

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

WRIT PETITION NO. 8502 OF 2015

1. Kishanrao S/o Jethuji Halde,
Age: 71 years, Occu: Agriculture, he
R/o : 216, Nanded H. Society,
Vijaynagar, Nanded, Ta. And
Dist. Nanded.

2. Chandrakala W/o Kisanrao Halde,
Age: 61 years, occu: Agriculture,
R/o : as above.

3. Jagdish S/o Kisanrao Halde,
Age: 31 years, occu: Service,
R/o as above.

...PETITIONERS

versus

1. The Planning Authority,
for Nanded Waghala City Municipal
Corporation Nanded.

2. Nanded Waghala City Municipal
Corporation, Nanded, through,
The Commissioner.

3. The State of Maharashtra,
Urban Development Department,
Mantralaa, Mumbai-32
through the Secretary

...RESPONDENTS

.....
Mr. Pratap P. Mandlik, Advocate for petitioners
Mr. N.D. Narwadkar, Advocate for respondents No. 1 and 2
Mr. S.M. Ganachari, AGP for respondent No. 3
.....

**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 9th JUNE, 2016.

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

1. Rule. Rule made returnable forthwith. Heard the learned counsel
for appearing parties finally, with consent.

2. Mr. Mandlik, learned counsel for petitioners submits that the petitioners are owners and possessors of land bearing Survey no. 59/B/2 admeasuring 8 Acres 20 Gunthas situated at Nanded. In the year 1996 draft development plan was prepared by respondent No. 2 and out of it land admeasuring 7 acres of the petitioners was reserved for playground/garden. Thereafter, draft development plan came into effect from 16-03-2004. The land of the petitioners were shown reserved for playground. Learned counsel for the petitioners submits that as no steps were taken for acquisition within ten years from the date of finalization of draft development plan, the petitioners had issued notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") on 05-03-2014. As said notice was premature, petitioners thereafter on 19-08-2014 had issued notice under section 127 of MRTP Act. Respondent- Planning authority directed the petitioners to submit document such as 7/12 extracts and the map. The petitioners again on or about 23-09-2014 submitted 7/12 extracts and measurement map. The same is also received by respondent No. 2 on 23-09-2014.

3. Learned counsel submits that within one year from the date of issuance of notice, respondents have failed to take up acquisition proceedings and did not issue declaration under section 126 of MRTP Act read with section 6 of the Land Acquisition Act, 1894, as such a reservation stands lapsed. To buttress his submission, learned counsel for the petitioners relies on the judgment of the Apex Court in the case of *Girnar Traders Vs. State of Maharashtra and others* reported in 2011(3)

SCC 1.

4. Mr. Narwadkar, learned counsel for respondent No. 2 strenuously contends that notice dated 19-08-2014 was not in consonance with law and the documents were not supplied even in December-2014, respondent No. 2 has issued notice to the petitioners to submit the documents, however, the same have not been submitted. Learned counsel submits that considering amendment to section 127 of the MRTP Act, notice period is of two years and respondent No. 2 has already taken steps for acquisition. It has submitted proposal to the concerned authority in December-2014, as such, it cannot be said no steps are taken by respondent No. 2.

5. We have considered the submissions canvassed by learned counsel for respective parties. Amendment to section 127 of MRTP Act enlarging notice period to two years has come into force with effect from 29-08-2015, the same is after lapse of one year from the date of issuance of notice by the present petitioners. Petitioners have submitted the documents as required, as is clear from the application, which is received by respondent No. 2. Receipt to that effect is not denied by respondent No. 2.

6. The provision of section 127 of the MRTP Act, acts as fetters on the power of eminent domain. Lapse of reservation on expiry of stipulated period as contemplated under section 127 of the MRTP Act is axiomatic. The petitioners have submitted the 7/12 extract showing their ownership. Notice under Section 127 of the MRTP Act does not

require submission of measurement map.

7. Considering the aforesaid facts and judgment of the Apex Court in the case of *Girnar Traders (Supra)*, reservation would stand lapsed. It is not disputed that till the date no declaration under section 126 of the MRTTP Act has been issued.

8. In light of the above, writ petition is allowed in terms of prayer clause "B". Rule is made absolute accordingly. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK