

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

WRIT PETITION NO.6057 OF 2016

Sau. Kusum w/o Dashrath Unde
Age 72 years, Occ. Agri & Household,
R/o. Near Jumma Masjit, Rahuri,
Tq. Rahuri, District Ahmednagar

- PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary for
Urban Development Department
Mantralaya, Mumbai
2. The Chief Officer,
Municipal Council, Rahuri
Tq. Rahuri, District Ahmednagar

- RESPONDENTS

WITH

WRIT PETITION NO.6058 OF 2016

1. Sudarshan s/o. Sundarlal Bihani
Age 40 years, Occ. Agriculture
R/o. Rahuri, Tq. Rahuri,
Dist. Ahmednagar
2. Sau. Laxmibai w/o Sundarlal Bihani
Age 71 years, Occ. Agri. & Household,
R/o. Rahuri, Tq. Rahuri,
Dist. Ahmednagar,

...PETITIONERS

VERSUS

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

2. The Chief Officer,
Municipal Council, Rahuri
Tq. Rahuri, Dist. Ahmednagar

...RESPONDENTS

...

Mr.V.D.Hon, Senior Advocate and A.V. Hon, Advocate
for Petitioner/s

Mr.AR Borulkar, AGP for Respondent No.1 /State.

Mr.R.V. Naiknaware for Respondent No.2

CORAM : R.M.BORDE &
P.R.BORA,JJ.

DATE : 21st MARCH,2017.

ORAL JUDGMENT (PER:-R.M.BORDE,J.)

1) Heard. Rule. With the consent of the parties, the petitions are taken up for final disposal at admission stage.

2) The petitioners are praying for issuance of declaration that the reservation prescribed for public amenities in respect of the properties belonging to the petitioners in the final development plan prepared for Rahuri Municipal Council, shall be deemed to have lapsed in view of the operation of the provisions of Section 127 of The Maharashtra Regional and Town Planning

Act, 1966 (for short, MRTTP Act).

3) The petitioners contend that the final development plan for Rahuri Municipal Council was published in the official Gazette on 16.10.1997. The properties, viz., 1) land admeasuring 80 R. out of survey No.21/1/2 (in WP No.6057/2016) and 2) the land admeasuring 1 hectare and 17 Are, out of Survey No.31, belonging to petitioner no.1 in WP No.6058/2016; whereas the land to the extent of 1 hectare and 76 Ares out of Survey No.30 belonging to petitioner no.2 in the aforesaid writ petition, have been prescribed for public purpose in the final development plan prepared for Rahuri Municipal Council.

4) On completion of the period of ten years of preparation of the Development Plan, the petitioners issued a notice to the Municipal Council, calling upon the Local Authority to take steps for acquisition of the properties under the reservation. It has been further informed that

in the event of failure of the Municipal Council to take requisite steps within contemplation of the provisions of the MRTP Act, the reservation, designation or allotment concerning the lands belonging to the petitioners under the final development plan prepared for Rahuri Municipal Council, shall stand lapsed automatically. It is the further contention of the petitioners that the notices issued by the respective petitioners, were served on the Municipal Council, however, no steps have been taken by the Municipal council for acquisition of the properties prescribed under the reservation in contemplation of the provisions of Section 126 of the MRTP Act. The petitioners, therefore, contend that by operation of law, the reservation, designation or allotment of the properties under the final development plan prepared for the local authority shall stand lapsed.

5) An affidavit in reply has been presented on behalf of the Municipal Council, wherein it

has been contended that since the steps have been taken for acquisition of the properties of the petitioners, the reservation, allotment or designation in relation to the properties belonging to the petitioners, shall not lapse and it is open for the Municipal council to acquire the properties. It is contended that a Resolution has been passed by the Municipal council for acquisition of the lands and proceedings of acquisition have been initiated.

6) It is not a matter of dispute that steps within contemplation of the provisions of Section 126 of the MRTP Act have not been initiated. The Respondent/Municipal Council failed to point out notification issued under Section 19 of the Right To Fair Compensation and Transparency in Land Acquisition Rehabilitation and Re-settlement Act, 2013 (herein after referred to, the Act of 2013)

7) It would be appropriate to refer to the judgment of the Hon'ble Apex court in the matter of Girnar Traders Vs. The State of Maharashtra —

(2007) 7 SCC 555. The Apex Court has observed in para Nos.56 & 57 of the aforesaid judgment, as quoted below, -

"56. The underling 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 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 nor may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

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 leave 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."

8) Since the notification within contemplation of Section 19 of the Act of 2013 has not been issued, the contention of the local authority that the steps have been taken for acquisition of the properties belonging to the petitioners, is not acceptable. On account of failure of the local authority to initiate the proceedings for land acquisition within a period of 24 months from the date of receipt of the

notice under Section 127 of the MRTTP Act, the reservation, allotment or designation in respect of the properties belonging to the petitioners, prescribing the final development plan prepared for the local authority, shall stand lapsed. As a result of lapsing of reservation, allotment or designation, the State Government is directed to notify the same by an order to be published in the official gazette, as expeditiously as possible and preferably within six months from today.

9) Rule is accordingly made absolute according. There shall be no order as to costs.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/