of 10 years, however, it would appear that as on now more than 17 years have lapsed and no

steps are taken for acquisition. On the contrary, readiness is shown by the Corporation to award TDR in lieu of compensation for the said land. The land of the petitioners is under reservation since 1983 i.e. for more than 33 years. The said land is not used for the purpose for which it is reserved nor the petitioners are permitted to develop it. Even after revised development plan came into force, 23 years have lapsed. Notice has been issued 17 years back. Even accepting that notice could be issued after 10 years of the revised development plan and steps for acquisition are required to be taken within one year of notice u/s 127, still in the present case, 17 years have lapsed after issuance of notice u/s 127 of the Maharashtra Regional Town Planning Act and as yet, no steps are initiated for acquisition of the writ land. Section 127 of the MRTP Act is a fetter on the powers of eminent domain. Considering the inaction on the part of the respondents in not acquiring the writ property nor taking any steps for acquisition for a period of 17 years even after issuance of notice u/s 127 of the MRTP Act, the judgment of the Apex Court in the case of *Hasmukhrai*, referred to supra, would be squarely

applicable.

11] In the result, we hold and decide that reservation of land for the purpose of park / garden of Survey No.484/5A situated at Mehrun Tq. & Dist.Jalgaon owned by the petitioners has lapsed and the same is released from reservation. Consequential acts be performed accordingly. Writ petition is allowed accordingly. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)