

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

WRIT PETITION NO. 2439 OF 2015

Paraji s/o Abaji Lokhande
Age 65 yeasers, Occ-Business
R/o Flat No.302, Malkhare Vihar
Khadkeshwar, Tq. Aurangabad
Dist.Aurangabad.

.. PETITIONER

Versus

- 1] The State of Maharashtra
through Principal Secretary
Urban Development Department,
Mantralaya, Mumbai 431 032.
- 2] The Director of Town Planning
Maharashtra State,
Pune, Dist.Pune.
- 3] The Assistant Director of
Town Planning, Aurangabad
Dist.Aurangabad.
- 4] The Collector, Aurangabad
Aurangabad

5] The Aurangabad Municipal Corporation

Aurangabad, Dist.Aurangabad

Through its Commissioner.

..RESPONDENTS

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Mr.R.L.Chhabda, Advocate for petitioner

Mr.A.P.Basarkar, AGP for respondent nos. 1 to 4.

Mrs.M.A.Deshpande,Adv. For respondent no.5

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**CORAM : S.V.GANGAPURWALA &
A.M.BADAR,JJ.**

DATED : 16TH FEBRUARY,2016

ORAL JUDGMENT [PER S.V.GANGAPURWALA,J.] :-

Rule. Rule made returnable forthwith. With consent of parties,
Petition is taken up for final hearing.

2] The petitioner claims to be the owner of land survey no.48/1 C.T.S.No.910/B situated at Bhausingpura, Aurangabad. Mr.Chhabda, learned counsel for the petitioner submits that the land of the petitioner is reserved in the Revised Development Plan dated 17/8/2002 for High School, Cremation Ground, Play Ground and Primary School bearing Site Nos. 135, 137, 138 and 139. The learned counsel submits that as no steps were taken by respondent – Municipal Corporation, for acquiring the said land, the petitioner issued notice u/s 127 of Maharashtra Regional Town Planning Act on 21/8/2012. The said notice was served to the Municipal Corporation

on the same date. Municipal Corporation replied to the petitioner vide communication dated 24/9/2012. In reply the respondent sought latest ownership documents. The petitioner had annexed all the copies of the documents alongwith notice u/s 127. However, again vide notice-cum-reply, dated 10/12/2012 the petitioner has supplied the latest set of ownership documents and has also stated that the same be again treated as notice u/s 127 of the MRTP Act.

3] Till this date, the respondents have not issued any declaration under Section 6 of the Land Acquisition Act read with Section 127 of the MRTP Act, as such reservation stands lapsed. The learned counsel relies on the judgment of the Apex Court in the case of **Girnar Traders V/s State of Maharashtra and others reported in (2011) 3 SCC page 1.**

4] Mrs.Deshpande, learned advocate for the Municipal Corporation, Aurangabad submits that the notice dated 21/8/2012 was in respect of Survey No.48 and not of Survey No.48/1 though it referred to C.T.S.No.910/B. The latest documents were also not submitted. Even with subsequent reply dated 10/12/2012 latest documents are not submitted. The reply dated 10/12/2012 cannot be construed as notice under Section 127 of the MRTP Act. The notice under Section 127 of MRTP Act is not in accordance with law with regard to the property under reservation. As such, the same is not legal and valid. Notice will have to be strictly construed.

5] We have considered the submissions. The provisions of Section 127 of the MRTP Act act as fetters on the power of eminent domain. The following dates are not disputed.

17/8/2002 is the date when Revised Development Plan was

brought into force. Property of the petitioner i.e. Survey No.48/1 was reserved as Site Nos.135, 137, 138 and 139 as per the affidavit filed by the Assistant Director of Town Planning.

6] On 21/8/2012 notice was issued by petitioner under Section 127 of the MRTP Act. The said notice mentioned Survey No.48 Bhausingpura, CTS No.910/B.

7] The Corporation issued communication on 24/9/2012 stating that petitioner has annexed ownership documents for a period prior to ½ years and without giving latest documents.

8] On 10/12/2012, the petitioner again issued notice-cum-reply in respect of Survey No.48/1 Bhausingpura CTS No.910/B alongwith latest documents and it was stated as under :

“By this notice again abundant and caution to you under Section 127 of the Maharashtra Regional and Town Planning Act, 1966, you are called upon the initiate and complete acquisition of the above referred sites within the statutory period of one year failing which, my client will be entitled to presume that the above referred reservations have already lapsed and he shall be entitled to use the said portions have already lapsed and he shall be entitled to use the said portions of land survey No.48/1, Bhausingpura, CTS No.910/B Aurangabad as per law.”

9] Till this date, respondents have not issued any declaration under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act and/or of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

10] In view of the judgment of the Apex Court in the case Girnar referred supra, if no steps of acquisition are initiated within one year from the date of service of purchase notice, the acquisition stands lapsed.

11] In view of above, Rule is made absolute in terms of prayer clause "A". Writ Petition is disposed of. No costs.

(A.M.BADAR,J.)

(S.V.GANGAPURWALA,J.)

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