

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

WRIT PETITION NO. 2584 OF 2014

Madanlal S/o. Lalchand Jain,
Age : 55 Years, Occu. : Agriculture,
R/o Vibhare Building, Station Road,
Nandurbar, Dist. Nandurbar. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 400 032.
2. The Assistant Director of Town
Planning and Valuation Department,
Nandurbar.
3. Nandurbar Municipal Council,
Nandurbar,
Through its Chief Officer. .. Respondents

Shri J. R. Shah, Advocate for the Petitioner.
Shri B. A. Shinde, A.G.P. for Respondent Nos. 1 and 2.
Shri D. S. Bagul, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.**

DATE : 11TH APRIL, 2016.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Mr. Shah, the learned counsel for the petitioner submits that, final development plan of Nandurbar town is sanctioned on

19.03.1979. The Survey No. 37 was reserved for open space, 12 Mtr. and 9 Mtr. wide D. P. Road by the respondent No. 3. The learned counsel submits that for more than 20 years no steps were taken, as such the petitioner on 21.01.2004 issued a purchase notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "M. R. T. P. Act"). The same was for the open space Site No. 9 as well as Site No. 24, play ground, 9 Mtr. and 12 Mtr. wide D. P. Road. Prior to 21.01.2004 the petitioner's predecessor had also served notice U/Sec. 127 of the M. R. T. P. Act on 24.08.1999. The notice dated 24.08.1999 was in respect of Survey No. 37/2 + 37/3 and the notice dated 21.01.2004 was in respect of Survey No. 37/1-B, so also 37/1-A. The learned counsel submits that no steps were taken for acquisition though on 28.02.2000 the Municipal Council, Nandurbar passed resolution resolving to acquire the land. Subsequently on 26.07.2004 the Municipal Council passed resolution not to acquire land under D. P. Road. According to the learned counsel though the time stipulated had expired, no steps were taken for declaration U/Sec. 6 of the Land Acquisition Act (for short "L. A. Act"). The learned counsel submits that, subsequently in the year 2007 the development plan is revised and the same has come into force from 31.08.2009. The said reservation is revised as Site No. 24 play ground and the other reservation is not changed. The learned counsel submits that, said revised development plan would not affect the right of the

petitioner. The learned counsel for the petitioner relies on the judgment of the Apex Court in a case of **Godrej and Boyce Manufacturing Co. Ltd. V/s. State of Maharashtra and others** reported in **2015 (2) All M. R. 921 (SC)**.

2. Mr. Bagul, the learned counsel for the respondent No. 3/Municipal Council submits that, subsequent to the issuance of purchase notice in the year 2007 revised development plan has come into force and the said properties are under reservation again. As such, notice issued would not have any effect. The learned counsel relies on the judgment of the Apex Court in a case of **Prafulla C. Dave V/s. Municipal Commissioner and others** reported in **2014 AIR (SCW) 691**.

3. We have considered the submissions canvassed by learned counsel for respective parties.

4. The factual matrix as narrated above are not disputed by any of the parties. The issuance of purchase notice and service upon the respondent No. 3/Municipal Council is not disputed. It is also not disputed that till date no declaration U/Sec. 6 of the L. A. Act read with Section 127 of the M. R. T. P. Act is ever issued.

5. The Apex Court in a case of **Girnar Traders (3) V/s.**

State of Maharashtra and others reported in (2011) 3 SCC 1 has observed that steps of acquisition would mean issuance of declaration U/Sec. 6 of the L. A. Act read with Section 126 of the M. R. T. P. Act.

6. In view of that, axiomatically after lapse of the stipulated period of the purchase notice, the reservation stands lapsed as is held by the Apex Court in a case of **Godrej and Boyce Manufacturing Co. Ltd. V/s. State of Maharashtra and others** referred to supra. The subsequent revised development plan would not have any effect, as the statutory period mentioned in the purchase notice has already lapsed prior to the revised development plan.

7. In light of the above, the writ petition is allowed. Rule is made absolute in terms of prayer clause "A". No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]