

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5568 of 2015**

Pasku Zuje Pinto
versus
Sawantwadi Municipal Council and
Town Planning Authority and ors.

....Petitioner

...Respondents

Mr. G. H. Keluskar, advocate for the petitioner.
Mr. S. M. Railkar, advocate for respondent No.1.
Mr. P. G. Sawant, AGP for respondent Nos. 2 to 4.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE : 7th JULY, 2016.

P. C. :

Mr. Keluskar, learned counsel for the petitioner, at the outset, makes a statement that the petitioner does not press the relief claimed under prayer clause (c) and restricts this petition to the reliefs claimed under prayer clauses (a) and (b). The statement accepted. The prayer clauses (a) and (b) reads as follows:

(a) To call the record and proceeding from the Respondent Nos.1 and 2 in respect of the land bearing (Old Survey No.64) New Survey No.55/1K and (Old Survey No.64) New Survey No.55/1 A, area admeasuring about 2187 sq. mtrs, at Sawantwadi, Dist. Sindhudurg and after perusing the same;

(b) To issue a writ of mandamus or any other appropriate, writ, order or direction in the nature of mandamus holding that reservation in respect of land bearing (Old Survey No.64) New Survey No.55/1K and (Old Survey No.64) New Survey No.55/1, area admeasuring about 2187 sq.mtrs. at Sawantwadi, Dist.Sindhudurg has lapsed and the said land is released from the reservation or designation and become available to the petitioner owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan;”

2. The petitioner is the owner of land bearing new survey Nos. 55/1K and 55/1A (Old Survey No.64) area admeasuring about 2187 sq.mtrs. situated at Sawantwadi, District-Sindhudurg. Admittedly, this land was reserved for ring road in sanctioned development plan of Sawantwadi City which came into force on 1st April, 1989. Since respondent No.1-Municipal Council has not taken any steps to acquire the said land for the period of more than 10 years from 1st April, 1989, the petitioner served notice dated 13th February, 2014 on respondent Nos. 1, 2 and 3 under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short “the MRTP Act”), which was admittedly received by these authorities on 17th February, 2014. It is the petitioner's case that within a period of one year, no steps were taken

by respondent No.1-appropriate/planning authority within the meaning of Section 127 of the MRTP Act and, therefore, reservation has lapsed.

3. The second part of Section 127 of the MRTP Act stipulates that reservation under the development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within a period of one year from the date of service of notice. The Apex Court in **Shrirampur Municipal Council versus Satyabhamabhai Bhimaji Dawkher and ors. 2013(5) Mh.L.J.** had an occasion to consider the provisions of Sections 126 and 127 of the MRTP Act. In the said case, the Apex Court after considering the previous decisions including Girnar Traders vs. State of Maharashtra and ors.(2007) 7 SCC 555 (referred as Girnar Traders II) has held in paragraph 21 as under:

"21. We are further of the view that the majority in Girnar Traders(II) had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under section 6 of the 1894 Act. Any other interpretation of the scheme of sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government."

4. In the present case, an affidavit is filed on behalf of respondent No.1. The affidavit does not disclose that respondents have issued any declaration under Section 6 of the Land Acquisition Act, 1894 and this fact is also fairly conceded by Mr.Railkar, learned counsel for respondent No.1.

5. In the above circumstances, Rule is made absolute in terms of prayer clauses (a) and (b). The petition stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]