

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

WRIT PETITION NO. 4360 OF 2016

1. Satish Parashram Shinde,
Age : 61 years, Occ. Business,
2. Vijayalaxmi Satish Shinde,
Age : 56 years, Occ. Household
3. Rupesh Satish Shinde,
Age : 37 years, Occ. Business,

All R/o. 'Durwas', Vivekanand Nagar,
Taluka Pachora, District Jalgaon.

.. **Petitioners**

Versus

1. The Pachora Municipal Council,
Pachora Through its Chief Officer.
2. The State of Maharashtra,
Through its Department of
Urban Development,
Mantralaya, Mumbai – 32.

.. **Respondents**

Mr. P.M. Shah, Senior Advocate i/b. Vijay Patil for the petitioners.
Mrs. A.V. Gondhalekar, A.G.P. for respondent-State.
Mr. D.B. Thoke, Advocate for respondent no.1.

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATE : 20.09.2017

ORAL JUDGMENT (Per S.V. Gangapurwala, J.): -

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Shah, the learned senior advocate for the petitioner contends that initially in the revised development plan which came into effect from 01.02.1987 the writ land of the petitioner ad-measuring 1 Hectare 18 R from survey no. 66 out of total area ad-measuring 1 Hectare 42 R was reserved as site no. 67 part for the purpose of park. The respondents did not take any steps. The petitioners' purchased the writ land from the heirs of the original owners and the original owners under the registered instrument of sale dated 27.03.2000 and 10.04.2003. The learned counsel submits that, as more than ten years had lapsed from the commencement of the development plan and no steps were taken, the petitioner issued notice under Section 49 of the Maharashtra Regional Town Planning Act (M.R.T.P. Act). It was stated that the notice be also considered as notice under Section 127 of the M.R.T.P. Act. The said notice was served on the Government. Pursuant to the service of the notice, the Deputy Director, Town Planning on or about 07.10.2003, issued notice to the Chief Officer, Pachora Municipal Council for hearing pursuant to the purchase notice. The purchase notice was

brought to the notice of Pachora Municipal Council. The said purchase notice was to the extent of 92R from land survey no. 66/1A, 66/2A. The learned senior advocate submits that the purchase notice is confirmed by the Government on 16.10.2003. Since the said date no steps are taken for acquisition and subsequently on 20.02.2015 the development plan is revised and the site of the petitioners' is reserved as garden site no. 54. The learned senior advocate submits that by operation of statute as no steps for acquisition were taken by the respondents even after the confirmation of the purchase notice, the reservation stood lapsed. The subsequent reservation in the revised development plan would not affect the right of the petitioners.

3. The learned senior advocate relies on the judgment of the Apex Court in a case of **Godrej and Boyce Manufacturing Company Ltd. V/s. State of Maharashtra & Ors.** reported in **2015 (11) SCC 554**. The learned senior advocate further submits that the land of the petitioners' cannot be kept in reservation for times immemorial, to buttress the said submission the learned senior advocate relies on the judgment of the Apex Court in a case of **Hasmukhrai V. Mehta V/s. State of Maharashtra & Ors.** reported in **2015 (3) SCC 154**, so also the judgment of this Court in writ petition no. 1868 of 2004 dated

09.04.2014. The learned senior advocate further submits that, the steps to be taken or the application to be made for acquisition has to be a substantive application. The resolution is passed by the Municipal Council suggesting that they do not have funds to initiate the acquisition proceedings. In legal sense there is no application by the Municipal Council for acquisition of the property.

4. Mr. Thoke, the learned counsel for the respondent no.1 submits that the respondents' had filed an application stating that it is interested in acquisition of the land, however, the Collector had directed for depositing 2/3rd amount of the land. The Municipal Council did not possess the said amount. The resolution is passed to the effect that, though, the amount is not available and because of the weak financial condition of the Municipal Council, steps could not be taken for acquisition for thirteen years. However, it is necessary to develop the said property and request would be made to the Government as a special case to sanction funds. This would substantiate that the respondent-Municipal Council is interested in initiating acquisition proceedings.

5. We have considered the submissions canvassed by the learned counsel for the respective parties. The dates and the factual matrix as narrated above are not disputed.

6. It appears that initially the petitioners had moved an application for sanction of the lay-out of plots in survey nos. 66/1A and 66/2A on 22.11.2002, however, the said application was not considered by stating that the land is under reservation. It appears that proposal was made for the development plan of the land also but the same was not considered on the ground of reservation.

7. The provisions of Section 127 and Section 49 of the M.R.T.P. Act act fetters on the power of eminent domain.

8. The Apex Court in a case of **Godrej and Boyce (supra)** has observed that, if the acquisition proceedings are not commenced as required under the statute and when no proposal for acquisition of land for the purpose for which it was reserved is made, then, the said reservation would lapse and subsequent reservation in the revised development plan would not have any effect.

9. In the present matter purchase notice was issued on 10.04.2003 and the same was confirmed on 16.10.2003, no steps were taken pursuant to the confirmation of the purchase notice even till date.

10. The Apex Court in a case of **Hasmukhrai V. Mehta (supra)**

has observed in para 12 as under:

“12. We think it pertinent to mention here that APMC, Respondent 5, even after service of notice, has not cared to contest this appeal. Also, we think it relevant to mention that till date no steps appear to have been taken for acquisition of the land in question or to release the same. The land of the appellant, in our opinion, cannot be held up, without any authority of law, as neither the same is purchased till date by the respondent authorities, nor acquired under any law, nor the appellant is being allowed to use the land for the last more than twenty years.”

11. It has re-produced the observations of the Apex Court in a case of **Girnar Traders V/s. State of Maharashtra** reported in 2007 (7) SCC 555 which reads thus:

“54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. Of Greater Bombay v. Hakimwadi Tenants Assn. If the acquisition is left for time immemorial in the hands of the authority concerned by simple making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one

year of the publication of the draft regional plan under Section 126 (2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which

may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.”

12. In a case of **Hasmukhrai V. Mehta (supra)** also the land was subsequently under reservation, the Court considered that the land is under reservation for many years and the same status would not be continued in eternity.

13. In the present case also as yet no steps for acquisition are taken. The 2/3rd amount as directed by the Collector has not been deposited. The notification under Section 126 of M.R.T.P. Act is not issued till date. Even the Government resolution dated 14.06.2001 mandates that when acquisition is to be initiated on the part of the acquiring body the proposal should be accompanied with deposit of 2/3rd amount. The Municipal Council has itself passed a resolution that it does not have any funds. The notice issued is a notice under Section 49 read with Section 127 of the M.R.T.P. Act.

14. Considering the aforesaid conspectus of the matter, the reservation on land survey nos. 66/1A and 66/2B to the extent of 92R stands lapsed. The Municipal Council shall take further consequential steps. Writ petition is accordingly disposed of. Rule accordingly made

absolute in above terms. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]

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