

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

WRIT PETITION NO. 6416 OF 2016

Lalchand s/o Hemandas Sainani,
Age 53 years, Occ. Business,
R/o Tamboli Jin, Amalner,
Tq. Amalner, Dist. Jalgaon.

.. **Petitioner**

Versus

1. The State of Maharashtra,
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Director of Town Planning & Valuation
Department, Maharashtra State,
Pune.
3. The Assistant Director,
Town Planning, Jalgaon.
4. Amalner Municipal Council,
Amalner, District Jalgaon,
through its Chief Officer.

.. **Respondents**

Mr. Mr. J.R. Shah, Advocate for the Petitioner.
Mr. A.R. Kale, AGP for Respondents/State.
Mr. G.V. Wani, Advocate for Respondent No.4.

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

DATE : 31.07.2017

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioner challenges the refusal of the Amalner Municipal Council, Amalner, District Jalgaon to release the land from reservation.

3. The petitioner claims a declaration that land bearing gut no. 419/1 ad-measuring 393.22 sq.mtr situated within Amalner Municipal Council limits, reserved for play ground and primary school in the second revised development plan dated 30.04.1994 is free and the designation or reservation has lapsed.

4. The petitioner's case briefly set out is that he is a person interested/owner of this land. There was a reservation in the development plan and that reservation is in terms of the plan sanctioned by the State of Maharashtra through the Department of Urban Development, Mantralaya, Mumbai. The second respondent is the Director of Town Planning, Maharashtra State, Pune. The respondent no.3 is the Assistant Director, Town Planning, Jalgaon. The respondent no.4 is the Planning Authority and Municipal Council of Amalner through its Chief Officer.

5. The petitioner traces his title to the property and then relies upon Annexure 'B' which is the copy of the 7/12 extract. It is stated that a Town planning scheme was introduced in Amalner Town in the year 1970. The revised development plan for the respondent no.4 came into effect from 30.04.1994. Though, twenty years have lapsed, no steps were taken by the respondent no. 4 to acquire this land which has been reserved for primary school and play ground. In such circumstances, the petitioner issued a notice dated 19.01.2015 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 calling upon the respondents to take steps to acquire the land. The petitioner also claims compensation. We are not concerned with that aspect for the simple reason that the receipt of this notice is not disputed. After it was so received in the office of these respondents and particularly, the respondent nos. 3 and 4, it was incumbent upon them to have taken the steps within the meaning of Section 127(1) of The Maharashtra Regional & Town Planning Act, 1966.

6. However, the argument before us is that this notice was resisted and properly by passing a resolution no. 229. On 30.04.2015, the Amalner Municipal Council resolved to acquire this land. The resolution together with a proposal for acquisition was forwarded to the

State Government. The respondent no.4 failed to take the steps according to the petitioner but this allegation is denied by urging that once the Municipal Council has performed its part of the duty, then, there is no question of the reservation lapsing or coming to an end.

7. The petitioner's counsel places reliance upon the averments in this petition and annexures 'B' and 'C'.

8. On the other hand, the counsel appearing for the contesting respondent no.4 places reliance on the affidavit of the Chief Officer of the Municipal Council filed in reply and the annexures thereto.

9. After perusing the writ petition with their assistance and equally the affidavit in reply, we do not think that there is any dispute on facts. There is no dispute about the legal principle and proposition either.

Section 127 (1) of the M.R.T.P. Act reads as under:

“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.”

10. A perusal of the same would indicate that, 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 development plan comes into force or if a declaration under Sub-section 2 of Section 4 of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 is not published in the official gazette within such period, then, the owner or any person interested in the land may serve notice within the meaning of this provision on the development authority, or as the case may be, the appropriate authority to that effect. If within twelve months which period is now modified and now within 24 months from the date of service of such notice, the reservation, allotment or designation shall be deemed to have lapsed. Thereupon, the land shall be deemed to be released from such reservation and shall become available to the owner for the purpose of development as otherwise permissible in the case of

adjacent land owner under the relevant plan.

11. The dates are very clear, in the sense the development plan was sanctioned and approved and, thus, came into effect from 30.04.1994. Site no. 83 was reserved for primary school and play ground. The notice was duly received by the Municipal Council. The pre-requisites for issuance of this notice are fully satisfied in the sense that the development plan came into force, was in force but the reservation was not carried to its logical end. Secondly, when the notice was served and it was duly received beyond forwarding a proposal on 26.11.2015, no steps as contemplated by Sub-section 1 of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 have been taken. The steps that have to be taken before the notice is served and which enables the notice being served are thus not taken. The ingredients of the Section then came into play. Even after the receipt of the said notice, the steps to acquire the land either by private agreement or by acquisition within the meaning of Sub-section 2 and Sub-section 4 of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 were also not taken.

12. It is in these circumstances that, we are of the opinion that the petition deserves to succeed. The petitioner is, thus, clearly entitled

to the relief and in terms of the prayer clause.

13. We do not see how we can countenance the steps taken by the Municipal Council allegedly as compliance with the mandate of Sub-section 1 of Section 127 of the Maharashtra Regional and Town Planning Act, 1966. Beyond passing a resolution and addressing a communication to the Collector styled as a proposal, the steps as aforesaid and within the meaning of Sub-section 1 of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 have admittedly not been taken.

14. Consequently, the writ petition succeeds. Rule is made absolute in terms of prayer clause 'A'.

15. Before concluding, we would like to impress upon the authorities that over a passage of time, such petitions are routinely filed. The filing of such petition/s reflects a pattern and which disturbs us. The pattern is that a development plan proposal, reservation, designation is in force. When the plan is sanctioned and comes into effect, no steps are taken and we do not know, whether this is deliberate or intentional, within the life of the plan. If those steps are not taken and the Authorities are aware that the consequences flowing from Sub-section 1 of Section 127 of the Maharashtra Regional and Town Planning Act, 1966

would follow, then, it is their bounden duty to protect and preserve the larger public interest. All powers are in the nature of trust. The Government or the Municipal Council is but a trustee for the public. The reservations are in public interest. We do not see, why reservations of primary school and play ground have to be given up. Equally, the picture is dismal about health care and other facilities and amenities, if they have to be provided but there are no funds, then, if some of them have to be provided and it is the obligation to do so, then lack of funds is no answer. There are ample public spirited persons, organizations who can assist the Municipal Councils and Corporations. They can carry forward the object and purpose of reservation or designation by either constructing or handing over the amenity and obtaining relief in the form of T.D.R. etc. or they may construct the amenity free of cost, hand it over and apply for maintaining and operating it. Either way the problem of lack of funds can be solved. However, we do not see any will or desire on the part of the State and Municipal Corporations/Councils, in carrying forward the reservation and designation which is in public interest, then, we may as well start suspecting or doubting their intentions and whether this is a situation brought about by them for other reasons. We do not say anything more.

16. We hope and trust that a copy of this order being forwarded to the Principal Secretary in the Department of Urban Development, Government of Maharashtra that will receive the attention that it deserves.

17. Let therefore, the Registry of this Court forward a copy of this order to the State Government and particularly the Department of Urban Development, Mantralaya, Mumbai, for a perusal by the Principal Secretary of that Department and for taking necessary steps and action.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]

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