

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2824 OF 2016

- 1 Ramesh Ramnath Mantri,
Age: 65 years, occu: agricultural
R/o Main Road, Pathardi,
Tq. Pathardi, Dist. Ahmednagar
 - 2 Vilas Ramdayal Baheti,
age: 67 years, occu: Doctor,
R/o Baheti Hospital, Pathardi,
Tq. Pathardi, Dist. Ahmednagar
 - 3 Sureshkumar Murlidhar Mantri,
age: 73 years, occu: Doctor,
R/o Mantri Line, Main Road,
Pathardi, Tq. Pathardi, Dist.Ahmednagar
- Petitioners

Versus

- 1 The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai 32
 - 2 The Town Planning Officer,
Town Planning Department,
Ahmednagar, Tq. & Dist. Ahmednagar
 - 3 Pathardi Municipal Council,
Through its Chief Officer,
Pathardi, tq. Pathardi,
Dist. Ahmednagar
 - 4 The President,
Pathardi Municipal Council
Pathardi, tq. Pathardi
& Dist. Ahemadnagar
- Respondents

Mr.R.D. Sanap advocate for the petitioners
Mr.P.S.Patil, Assistant Government Pleader for Respondent No.1
Mr. R.V. Naiknaware advocate for respondent No.3

CORAM : *R.M. BORDE &*
K.L.WADANE, JJ

(Date : 16th June, 2016.)

ORAL JUDGMENT

(Per: R.M.Borde, J)

1 Heard.

2 Rule. With the consent of the parties, petition is taken up for final decision at admission stage.

3 The petitioners are praying for issuance of declaration that, the land Gut No.83/1/B admeasuring 40-R situate at Pathardi, Dist. Ahmednagr shall be deemed to have been released from reservation, prescribed under the Final Development Plan published by the State in respect of Planning Authority - Municipal Council Pathardi in the year 1993.

4 It is not a matter of dispute that, the land belonging to the petitioners has been earmarked for municipal office, quarters, shopping centre, library & community center under the Final Development Plan published for Municipal Council, Pathardi in the year 1993. Since the Planning Authority did not take steps for acquisition of the property within a period of ten years from the

date of publication of the Final Plan, notice came to be issued by the petitioners, requesting the Planning Authority to take proper steps within contemplation of law or else, the reservation allotment or designation under the Final Development Plan in relation to property in question shall be deemed to have been lapsed. Even after receipt of the notice, the Planning Authority did not take steps within a period of one year and as such, the designation, allotment or reservation in respect of the property under the Final Development Plan published for the Pathardi Municipal Council shall be deemed to have lapsed.

5 It is stated in the affidavit in reply that the process of revision of Final Development Plan has been initiated and the appropriate measures are required to be taken during the process of revision of the plan. The defence raised is of no consequence and the independent process of revision of Final Development Plan for the town shall not be an obstacle for issuance of declaration as prayed by the petitioners.

6 In this context reliance is placed on the Judgment of the Supreme Court in the matter of Girnar Traders (II) V/s State of Maharashtra & others reported in **(2007) 7 SCC 555** to contend that the steps required to be taken for acquisition of property is

issuance of section 6 notification and the planning authority has failed to take necessary steps and as such the property under reservation shall be deemed to have been de-reserved. Supreme Court in the matter of *Girnar Traders* has observed thus :

54..... If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126 (2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under Sub Section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result

into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

57. It may be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRPT At, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (C) of Section 126 (1) merely provides for a mode by which the State Government can be requested for acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub Section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under section 6 of the LA Act."

7 Section 127 of MRTP Act provides that, if any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the

date on which a final Regional Plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan. In the instant matter, since planning authority failed to take steps for acquisition of land as contemplated under Land Acquisition Act so also planning authority did not acquire the property by entering into private negotiation with petitioners, reservation, allotment or designation for the purpose specified in the plan in relation to the property has come to an end and the land is available to the owner for the purpose of development as otherwise permissible in case of adjacent land under the relevant Act.

8 In view of above, writ petition deserves to be allowed and the same is accordingly allowed. The reservation, allotment or designation in respect of land situate in Gut No.83/1/B admeasuring 40-R, prescribed under the Final Development Plan for Pathardi Municipal Council shown in the year 1993 shall be deemed to have lapsed and the land shall be available to the petitioners for development as in case of adjacent land holders.

9 The State Government shall publish Notification declaring the lapsing of reservation in the official gazette within a period of one year from today.

10 Rule is accordingly made absolute.

11 There shall be no order as to costs.

(K.L.WADANE, J)

(R.M.BORDE, J)