

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

WRIT PETITION NO.4409/2016

Mukund S/o Prabhakar Kulkarni
Age 53 years, Occ-Agriculture and
Business, R/o Shevgaon, Tq.Shevgaon
Dist.Ahmednagar ..PETITIONER

Versus

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

2]The Collector,
Ahmednagar, Dist.Ahmednagar

3]The Chief Officer
Zilla Parishad,Ahmednagar

4]The Chief Executive Officer
Nagar Parishad, Shevgaon
Tq.Shevgaon,Dist.Ahmednagar ..RESPONDENTS

Mr.K.M.Nagarkar h/f Smita Kulkarni, Advocate for petitioner
Mr.P.S.Patil, AGP for Respondent 1 & 2
Mr.S.T.Shelke, Adv.for R. 3.
Mr.S.V.Natu, Adv. For R.4.

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

DATE : 13/06/2017

ORAL JUDGMENT [PER S.C.DHARMADHIKARI,J.] :-

1] Rule. Rule is made returnable forthwith. By consent, heard finally at the stage of admission.

2] This petition under Article 226 of the Constitution of India is seeking a declaration that the reservation in the Development Plan for primary school and play ground on the petitioner's property stands lapsed.

3] The petitioner resides within the limits of now Shevgaon Nagar Parishad, District Ahmednagar. Earlier the affairs of the said Shevgaon village were controlled and managed by a Village Panchayat. It was the Zilla Parishad which was the planning authority. The Zilla Parishad, Ahmednagar therefore, should have taken the reservation of playground and primary school in the Development Plan for the entire district Ahmednagar to its logical end. Both plots which were earmarked for use as a play ground and a primary school according to the petitioner are owned by him. Land gat no.696/4 admeasuring 10380 Sq.Mtrs. belongs to the petitioner. Out of which 6300/- Sq.Mtrs. was reserved for play ground and 4080 Sq.Mtrs. was reserved for primary school. The affairs of the Gram Panchayat are now taken over by successor in

interest, the Nagar Panchayat since July 2015. The reservation was sanctioned by the first respondent by notification dated 1/11/2002. In view of the said reservation the land could have been utilised only for the public purpose. However, the petitioner placed reliance on Section 127 of the Maharashtra Regional Town Planning Act, 1966 [hereinafter referred to as the MRTTP Act for short]. That provision prior to its amendment and subsequently reads as under :

“Section 127 : Lapsing of reservations

(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development Plan comes into force [or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty-four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation,

allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette”

4] A bare perusal of this Section would reveal that if any land reserved allotted or designated for any purpose specific in the plan under this Act if not acquired by agreement within ten years from the date on which a final regional plan or final development plan comes into force or if the steps set out in sub Section (1) of Section 127 of the MRTP Act are not taken within the period commencing from the date of service of notice by the person interested then that reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation.

5] Thus the provision enables the person interested in any land to serve the notice and which the petitioner claims to have served on the planning authority. That notice u/s 127 of MRTP Act is dated 20/12/2013 copy of the said notice is marked as Annexure “B” collectively which would enable us to conclude that it was duly received by Zilla Parishad and also by Gram Panchayat equally the successor in interest, the Shevgaon Nagar Panchayat. It also appears that there have been no steps taken to acquire the land either by agreement or by taking recourse to the provisions of acquisition of immoveable properties/lands under the then Land Acquisition Act 1894 or otherwise. The notice dated 20/12/2013 having been duly received on 30/12/2013 the time stipulated in Section 127 would begin to run from the date of service of such notice. No steps

for acquisition of the land were taken nor the work commenced and that is why the reservations lapsed and the land stands released from the reservation is the submission of the petitioner and reiterated before us by his counsel.

6] This Writ Petition was placed for admission and notice was directed to be issued on 16/4/2016 but from that date till today, no affidavit in reply has been filed.

7] Today the affidavit in reply on behalf of the 4th respondent has been tendered. The respondent is the successor in interest of the Gram Panchayat who came under the jurisdiction of the planning authority i.e. Zilla Parishad, Ahmednagar. This affidavit in reply is filed by Office Superintendent of that municipal council and in paragraph nos.1,3,4,7 and 10, this is what is stated :

“[1] I have read and understood the contents of the writ petition and annexure thereof. I am authorized to file reply in this matter as I am aware of the facts involved in Writ petition. I am filing this reply on the basis of record available with respondent no.4. I crave liberty of this Hon'ble Court to file additional reply, if required, with prior permission.

[3] In reply to contents of para no.2, averment in respect of title of petitioner to the land in question and reservation demarcated for playground and primary school as well as conversion of Gram Panchayat in Nagar Parishad is correct. I say that the then Sarpanch of erstwhile Gram Panchayat in

collusion with the petitioner deliberately did not take effective steps for acquisition of the land by submitting the necessary proposal, though the reservation for primary school and playground are essential in the development plan for the then Gram Panchayat and now Municipal Council.

4] In reply to contents of para no.3, except the publication of development plan and reservation thereof, rests of the contents are denied.

7] In reply to contents of para no.6, I say that the contents thereof are denied. I say that, in absence of proper notice to respondent no.4 U/s 127 of M.R.T.P. Act, further action of taking steps for acquisition of the same cannot be initiated.

10] I say that writ petition being devoid of merit deserves to be dismissed. I say that, the petitioner in collusion with the then authorities of Gram Panchayat made a show of service of notice. I say that, the reservation of primary school and playground is necessary for the proper development of Shevgaon and therefore, the request for the de-reservation of land in question deserves to be rejected.”

8] To our mind this reply apart from denying the contents of the petition reiterates all the factual statements and averments therein. They remain uncontroverted. No amount of denial which is vague or general would suffice. In the present case none of the dates are disputed including the receipt of notice. If the notice was duly served and received but the steps contemplated by law have not been taken nor any acquisition

proceedings were commenced, then, we are left with no alternative but to hold that the petitioner has proved his case. He is entitled to the declaration as prayed. The Writ Petition therefore, succeeds. Rule is made absolute in terms of prayer clause "B". All consequences in law shall now follow.

(MANGESH S.PATIL,J.) (S.C.DHARMADHIKARI,J.)

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