

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

WRIT PETITION NO.1229 OF 2017

Shri Kashinath S/o Pundlik Patil
Age : 85 years, Occup : Agril.'
R/o : Gholap Managalkaryalaya,
Chitali Road, Rahata, Tq. Rahata,
District Ahmednagar

..Petitioner

Versus

1]The State of Maharashtra,
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai

2]The Director of Town Planning,
Maharashtra State, Pune

3]The Deputy Director of Town Planning,
Nashik division, Nashik

4]The Municipal Council, Rahata,
Through its Chief Executive Officer.

5]The Collector, Ahmednagar,
Ta. and District Ahmednagar.

..Respondents

[copies for respondents to be
served on Govt.Pleader High Court
Bench at Aurangabad.]

**WITH
WRIT PETITION NO.1256 OF 2017**

Smt.Alka Wd/o Bapusaheb Sadaphal
Age : 50 years, Occup : Agril. & Household
R/o : Near Gholap Managalkaryalaya,
Chitali Road, Rahata, Tq. Rahata,
District Ahmednagar

..Petitioner

Versus

1]The State of Maharashtra,
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai

2]The Director of Town Planning,
Maharashtra State, Pune

3]The Deputy Director of Town Planning,
Nashik division, Nashik

4]The Municipal Council, Rahata,
Through its Chief Executive Officer.

5]The Collector, Ahmednagar,
Ta. and District Ahmednagar.

..Respondents

[copies for respondents to be
served on Govt.Pleader High Court
Bench at Aurangabad.]

Mr.V.D. Sapkal, Advocate for petitioners.
Mr. D.R. Kale, AGP for Respondent Nos. 1 to 3 & 5.
Mr.A.V.Hon, Advocate for respondent No.4.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 18/07/2017.
PRONOUNCED ON :03/08/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2] A common question in these sister writ petitions that arises for consideration is as to whether on the facts of these cases can it be declared that the reservation imposed on the petitioners' land has lapsed due to the failure of the Planning Authority to take steps within the statutory period stipulated by Section 127 of the Maharashtra Regional Town Planning Act, 1966 (for short MRTP Act). The petitioners are seeking a writ of mandamus under Article 226 of the Constitution of India with following prayers.

“B] To hold and declare that reservation of land admeasuring 09 Aar of petitioner in respect of site No. 45, reserved for garden and residential zone from land survey No. 179 situated at Rahata, Ta. Rahata, District Ahmednagar from final development plan dated 16-08-2004 of Municipal Council, Rahata, Ta. Rahata, District Ahmednagar, is lapsed.

C] To direct respondents to issue notification in respect of de-reservation as

contemplated under section 127 of the MRTP Act by publishing it in Government Gazette showing de-reservation of land admeasuring 09 Aar of petitioner from site No.45, reserved for garden and residential zone from land survey No. 179 situated at Rahata, Tq. Rahata, District Ahmednagar from final development plan dated 16-08-2004 of Municipal Council, Rahata, Tq. Rahata, District Ahmednagar by issuing appropriate writ or direction or order in the nature of writ as the case may be.”

3] The petitioner in Writ Petition no. 1229 of 2017 is the owner of a portion admeasuring 09 Are from the City Survey no. 179, whereas the petitioner in writ petition no. 1256 of 2017 is the owner of a portion admeasuring 15 Are from the same city survey number. The respondent no.4 Municipal Council finalized a town development plan. It was duly approved and notified in the official gazettee and came into force with effect from 15.09.2004(Exhibit.B). In the approved development plan, the City Survey no. 179 was reserved for garden as well as residence as site no.45. However, it did not take any steps for acquisition of land as contemplated under the provisions of Sections 126 of the MRTP Act. The statutory period of 10 years provided under Section 127 of the Land Acquisition Act expired on 16.09.2014. The petitioners therefore issued a purchase notice under that provision on 20.11.2014 (Exhibit.C). Alongwith notice they forwarded the revenue record in the form of 7/12 extracts, a copy of development plan and a copy of the sale-deed under which they had acquired the title to their respective portions/ plots. The notice was duly sent to the respondent no.4 Municipal Council by registered post

acknowledgement due and it was duly received by it. As certified by the post office (Exhibit-D) not only the Municipal Commissioner of the respondent no.4 Municipal Council but the Collector respondent no.5 received it on 21/11/2014. Since there were some short falls, the respondent no.4 Municipal Council demanded certain documents vide its communication dated 05.12.2014 (Exhibit E) and the petitioners duly complied with it, vide their response dated 10.12.2014 (Exhibit F). Again, respondent no. 4 pointed out few more short falls by its communication dated 04.02.2015(Exhibit G) and the petitioners duly complied with it vide their reply dated 06.04.2015 (Exhibit H).

4] According to the petitioners inspite of service of such purchase notice as contemplated under section 127 of the MRTP Act, respondent no. 4 Municipal Council, which is a development authority, has not taken any steps for acquiring the portions of the lands belonging to them and later by issuing necessary notifications/ declaration under section 6 of the Land Acquisition Act, 1894 or a similar provision contained in Maharashtra Act No. XXIII of 2013. According to the petitioners in view of such inaction on the part of the respondent no.4 Municipal Council and the State Government, by virtue of the operation of the provision of section 127 of the MRTP Act, the reservation on their respective lands stands lapsed. Hence these petitions, claiming aforementioned reliefs.

