

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

WRIT PETITION NO. 2080 OF 2006

Jitendra Anupchand Jain and others ...PETITIONER

versus

The State of Maharashtra and others ...RESPONDENTS

WITH

WRIT PETITION NO. 5872 OF 2015

Jitendra Anupchand Jain and others ...PETITIONER

versus

The State of Maharashtra and others ...RESPONDENTS

.....
Mr. C.K. Shinde, Advocate for petitioner
Mrs.A.V. Gondhalkekar, AGP for respondents – State authorities
Mr. D.S. Bagul and M.K. Goyanka, Advocate for respondent - MSRTC
Mr. Ajaykumar Magare, Advocate for respondent – Municipal Council
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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 7th JULY, 2016.

Order :-

1. Both the writ petitions are filed by same persons in respect of same writ land.
2. Writ Petition No. 2080 of 2006 is filed seeking declaration that land bearing Survey Nos. 389/A/2 and 389/A/3 to the extent of 40 Aar situated within the Municipal Limits, Taloda stands released from

reservation, whereas writ petition No. 5872 of 2015 is filed seeking direction against respondents- authorities to declare award in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (for short "Act of 2013"). Relief in both petitions may run counter to each other.

3. Mr. Chandrakant K. Shinde, learned counsel for petitioners states that in subsequent writ petition bearing No. 5872 of 2015 the petitioners have categorically stated that the said petition is filed without prejudice to the claims/contentions raised in earlier writ petition bearing No. 2080 of 2006. Learned counsel for petitioners submits that petitioners are interested in land bearing Survey No. 389/A/2 to the extent of 20 *Aar* and land Survey No. 389/A/3 also to the extent of 20 *Aar*. In the year 1965 development plan of the Municipal Council, Taloda was sanctioned and area of 2 Hectare, 90 *Aar* was reserved for Bus Stand as site No. 14. Aforesaid land of the petitioners was included in said reservation. Thereafter, on 16-06-1986 earlier development plan was revised and said land of petitioners was again reserved for the Bus Stand as site No. 14.

4. Learned counsel submits that on 23-10-1990 a notice under section 127 of the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act" for short) was issued by the petitioners, however, no steps were taken for acquisition of land within a period as stipulated. As such, the petitioners have filed writ petition No. 2080 of 2006 seeking declaration that reservation has lapsed. Said petition is admitted and

as no further steps were being taken subsequent writ petition bearing No. 5872 of 2015 came to be filed without prejudice to the contentions raised in earlier petition.

5. Learned counsel for petitioners submits that though land of the petitioners is under reservation since 1965, the same has not been purchased till date by the respondents-authorities nor acquired under any law nor the petitioners are allowed to use the land, in such a case, reservation stands lapsed. Even after purchase notice was issued, no steps as required for acquisition are taken. To support his contention, learned counsel relies on the judgment in the case of *Hasmukhrai V. Mehta vs. State of Maharashtra and others* reported in (2015)3 SCC 154.

6. Learned counsel further submits that pursuant to the directions of this Court, respondent - Maharashtra State Road Transport Corporation (for short "MSRTC") has filed affidavit stating that they have already constructed the Bus Stand over the area of 1 Hectare, 32 Aar, which is acquired in 1979 and the land of the petitioners is not required as such. According to learned counsel, as MSRTC does not require said land, there is no purpose to keep said land under reservation.

7. Learned Assistant Government Pleader states that proposal was received by the State for acquisition of land pursuant to purchase notice in the year 1998 and the said proposal was not processed. Affidavit to that effect in the year 2006 is filed on record. Learned Assistant Government Pleader submits that notice under section 127 of

the MRTTP Act has been issued prior to completion of ten years of issuance of revised development plan. As such, said notice is not valid.

8. Mr. Bagul, learned counsel for respondent – MSRTC states that pursuant to the directions of this Court, affidavit is filed by the Managing Director of the MSRTC stating that construction of the Bus Stand is complete. Even compound wall was constructed and writ land is not required for the purpose of Bus Stand.

9. We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that land of the petitioners to the extent of 20 *Aar* from survey No. 389/A/2 and land to the extent of 20 *Aar* from land Survey No. 389/A/3 is under reservation as site No. 14 for Bus Stand since the year 1965 i.e. when first development plan was sanctioned. Subsequent development plan was sanctioned in the year 1986. Thereafter, the petitioners have issued notice on 23-10-1990 purportedly under section 127 of the MRTTP Act. There is no dispute that said notice is issued prior to completion of ten years from the revised development plan. Naturally, said notice was pre-mature.

10. It is also not disputed that pursuant to said purchase notice proposal was sent for acquisition by the MSRTC to the Collector on 17-11-1998 as is evident from affidavit filed by the Town Planner, Dhule. Till date notification under section 126 of MRTTP Act read with section 6 of the Land Acquisition Act, 1894 (for short "Act of 1894") is not issued. It is also required to be considered that about 1 Hectare, 32

Aar land was acquired by MSRTC from said site No. 14 in the year 1979 for construction of Bus Stand and now said construction is completed. MSRTC has also filed affidavit thereby explicitly stating that it does not require writ land for the purpose of Bus Stand as area required for Bus Stand has been acquired as well construction of Bus Stand along with compound wall has been completed. The Apex Court in the case of *Hasmukhrai* referred to supra dealt with similar situation where the notice under section 127 of the MRTP Act was given prior to ten years. The Apex Court in that case had considered that land was reserved under fresh development plan since 1999 and in spite of the fact that proposal was sent for acquisition no steps were taken for acquisition. The Apex Court has observed that land of the appellant therein cannot be held up without any authority of law. Neither the same is purchased by the authorities nor acquired under any law nor the appellant is being allowed to use the same for more than 20 years.

11. In the present case, land is under reservation and the petitioners are not allowed to use the same for more than 50 years. Today, after revised development plan 30 years have lapsed and period of 25 years has lapsed since the date of issuance of notice under section 127 of the MRTP Act. The land of the petitioners cannot be kept under reservation without acquisition or without taking any steps pursuant to purchase notice under section 127 of the MRTP Act in perpetuity. We could have appreciated the case of respondents, had some steps being taken for acquisition.

12. The present case has an additional facet. It has been stated on oath by authority of MSRTC that land in question is not required by them, so also Municipal Council, Taloda has passed resolution that if the MSRTC does not require land, the Municipal Council, has no objection to release the said land from acquisition. No purpose would be served by keeping the property under reservation. In fact the purpose of reservation stands fructified by construction of Bus Stand by acquiring part of property in 1979.

13. Considering above conspectus of the matter, we allow writ petition No. 2080 of 2006 declaring that land survey No. 389/A/2 to the extent of 20 *Aar* and land Survey No. 389/A/3 to the extent of 20 *Aar* situated within the Municipal Limits, Taloda belonging to the petitioners stands released from reservation. The parties shall take consequential steps pursuant to its release from the reservation.

14. In view of the fact that writ petition No. 2080 of 2006 is allowed no orders are required to be passed in writ petition No. 5872 of 2015.

15. Writ petitions stand disposed of accordingly. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK