

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8202 OF 2015

Shantilal s/o Zumbarlal Kothari,
Ae : 80 years, Occu : Agricultural,
R/o Station Road, Vaijapur,
Tq. Vaijapur, Dist.Aurangabad.

...PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai - 32
- 2] The Director of Town Planning
Maharashtra State, Central Building,
Pune.
- 3] Assistant Director Town Planning,
Jubli Park, Aurangabad.
- 4] The Municipal Council, Vaijapur,
Through its Chief Officer,
District Aurangabad.

...RESPONDENTS

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Advocate for Petitioner : Mr. Ajit D. Kasliwal.
AGP for Respondent Nos.1 to 3 : Mr. A. P. Basarkar.
Advocate for Respondent No.4 : Mr. N. D. Sonavane.

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

DATE : 3rd FEBRUARY, 2016.

PER COURT:

- 1] Rule. Rule made returnable forthwith. Heard finally with consent of parties.
- 2] Vide the present writ petition, petitioner seeks a declaration

against the respondents that the reservation provided in the Development Plan of Vaijapur, in respect of land Survey No.12, admeasuring 1 Hectare 59 R, stands lapsed.

3] Mr. Kasliwal, learned counsel for the petitioner states that land Survey No. 12 is owned and possessed by the petitioner. Same was reserved and designated for the proposed weekly Bazar in the development plan, prepared by the respondent No.4 Municipal Council. The said final development plan was published on 18th February, 1985. On 29th August, 2005, the petitioner had issued a purchase notice, under Section 127 of the MRTP Act and the respondent No.4 Municipal Council vide letter dated 6.9.2005, has replied the said notice and called upon the petitioner to furnish copies of 7 x 12 extract, measurement map and the site map. Learned counsel submits that the in spite of service of purchase notice, no steps have been taken by the respondents within six months, to purchase the said land nor any declaration under Section 6 was issued. In view of that, the reservation stands lapsed.

4] Learned counsel submits that subsequent revision in the said development plan would not take away the right of the petitioner crystallized prior to enforcement of the revised development plan. Learned counsel relies on the judgment of the Apex Court in the matter of **Hasmukhrai V. Mehta Vs. State of Maharashtra & Ors.** reported in **2015 (3) All MR 967**, so also, the judgment of the Division Bench of this Court in W.P. No. 3726 of 2011 dated 8.5.2014. Learned counsel also relies on the judgment of the Division Bench of this Court in the case of **Satish Soma Bhole Vs. State of Maharashtra & Ors.** reported in **2010 (6) All MR 65**, so also, the judgment of the Division Bench in the case of **Balkrishna Jagannath Lad Vs. Indian Postal Department & Ors.** reported in **2015 (6) All MR 21** and the judgment of the Apex Court in the case of **"Godrej & Boyce Manufacturing Co. Ltd. Vs. State of Maharashtra & Ors.** reported in **2015 (2) All MR 921 (SC).**

5] Mr. Sonawane, learned counsel for the respondent Municipal Council submits that the petitioner has approached this court after a long slumber of 10 years. The purchase notice was issued in 2005 and it is only in 2015, the petitioner has approached this Court. He further submits that during the intervening period, the said development plan was modified, revised development plan was notified on 5.5.2013 and in said revised development plan, the land of the petitioner is reserved for Shopping Center, Weekly Bazar and for parking. According to learned counsel, as the land has subsequently been reserved, the notice dated 29.8.2005 will be of no avail. Learned counsel relied on the judgment in the matter of **"Prafulla C. Dave Vs. Municipal Commissioner & Ors."** reported in **2014 AIR (SCW) 691**. We have also heard the learned AGP.

6] The factual matrix as pleaded by the petitioner is not disputed by the respondents. The fact of issuance of notice dated 29.8.2005 and service of said notice upon the Municipal Council, is not disputed. The Municipal Council has issued a letter on 6.9.2005, calling upon the petitioner to submit copies of 7 x 12 extract, measurement map and site map. The Municipal Council, in their affidavit in reply had not disputed the ownership of the petitioner. The reply notice dated 6.9.2005 issued by the Municipal Council would have been relevant had they disputed the ownership of the petitioner upon the writ land in question. Moreover, the requirement to place the title document alongwith purchase notice was introduced by way of an amendment to Section 127 of the MRTP Act, in the year 2009. The purchase notice is of the year 2005. As such, at the relevant time when the purchase notice was issued, the petitioner was not under obligation to send the title document alongwith the purchase notice. Moreover, as stated above, respondents have not disputed even remotely the title of the petitioner on the writ land.

7] It is trite that provisions of Section 127 of the MRTP Act act as fetters on the powers of Eminent Domain. By deeming fiction, the land stands de-reserved upon the lapse of statutory period envisaged under Section 127 of the MRTP Act. The service of purchase notice dated 28.9.2005 is not disputed. No declaration is required of the Court about lapsing of reservation. It is by operation of statute that reservation stands lapsed once the statutory period laid down under the said provisions after service of notice u/s. 127 of MRTP Act, comes to an end and no steps are taken for acquisition of the said property. The Apex Court in ***Girnar Traders (3) Vs. State of Maharashtra & Ors.*** reported on (2011) 3 SCC 1, has held that steps for reservation would be issuance of declaration under Section 6 of the Land Acquisition Act r/w. Section 126 of the MRTP Act. In the present case, till date, declaration under Section 6 of the Land Acquisition Act r/w. Section 126 of the MRTP Act has not been issued. As has been held by the Apex Court in the judgment in the matter of ***Godrej and Boyce (supra)*** the reservation would stand lapsed and the modification of the development plan after the expiry of period, would be of no avail.

8] Considering the above, writ petition is allowed. Rule is made absolute in terms of prayer clauses (B) and (D). In the circumstances, there shall be no orders as to costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-