5] One Junior Engineer of the respondent no. 4 Municipal Council duly authorised by it has filed affidavit-in-reply (page 59

of the paper book) in both the petitions. He has admitted all the facts mentioned herein above averred by the petitioners. He has not disputed their title to their respective portions of the land from survey no. 179. He has not disputed about the land having been reserved in the development plan which came into effect with effect from 15.09.2004. He has not disputed that 10 years have lapsed after finalization of the development plan, and therefore the petitioners had served a purchase notice dated 20.11.2014. For that matter he has also not disputed about the subsequent correspondence between the petitioners and the respondent no.4 Municipal Council, for compliance of some documents in support of the purchase notices. According to him, in fact after receipt of notice on 08.01.2015, the respondent no. 4 Municipal Council duly passed a Resolution (Exhibit R-1) for acquiring and developing and thereby exploiting the reservation of the petitioners' lands. The proposal was also forwarded to the respondent no. 5 Collector on 05.02.2015, who in turn appointed Sub-Divisional Officer, Shirdi as the Land Acquisition Officer by his order dated 14.12.2015. Accordingly, the Land Acquisition Officer directed the Deputy Superintendent of Land Records for effecting a measurement of the petitioners land by a communication (Exhibit R-2). However no measurement is carried out promptly and the matter is still pending with the T.I.L.R. Thus according to him the respondent no. 4 Municipal Council has promptly taken steps for acquisition of the petitioners land for development, therefore it cannot be said that it has not taken steps for acquisition of the lands as contemplated under sections 126 and 127 of the MRTP Act.

6] The Assistant Director of Town Planning Ahmednagar has also filed affidavit-in-reply on behalf of respondents no. 1 to 3, who are the State Government and the Town Planning Authorities (page 72). He has also admitted almost all the facts mentioned hereinabove. However, according to him it was wholly the responsibility of the respondent no. 4 Municipal Council, which should have taken all the steps for using the petitioners land for assigned purpose according to the development plan and they have no role to play.

7] The learned Advocate for the petitioner Shri V.D.Sapkal, in consonance with the averments in the petition strenuously submitted that the law has been duly settled vis a vis the scope and ambit of sections 126 and 127 of the MRTP Act, by virtue of the decisions of the Supreme Court in the cases of **(1) Girnar Traders and Another Versus State of Maharashtra and others (2007) 7 SCC 555; (2) Shrirampur Municipal Council Versus Satyabhamabai Bhimaji Dawkher and others; 2013 (3) Bom.C.R.481 (Supreme Court)**. The learned Advocate also referred to the recent judgments of the Division Benches of this High Court in the case of (1) **Vikramsinh Haysingrao Ghatge Versus Municipal Council and others reported in 2014 (6) Bom.C.R.842 and (2) Shrishail Parvati Sahakari Grihanirman Sanstha Versus The State of Maharashtra and Ors., reported in 2017 (4) All M.R.373.**

8] Thus according to the learned Advocate, the acid test for the declaration about the reservation having been lapsed under section 127 or otherwise is issuance of a declaration under

Section 6 of the Land Acquisition Act, 1894, or now Section 19 of Maharashtra Act No. XXIII of 2013. Therefore when admittedly the State Government has not issued any declaration under that provision, the legal consequences should automatically follow, and the petitioners are entitled to seek the declaration about their respective lands having been de-reserved.

9] Suffice for the purpose to refer to the decision in the case of Girnar Traders (supra), the view wherein has been duly endorsed by subsequent decision of the Supreme Court in the case of Shrirampur Municipal Council (supra). As has been rightly submitted by the learned Advocate for the petitioners, the wordings of Sections 126 and 127 of the MRTP Act, clearly lays down as to how the acquiring body i.e. development authority is expected to take steps in the directions of acquisition of the land, which are reserved in the development plan. Instead of repeating the observations and the conclusions in the aforesaid two Supreme Court judgments, it would be sufficient to only refer to the principle laid down therein. Paragraphs 57 to 61 of the judgment in Girnar Traders (supra) read as under :

“57] It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would

be issuance of the declaration under Section 6 of the LA Act. Clause (c) of section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

58] The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. The process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of the Section 126 read with Section 6 of the LA Act is sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6

declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it can not be said that the steps for acquisition are commenced.

59] There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126 (1) (c) of the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

60] On a conjoint reading of sub-sections (1) (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (c) of Section 126 (1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section 2 (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority.

61] Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any

other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (c) of Section 126 (1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126 the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126 (2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government on receipt of the application mentioned in Clause (c) of Section 126 (1) on satisfaction of the conditions specified under Section 126 (2). The only exception to this provision has been given under Section 126 (4).

If this is the position in law, when admittedly in the matter before hand there has been no declaration by the State Government in the form of issuance of a notification under section 6 of the Land Acquisition Act, 1894, the only legal and logical conclusion that should ensue is lapsing of the reservation in dispute. We have therefore, no slightest of hesitation in concluding that the reservation on the petitioners lands in the final development plan approved for Rahata Municipal area stood lapsed. The petitioners though had shown unnecessary promptitude in filing a writ petition, initially, have duly waited for the statutory period to lapse and have taken all the steps strictly in accordance with the time line prescribed by the provisions, while seeking the declaration regarding lapsing of the reservation. To repeat, the development plan came into effect

on 15.09.2004. After lapse of 10 years, a purchase notice under section 127 of the MRTP Act is issued on 20.11.2014 and after lapse of a period of 24 months (which was earlier six months) are now seeking a declaration. We therefore have no reservation in accepting the submissions of the learned Advocate for the petitioner and granting the reliefs as prayed for. In doing so, we also record our concurrence with the view taken by earlier two Division Benches of this Court (supra).

10] In the result, both the Writ Petitions succeed. Rule is made absolute in terms of prayer clauses B and C.

(MANGESH S. PATIL,J.)

(S.C. DHARMADHIKARI ,J.)

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