

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

**REVIEW APPLICATION (CIVIL) NO. 183 OF 2015
IN
WP/4235/1999**

THE AGRICULTURE PRODUCE MARKET COMMITTEE
CHOPADA THROUGH ITS CHAIRMAN JAGNATH DAMU
PATIL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr R. N. Dhorde Sr. Counsel i/b
Mr. V. R. Dhorde

AGP for Respondents: Mr. R. B. Bagul

Advocate for Respondent No. 5-A to 5-E : Mr. A.B. Kale

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.

Dated: June 28, 2016

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PER COURT :-

1. Perused the application. Heard learned counsel for respective parties.

2. By our order dated 27.10.2015 we allowed the writ petition no.4235/1999 and declared that reservation in respect of petitioner's land stood lapsed as per the provisions of section 127 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act". The applicant is the appropriate authority and was heard at the relevant time fully. Learned Senior Counsel

appearing for the applicant, in order to press the application seeking review of the order, raised two points. He pointed out that notice u/s 127 of the MRTP Act was not served on both the planning as well as appropriate authority in the year 1997. He pointed out that the observations of this Court in the judgment, on facts that notice was served, was erroneous. He pointed out the notice to us. We found that the notice was mentioned as notice u/s 49 of the Act. There is no mention of section 127 in the said notice. However, we are unable to hold that this notice was not valid or this notice was not given as per the provisions of section 127. Contents of this notice are as required by the provisions of Section 127. Section 127 and section 49 operate on different levels. What is stated in the notice is related to what is contemplated under section 127. If the land is not acquired within time, the owner or person concerned with the land is expected to request the above mentioned authorities to acquire the land or reservation would be lapsed. Similar words are used in the notice though erroneously “notice u/s 127 of the MRTP Act” words are not mentioned in the notice.

3. The second point raised at the bar is that we erred in applying the law. Learned Senior Counsel brought to our notice the judgment of Supreme Court in the case of ***Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants' Association and Others***, reported in ***1988 (Supp) Supreme Court Cases 55***. He contended that, at the relevant time, after receipt of notice within prescribed time, the appropriate authority was expected to take steps such as sending requisition for land acquisition to the Government. According to him, issuance of notification u/s 6 of the Land Acquisition Act was not made mandatory. Subsequently, by judgment of the Apex Court in the Case of Girnar Traders Vs. State of Maharashtra, which was delivered in the year 2007 and reported in 2007 (7) SCC 555, and notification u/s 6, we are not in agreement with this submissions. If we carefully read judgment referred to above of 1988, it becomes clear that, the Supreme court, in clear terms mentioned that action pursuant to notice is required to be taken in consonance with the provisions of the Land Acquisition Act. Relevant facts of the reported case of 1988 in short can be stated as

under :-

Respondent sent a notice u/s 127 of the MRTP Act on 1.7.1977 to the Municipal Corporation. Rather belatedly, on 10.1.1978 a Resolution was passed at the General Body of the Corporation. On 31.1.1978, the Corporation send a letter to the Government seeking acquisition of the land and accordingly, notification u/s 6 of the Land Acquisition Act was issued on 7.4.1978. All these steps were taken after expiry of six months period from the date of notice. An impression is created that because the Municipal Corporation did not write letter within six months time, the Supreme Court declared the reservation of the land lapsed. This impression is erroneous in view of the following observations of the Supreme Court in paragraph No.10 of the judgment:

10. We must hold in agreement with the High Court that the purchase notice dated July 1, 1977 served by respondents 4-7 was a valid notice and therefore with the failure of the appellant to take any steps for the acquisition of the land within the period of six months

therefrom, the reservation of the land in the Development Plan for a recreation ground lapsed and consequently, the impugned notification dated April 7, 1978 under Section 6 of the Land Acquisition Act issued by the State Government must be struck down as nullity.”

4. In view of this, we find no reason to review the order. Review application is dismissed. No costs.

5. Interim relief is continued for six weeks.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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