

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

Writ Petition No. 4811 of 2011

District : Aurangabad

Khurshid Begum w/o. Naziruddin Naqshbandi,
Through Power of Attorney
Shri Sayyed Aref s/o. Naziruddin Naqshbandi,
Age : 43 years,
Occupation : Business,
r/o. 5, Karan Apartments,
Opp. Begumpura Police Station,
Anandnagar, Begumpura, Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
through the Secretary,
Ministry of Urban Development,
Mantralaya, Mumbai - 32.
2. The Aurangabad Municipal Corporation,
Aurangabad,
Through its Commissioner.
3. The Assistant Director,
Town Planning,
Aurangabad Municipal Corporation,
Aurangabad.

.. Respondents.

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*Mrs. S.D. Tambat (Dhumal), Advocate, for the
petitioner.*

*Ms. S.S. Raut, Asst. Government Pleader, for
respondent no.1.*

*Mrs. Manjusha A. Deshpande, Advocate, for
respondent nos.2 and 3.*

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

DATE : 3RD MARCH 2016

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

1. The petitioner had issued notice under Section 127 of the Maharashtra Regional & Town Planning Act 1966 [**For short, hereinafter referred to as “MRTP Act”**] on 27-10-2009. According to the petitioner, no acquisition proceedings are initiated. As such, the reservation stands lapsed.

2. Mrs. Tambat, the learned Counsel for the petitioner, submits that the original Development Plan is sanctioned in the year 1974. The Corporation revised the Development Plan in the year 2002. The petitioner is having lease hold rights over the writ land. The writ land has reservation No. 104 for garden. The petitioner has issued notice under Section 127 of the MRTP Act on 27-10-2009. The same is served upon respondent - Corporation. According to the learned Counsel, as no declaration under Section 6 of the Land Acquisition Act 1894, read with Section 126 of the MRTP Act is issued within six months, the reservation stands lapsed. The learned Counsel further submits that earlier in the year 2008, the petitioner has applied for permission to carry out the repairs. The same is also rejected. According to the learned Counsel, even after 2012, the respondents have not taken any steps. The life of the modified /

revised Development Plan is for 10 years. On this count also, the reservation stands lapsed. The learned Counsel in the alternate submits that the petitioner be given permission for construction.

3. Mrs. Deshpande, the learned Counsel for respondent nos.2 and 3 - Corporation, submits that the revised Development Plan is sanctioned in the year 2002. The notice issued by the petitioner under Section 127 of the MRTP Act on 27-10-2009 is premature. The notice cannot be issued before lapse of 10 years. The learned Counsel relies on the judgment of the Hon'ble Apex Court in the case of ***Prafulla C. Dave & others Vs. Municipal Commissioner & others***, reported in ***2015(1) Bom.C.R. 88***.

4. We have considered the submissions canvassed by the learned Counsel for respective parties. The issue as to whether original sanctioned plan is to be considered or revised Development Plan has to be considered while computing the period of 10 years, is no longer *res integra* in view of judgment of the Hon'ble Apex Court in the case of ***Prafulla C. Dave & others***, referred supra. It is the revised Development Plan which is to be considered while reckoning the period of 10 years as contemplated under Section 127 of the MRTP Act, more particularly if no notice under Section 127 of the MRTP Act is issued prior to revised Development Plan. Admittedly, the revised Development Plan is sanctioned in the year 2002 where the writ land is reserved for garden. The notice issued in the year 2009 is certainly premature. As such, contention of the petitioner that the land stands released from reservation cannot be accepted. As far as alternate prayer, that the respondents be directed to grant permission for

repairs is concerned, the petitioner has appropriate remedy under the Act and the statute.

5. In the light of above, the Writ Petition is dismissed. Rule is discharged. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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