

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

Writ Petition No. 5281 of 2005

District : Beed

Dinkar s/o. Balwantrao Kadam,
Age : 38 years,
Occupation : Agriculture,
R/o. "Visava",
Balbhim Chowk, Beed - 431 122.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32.
2. The Deputy Director of Town
Planning, Aurangabad Division,
Aurangabad.
3. The Town Planner,
Beed.
4. The Municipal Council, Beed,
Through its Chief Officer.
5. The Under Secretary,
Urban Development Department,
Mantralaya, Mumbai.

.. Respondents.

.....

Mr. A.S. Bajaj, Advocate, for the petitioner.

*Mr. S.G. Karlekar, Asst. Government Pleader, for
respondent nos.1, 2, 3 and 5.*

Mr. G.K. Thigle, Advocate, for respondent no.4.

.....

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

DATE : 11TH FEBRUARY 2016

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

1. Mr. Bajaj, the learned Counsel for the petitioner, states that the land of the petitioner, admeasuring 82 Are was reserved for open space in the Development Plan of Beed City in the year 1975. As the said land was not acquired, the petitioner on 23rd February 1995 issued a purchase notice under Section 127 of the Maharashtra Regional & Town Planning Act, 1966 [**For short, hereinafter referred to as “MRTP Act”**]. The learned Counsel submits that thereafter 36 Are land was deleted from the reservation. However, 48 Are land was kept for playground vide revised Development Plan in the year 1997. According to the learned Counsel, as no steps are taken for acquisition within 6 months from the date of purchase notice under Section 127 of the MRTP Act, the reservation stands lapsed and the petitioner is entitled to use the property and develop it for residential purpose. The learned Counsel submits that after lapse of the statutory period of purchase notice under Section 127 of the MRTP Act, the petitioner had moved an application seeking permission for sanction of the layout vide application dated 21-12-1995. According to the learned Counsel, the act of the respondent in again reserving part of the property is illegal. The learned Counsel relies on judgment of the Hon'ble Apex Court in the case of *Godrej & Boyce Manufacturing Co. Ltd. Vs. State of*

Maharashtra & others, reported in **2015(2) ALL MR 921 (S.C.)**.

2. Mr. Thigle, the learned Counsel for respondent no.4 - Municipal Council, submits that as subsequently Development Plan has been revised, 10 years will have to be computed from the date of revised Development Plan. No purchase notice was issued after lapse of 12 years of the revised Development Plan. The learned Counsel submits that the land cannot automatically stand released. The learned Counsel further submits that even the said issue is referred to the Larger Bench by a Division Bench of this Court at Nagpur Bench. The learned Counsel relies upon judgment of the Hon'ble Apex Court in the case of ***Prafulla C. Dave Vs. Municipal Commissioner & others***, reported in **2014 AIR (SCW) 691**.

3. We have considered the submissions advanced by respective parties. The following factual matrix is not disputed :-

The final Development Plan was published in the year 1975. The land of the petitioner to the extent of 82 Are of Survey No. 34A was reserved for open space. On 13-2-1995, the petitioner issued a purchase notice to the respondent - Municipal Council. The said notice under Section 127 of the MRTP Act is served upon the respondent - Municipal Council. In 1997, revised Development Plan is sanctioned. In the said revised Development Plan, 36 Are land of the petitioner is deleted and 48 Are land is now kept for playground instead of open space.

4. Considering the aforesaid undisputed factual matrix, it is clear that within the statutory period of purchase notice under Section 127 of the

MRTP Act, the respondents have not taken steps for acquisition. The steps for reservation would be issuance of declaration under Section 6 of the Land Acquisition Act read with Section 126 of the MRTP Act, as has been held by the Hon'ble Apex Court in the case of *Girnar Traders Vs. State of Maharashtra & others*, reported in (2011) 3 SCC 1. In the present case, no such steps are taken till date.

5. Once the respondents fail to acquire the land within the statutory period as laid down under Section 127 of the MRTP Act, then the land would automatically stand released from reservation and it is obligation cast upon respondent no.4 - Municipal Council to notify the same. The said aspect is also clarified in the recent judgment of the Hon'ble Apex Court in the case of *Godrej & Boyce*, referred supra.

6. In the light of the above, the Writ Petition is allowed. Rule is made absolute in terms of prayer clauses “B” and “C”. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

.....