

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

8 WRIT PETITION NO. 1578 OF 2015

...

1. Bharde Saksharta Prasarak Mandal ... **Petitioner**
Through its Secretary,
Shamsundar s/o Dattatray Bharde,
Age 77 years, Occu: Agri,
R/o Shevgaon, Tq. Shevgaon
District Ahmednagar.

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Divisional Commissioner and
Director of Municipal
Administration, Nashik.
3. The Collector, Ahmednagar.
4. The Director fo Town Planning,
Ahmednagar.
5. The Chief Executive Officer,
Zilla Parishad, Ahmednagar.
6. The Chief Officer,
Municipal Council, Shevagaon,
Tq. Shevgaon, Dist. Ahmednagar
7. The Chief Officer, ... **Respondents**
Shevagaon Nagar Parishad,
Shevgaon, Tq. Shevgaon Dist.
Ahmednagar.

Mr. K. M. Nagarkar, Advocate for the petitioner
Mrs. P. V. Diggikar, AGP for the respondents 1 to 3
Mr. S. V. Natu, Advocate for respondents 6 and 7

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

DATE : 22nd November, 2016

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

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.
3. Mr. Nagarkar, the learned counsel for the petitioner submits that the petitioner is owner of the land bearing Gat No.720/1, Survey No.8, admeasuring about 20 R, situated at Shevgaon. The same is reserved for the purpose of Dispensary and Maternity Home under the development plan, which came into effect from 01.06.1987, of village Shevgaon, District Ahmednagar. Initially, the same was within limits of Grampanchayat and in 2015, the said Grampanchayat became Municipal Council. According to the learned counsel for the petitioner, no steps were taken for development or acquisition of the said land for a long time. As such, the petitioner, on 04.10.2011, issued a notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966. The said notice is addressed to the Zilla Parishad, the then planning authority, copy of which was also given to the Grampanchayat. However, no steps are taken within a period of one year as

contemplated under section 127 of the Act, 1966. As no steps are taken, in a sense that declaration under section 126 of the Act, 1966 read with section 6 of the Land Acquisition Act has not been made, the land would stand released from the acquisition. The learned counsel relies on the judgment of the Apex Court in the case of **Girnar Traders (II) Vs. State of Maharashtra and others**, reported in (2007) 7 SCC 555.

4. Mr. Natu, the learned counsel appearing for respondent Nos. 6 and 7 submits that the notice under section 126 of the MRTP Act was never served upon the Grampanchyat and the Municipal Council. As such, there is no issuance of notice under section 127 of the MRTP Act. The stamp of the Grampanchayat has been affixed fraudulently. Sarpanch of the Grampanchayat was employee of the petitioner and subsequently her husband was Upsarpanch. According to the learned counsel, the said land is required for the purpose of Dispensary and Maternity Home. In fact, at the relevant time, respondent no.3 was possessing necessary funds for acquiring the land. As no notice has been served, the reservation does not lapse.

5. Learned AGP submits that the Planing authority,

at the relevant time was the Zilla Parishad and the Zilla Parishad and the Grampanchayat were served with the notice under section 127 of the M.R.T.P. Act.

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

7. The planning authority i.e. Zilla Pariad has nowhere denied the receipt of the notice under section 127 of the MRTP Act. Endorsement also appears to be of the Grampanchayat having received the notice. The land of the petitioner appears to have been reserved for the purpose of dispensary and maternity home in the development plan sanctioned on 01.06.1987. It is not disputed that as yet, no declaration under section 126 MRTP Act, 1966 read with section 6 of the Land Acquisition Act has been issued even after five years of the issuance of notice under section 127 of the MRTP Act. Provisions of Section 127 of the MRTP Act fallen on the powers of eminent domain. If steps for acquisition are not taken within one year from the date of receipt of notice by the acquisition authority, then axiomatically reservation stands lapsed.

8. In light of above, we pass following order:

O R D E R

- i. Land bearing Gat No. 720/1 Survey No.8 to the extent of 20 R situated at Shevgaon Dist. Ahmednagar stands released from the reservation and can be used for the purpose as that of the adjacent land.
- ii. Further consequential steps be taken by the respondents Municipal Council pursuant to the release of the property from the Acquisition.
- iii. Rule is made absolute accordingly. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC