

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

WRIT PETITION NO. 8740 OF 2014

Shri Maruti Devasthan
Kukadel, Shahada
Registered Public Trust bearing
Registration No. A79/Poona,
Through its Trustees

1. Gajanan Someshwar Pathak
age 83 years, occ. Agriculture
r/o Kukadel, Shahada
Dist. Nandurabar.
2. Yogesh Gajanan Pathak
age 59 years,
r/o Kukadel, Shahada,
Dist. Nandurbar.
3. Jayesh Gajanan Pathak
age 57 years,
r/o Kukadel, Shahada,
Dist. Nandurbar.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Collector,
Nandurbar.
2. Shahada Municipal Council
Shahada, Tq. Shahada,
Dist. Nandurbar
through its Chief Officer

.. RESPONDENTS

Mr. V.J. Dixit, Senior Counsel, instructed by Mr. A.S. Savale, advocate for petitioners.

Mr. V.M. Kagne, AGP for the State.

Mr. J.R. Shah, advocate for respondent no. 2.

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CORAM : R.M. BORDE &

A.I.S. CHEEMA, JJ.

RESERVED ON : 28th JANUARY, 2016

PRONOUNCED ON : 2nd FEBRUARY, 2016.

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.
3. Petitioner – Trust and its trustees are praying for quashment of notification dated 14.01.1996 issued under section 6 of the L.A. Act r/w section 126 of the M.R.T.P. Act and the consequent land acquisition proceedings initiated in respect of land gat no. 7 admeasuring 1 H situate at Kukadel, Shahada, Dist. Nandurbar.
4. The aforesaid property belongs to the trust and the same has been reserved for play ground and primary school under the revised development plan for Shahada Municipal area sanctioned by the State Government on 21.02.1986 which has been enforced since 01.04.1986. Petitioners, noticing that the land cannot be utilised for any other purpose since the same has been reserved under the development plan, issued notice within contemplation of section 49 of M.R.T.P. Act to the State Government and the planning authority on 04.02.1989 calling upon them to purchase the land under reservation. The purchase notice issued by petitioners was confirmed by the State Government on 31.01.1990. Consequence of confirmation of purchase notice is that the State and the Municipal Council are under obligation to acquire the land under reservation within stipulated period. Municipal Council transmitted a proposal in respect of acquisition of land to

the Collector on 19.07.1990. It appears that no further steps were taken either by the Municipal Council or the State Government for about eight years and, only on 30.04.1998, notice under section 126(2) of the M.R.T.P. Act r/w section 6 of the Land Acquisition Act came to be issued whereas notification within contemplation of section 126(2) was stated to have been issued on 14.01.1999. It transpires that after issuance of notification under section 126(2), no further steps were taken and the proceedings for acquisition were not pursued and, till this date, award has not been declared in respect of the property under reservation. Petitioners issued notice under section 127 of the M.R.T.P. Act on 31.08.1999 calling upon the Municipal Council to purchase the property under reservation within stipulated period or else, the reservation in respect of the landed property under the final development plan shall be deemed to have been lapsed. Municipal Council informed petitioners on 26.12.2006 to the effect that since the acquisition proceedings have already been set in motion, notice issued under section 127 of M.R.T.P. Act is not competent. It was further informed that the Municipal Council has already made provisions to deposit 2/3rd amount of compensation in its budget for the year 2006-2007 and intends to pursue acquisition proceedings. Petitioners, however, again issued notice under section 127 of the M.R.T.P. Act on 12.04.2007. Municipal Council transmitted identical reply on 08.06.2007. Infact, the notices under section 127 of the Act issued by petitioners were not legal and within contemplation of law, since the proceedings for acquisition were already initiated by the planning authority on publication of notification under section 126(2) of the Act on 14.01.1999. Petitioners after waiting for

considerable period, approached this Court by presenting Writ Petition no. 3692/2008. It was contention of petitioners that since no steps have been taken after declaration under section 126 of the Act and award has not yet been passed, the proceedings shall be deemed to have been lapsed. This Court granted rule in the petition on 07.09.2009. The petition was listed for final disposal however, in view of judgment of the Supreme Court in the matter of Girnar Traders Vs. State of Maharashtra reported in **(2011) 3 SCC 01**, the challenge raised in the petition in respect of lapsing of reservation was not considered since the Supreme Court in the aforesaid judgment ruled inapplicability of provisions of section 11(a) of the Land Acquisition Act to the proceedings under M.R.T.P. Act. While disposing of the petition, this Court observed that the petitioners may assail acquisition proceeding itself by taking up such proceedings as are permissible in law. Petitioners as such approached this Court again with a request to direct quashment of the proceedings on the ground that even after lapse of more than decade since the date of issuance of notification under section 126(2) of the M.R.T.P. Act, award has not been declared and the amount of compensation has not been paid to them.

5. It is not a matter of controversy that inspite of issuance of notification under section 126(2) of M.R.T.P. Act on 14.01.1999, till this date, award has not been declared. The Municipal Council, by its communication dated 31.11.2007 forwarded to the Special Land Acquisition Officer, has expressed its inability to deposit 2/3rd amount assessed by the Land Acquisition Officer. The Special Land Acquisition Officer directed Municipal Council to

deposit sum of Rs. 10,03,865/- by transmitting communication on 29.06.2007 however, the Municipal Council vide communication dated 31.11.2007 expressed its inability to deposit the amount since its financial condition was not sound. Even till this date, the Municipal Council is unable to assure that it would pay market value of the land under acquisition to petitioners. Apart from the aspect of inability of Municipal Council to deposit the amount, the proceeding initiated in the year 1999, which has not yet reached the stage of issuance of award even after lapse of sixteen years, shall be deemed to have lapsed and needs to be quashed and set aside.

6. The Hon'ble Supreme Court in the matter of Ram Chand and others Vs. Union of India and others reported in **(1994) 1 SCC 44**, has observed in paragraph no. 27 of the judgment thus :

“27. According to us, after the judgment of this Court in Aflatoon's case (surpa) on 23rd August, 1974, the reasonable time for making the awards was about two years from that date. Beyond two yers, the time taken for making of the award will be deemed to be unreasonable. As such, after expiry of the period of two years, some additional compensation has to be awarded to the cultivators. Taking into consideration the interest of the cultivators and the public, instead of quashing the proceedings for acquisition, we direct that the petitioners shall be paid an additional amount of compensation to be calculated at the rate of twelve per cent per annum, after expiry of two years from 23.8.1974, the date of the judgment of this Court in Aflatoon's case (supra) till the date of making of the awards by the Collector, to be calculated with reference to the market value of the lands in question, on the date of the notifications under Sub-section (1) of section 4.

Thus, reasonable time for making award is about two years from the

date of declaration. Beyond two years, the time taken for making of the awards will be deemed to be unreasonable.

7. In the matter of Bharat s/o Maganbhai Kheta Vs. Improvement Trust reported in **1992(94) B.L.R. 67**, the Division Bench of this Court has observed in paragraph no. 21 of the judgment thus :

“21. It may be relevant to reiterate that the delay at every stage has to be tested on the ground of reasonableness. What is reasonable period of time in a given case would always depend upon the facts of that particular case. It is, therefore, necessary to scrutinize the facts as available on record.

8. In the aforesaid matters, since the awards were not declared within reasonable period, the Court proceeded to direct quashment of acquisition proceedings. Similar view was taken in a group of petitions decided by Division Bench of this Court on 09.05.2014 in Writ Petition No. 3782/1994 and other companion matters. So far as the instant matter is concerned, certain dates are required to be taken into consideration.

- i) Revised development plan sanctioned on 21.02.1986 and enforced from 01.04.1986.
- ii) Purchase notice issued by petitioners under section 49 of the Act on 04.02.1989.
- iii) Purchase notice was confirmed by the State Government on 31.01.1990.
- iv) Proposal for acquisition was moved by the Collector on 19.07.1990.
- v) Notification under section 126(2) was issued on 14.01.1999.
- vi) Special Land Acquisition Officer called upon the Municipal Council to deposit 2/3rd amount on

29.06.2007.

- vii) Communication by Municipal Council to the Special Land Acquisition Officer informing that financial position of the Municipal Council is not sound and as such unable to deposit the amount on 31.11.2007.

It is thus evident, that even though the proceedings were initiated with issuance of section 126(2) notification on 14.1.1999, till this date, for a period of more than sixteen years, no further steps have been taken. The period of sixteen years is about eight times more than the reasonable period as prescribed in Aflatoon's case. The proceeding in respect of acquisition in the instant matter therefore, shall be deemed to have lapsed.

9. In view of above, writ petition stands allowed. Notification dated 14.01.1999 in furtherance of reservation of land under Government Resolution No. T.P.S./1083/2065/C.R./233/84/U.D./24 dated 24.02.1986 and the consequent land acquisition proceeding in respect of petitioners' property bearing gat no. 7 admeasuring 1 H situate at Kukadel, Tq. Shahada, Dist. Nandurbar, are hereby quashed and set aside. Rule is accordingly made absolute. No costs.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE