

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

WRIT PETITION NO. 9637 OF 2017

1. Gulam Alamgir Gulam Mohammad
Age: 57 years, Occ. Business & Social Work,
R/o. Majrat Nagar, Jalna Road, Beed.
Tq. & Dist. Beed.
(Email-alamgirmomin57@gmail.com)
2. Vijayraj s/o Hemraj Bumb
Age: 55 years, Occ: Business,
R/o Majrat Nagar, Jalna Road, Beed,
Tq. & Dist. Beed.
3. Mrs. Nirmala w/o Vijayraj Bumb
Age: 50 years, Occ: Household/Nil,
R/o Majrat Nagar, Jalna Road, Beed,
Tq. & Dist. Beed.
4. Gautam s/o Champalal Dungwal
Age: 50 years, Occ: Business,
R/o Old Mondha, Jalna Road, Beed,
Tq. & Dist. Beed.

... **Petitioners**

Versus

1. The State of Maharashtra
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai.
(Email- sec.ud1@maharashtra.gov.in)
2. The Town Planner,
Town Planning & Valuation Office,
Beed Branch, Tq. & Dist. Beed.
(Email- tpbeed1@gmail.com)

3. The Municipal Council.
Beed, Tq. & Dist. Beed.
(Email- npbeed@gmail.com)

... **Respondents**

Mr. B.L. Sagar Killarikar, Advocate for the Petitioners.
Mr. G.K. Thigle, Advocate for Respondent No.3.
Mrs. P.V. Diggikar, A.P.P. for the Respondent/State.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 14.11.2017
DATE OF PRONOUNCING THE JUDGMENT : 04.12.2017**

...

JUDGMENT: (Per Mangesh S. Patil, J.)

. Rule. Rule is made returnable forthwith. With the consent of the parties matter is heard finally.

2. This is a petition under Article 226 of the Constitution of India with following prayers in clause B to D:

“B. To Quash and set aside the impugned Letter dated 13th November 2006, issued by respondent No.1-State of Maharashtra, through its Principle Secretary, Department of Urban Development, Mantralaya, Mumbai (EXH.”I”) and all consequential actions;

C. To hold and declare that 'Reservation' as against Land 'Owned by Petitioners', from Sy. No. K-199, marked/reserved as Reservation No.78 (Garden) has lapsed, in view of passing of resolutions No. 125 of 2002 as well as Report-cum-Communication Dated 14th March 2006 (EXH. "L" vis-a-vis provisions of Sub-section (7) of Section 49 of the Maharashtra Regional & Town Planning Act, 1966.

D. To direct the respondent No.3-Municipal Council, Beed to grant necessary permission to develop 'Open space'/'Land', owned and possessed by petitioners, by approving the Lay Outs/granting permissions;"

3. According to the petitioners, they are the owners in possession of agricultural land bearing survey no. Khod-199 of Beed town, District Beed. In a development plan of Beed town the land was demarcated as reservation no. 78, reserved for garden in the development plan prepared and modified by the office of Town Planning, Beed and duly published in the Government gazette of the State of Maharashtra dated 29.01.1988. However, since after finalization of the development plan no steps were ever taken by the respondent no.3-

Municipal Council to initiate acquisition proceeding of the land. On the other hand, the petitioners were unable to develop the land in view of such reservation. Therefore, they served a purchase notice under the provisions of Section 49 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the MRTP Act) on 27.06.2002. After calling necessary reports and holding inquiries the Director of Town Planning, Maharashtra State, Pune confirmed the purchase notice. It was incumbent on the part of respondent no.3-Municipal Council to have acquired the land within one year from the date of purchase notice. However, it failed to take steps towards the acquisition of the land and by virtue of operation of provisions of Section 49 the reservation and restriction on the development of the land has lapsed.

4. It is further averred in the petition that when the Director of Town Planning confirmed the purchase notice, the Chief Officer of the respondent no.3-Municipal Council forwarded a proposal to the State Government requesting to initiate acquisition proceedings in respect of the petitioners land. However, budgetary provision was never made by the Municipal Council and was never approved by the general body of the Municipal Council. Therefore, the Chief Officer having no power to incur liability, the steps taken by him were illegal. It is then alleged that only

with a view to keep the reservation intact and deprive the petitioners from their property, without making any budgetary provision a proposal was submitted to the Collector, Beed by the Municipal Council for initiating acquisition proceedings. However the Collector directed the Municipal Council to deposit an amount of Rupees Two Crore Eight Lakhs being $2/3^{\text{rd}}$ of the cost of proposed acquisition. When a proposal for compliance was placed before the general body of the respondent no.3-Municipal Council, a resolution was passed bearing no. 185 of 2003 on 03.02.2003 expressing its inability to acquire the land of the petitioners. Accordingly, the respondent no.3-Municipal Council by letter dated 10.04.2003 informed the Collector, Beed about such inability and the Collector in turn returned the proposal for acquisition of the land. Thus, since 30.04.2003 not even a proposal is pending with the office of the Collector, Beed for acquisition of the petition land. The petitioners have then averred that in spite of such state of affairs, the respondent no.3-Municipal Council started reconsidering the proposal for acquisition of the petition land and resolved to solicit loans from the banks to acquire the land. However, the banks refused to lend money. The petitioners, then, jointly submitted a representation dated 14.03.2006 seeking permission to develop the land, however, the State Government informed the Municipal Council that the reservation had not lapsed and was still in

existence and suggested the respondent no.3-Municipal Council to acquire the land by private negotiations. Thus, the respondents are bent upon to deprive the petitioners of their right to hold the petition land and to develop it in spite of reservation having been lapsed under Section 49 (7) of the MRTP Act.

5. It is then lastly averred by the petitioners that in spite of such happenings since there was civil dispute between the petitioners *inter se* from the year 2007 to 2015 in the form of RCS No. 120 of 2015 for partition and separate possession. The suit was disposed of in terms of compromise on 02.04.2016 as per the decree (Exhibit-K). It is thereafter that the petitioners names were recorded in the revenue record. They then deposited betterment charges seeking permission to develop the property. Necessary proposal which was complete in itself along with requisite maps, drawings have been submitted as contemplated under Section 44 of the MRTP Act. However, since filing of such proposal on 02.05.2016 the petitioners were not communicated anything and by virtue of deeming a provision contained in Sub-section 5 of Section 45 of the MRTP Act they are entitled to assume that permission has been deemed to have been granted. When the petitioners submitted a representation dated 12.06.2017 to the respondent no.3-

Municipal Council they were informed that they will not be allowed to develop their petition land.

6. It is necessary to note at this stage that the petitioners have also filed additional affidavit stating that as was apprehended by the petitioners, the respondent no.3-Municipal Council has published a notification dated 12.09.2017 in the Government gazette dated 21.09.2017 under title 'Development Plan of Beed (II Revise +AA) Municipal Council', pursuant to Section 26(1) of the MRTP Act, 1966. The Municipal Council is intending to revise the development plan with additional area and has issued a formal order on 09.03.2015 with prior approval of the Joint Director, Town Planning, Aurangabad Division, Aurangabad. By publishing such revised plan the Municipal Council has also invited suggestions and objections from general public within thirty days from the date of publication of notification. As per the draft development plan the respondent no.3-Municipal Council is intending to revise the reservation on the petition land, as reservation no. 60 for 'Recreational Activities and Open Space' in the Draft Development Plan of Beed (IIInd R+AA) and it also includes part plan showing petition land and surrounding areas.

7. The Chief Officer of the respondent no.3-Municipal Council,

Beed by name Dhananjay Dattatray Jawalika has filed affidavit in reply on behalf of respondent no.3-Municipal Council. He has not disputed the facts mentioned in the petition. He has admitted about the petition land having been reserved as site no.78 in the sanctioned development plan of the Beed and that a purchase notice dated 27.06.2002 under Section 49 of the MRTP Act was served by the owners, who were petitioners' predecessors. He has admitted that the purchase notice was duly confirmed. He has admitted that the respondent no.3-Municipal Council did not initiate land acquisition proceedings within a period of one year of confirmation of the notice on 02.10.2002. He has then admitted that the land acquisition proposal was moved on 03.12.2002 but the general body of the Municipal Council resolved that it was unable to deposit the amount demanded by the Land Acquisition Officer for the proposed acquisition and therefore the proposal was returned. He has then admitted that an attempt was made to approach the bank for grant of financial assistance but they refused to accommodate. He has lastly stated that since the petition land is already a part of the revised development plan and by efflux of time the petition has become infructuous. However, the process of preparation of revised development plan is in process and the petition thus becomes premature and deserves to be dismissed.

8. We have heard the learned Advocate for the petitioners and the learned Advocate for the respondent no.3, we have also heard the learned A.G.P.

9. At the outset, it is necessary to note that, almost all the facts mentioned herein-above stand admitted to both the sides. Therefore, there is no much of a dispute remains on facts. There is no dispute that the petitioners' land was reserved as site no. 78 for garden in the earlier development plan of Beed town. There is no dispute that since no steps were taken for acquisition of land, by invoking the provisions of Sub-section 7 of Section 49 of the MRTP Act, the petitioners served a purchase notice. It was duly confirmed by the State Government and in spite of some hiccups, no steps were taken under Section 126 of the MRTP Act for acquisition of the land and consequently by the statutory provision contained in Sub-section 7 of Section 49 the reservations stood lapsed. Suffice for the purpose to refer to provision of Section 49 which reads thus:

“49. Obligation to acquire land or refusal of permission or on grant of permission in certain cases.- (1) Where-

(a) any land is designated by a plan as subject to compulsory acquisition; or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body; or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included; or

1[(d) any land for the development of which permission is refused or is granted subject to conditions;
and any owner of land referred to in clause (a), (b), (c) or (d) claims-

- (i) that the land has become incapable of reasonably beneficial use in its existing state; or
- (ii) where planning permission is given subject to conditions that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or]

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated, the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as “the purchase notice”) requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that authority and of the State Government, if any in respect of which the notice is given.

(3) On receipt of a purchase notice, the State

Government shall forthwith call from the Planning Authority and the appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in subsection (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6) [* * * *]

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.]”

10. Thus, in fact there remains no dispute about the fact that the

reservation on the petition land in the development plan of the year 2002 stood lapsed by the operation of statute. In the normal course this should have been the end of the matter as far as the right of the petitioners to develop the petition land was concerned. Even the learned Advocate for the respondent no.3-Municipal Council fairly conceded such result.

11. However, much water seems to have flown under the bridge by the passage of time and by the time the petitioners woke up to enforce their right to the petition land. It is a common ground now that there has been a subsequent development, wherein, again the respondent no.3-Municipal Council has submitted revised development plan and has invited objections and suggestions from the public. More importantly now the same petition land has again been proposed to be reserved for 'Recreational Activities and Open Space'. In view of such state of affairs the learned Advocate for the respondent no.3-Municipal Council, submitted that the petition as it stands and the reliefs claimed have become infructuous and the only remedy now that would be available to the petitioners is to raise an objection to the proposed reservation or wait for the respondent no.3-Municipal Council to exercise its rights to acquire the petition land in pursuance of the revised

development plan. The learned Advocate also submitted that the petitioners now cannot blame the respondent no.3-Municipal Council for such state of affairs and they should blame themselves for not promptly taking steps to seek development of the petition land, when the earlier reservation had lapsed by operation of statute. There are absolutely no grounds to show that the proposed reservation in the revised development plan is prompted by any ulterior motive or *mala fides*.

12. The submission of the learned Advocate for the respondent no.3-Municipal Council may seem attractive at the first blush. However, it is necessary to note that the right which has accrued to the petitioners by virtue of lapse of reservation is a right which is conferred by the statute in view of the provisions of Section 49 of the MRTP Act. Not only that but in pursuance of such lapse they have also submitted a proposal for development of the land by depositing the development charges. Therefore, once such a right is vested in the petitioners by operation of law, the subsequent event of modification of the plan thereby once again including the self same petition land in the reservation would be unjustified and illegal.

13. In the case of **Godrej and Boyce Manufacturing Company Limited V/s. State of Maharashtra; (2015) 11 SCC 554**, while

considering a similar provision regarding lapse of reservation under Section 127 of the MRTTP Act, the subsequent proposal for modification in the development plan was held to be impermissible. In that case the land which was reserved in the earlier development plan for railway line had lapsed by virtue of Section 127 of the MRTTP Act. However, the State government then modified such reservation of land for road. It was held that the State government was not empowered to make such a modification since the land owners had acquired a valuable statutory right and the initial purpose for reservation had lapsed. Following observations have been made in paragraph 20:

20. ...Therefore, we have to hold that the impugned notification is bad in law and liable to be quashed. The High Court has not examined the impugned notification from the viewpoint of Section 127 of the MRTTP Act and interpretation of the abovesaid provision made in Girnar Traders (2), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is a futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved for has not been utilised for that purpose and a valid statutory right is acquired by the landowner/interested person after expiry of 10 years from the date of reservation made in the development plan and 6 months' notice period has also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the development plan from deleting for the purpose of

the Railways and adding to the development plan for the formation of development plan of road after lapse of 10 years and expiry of 6 months' notice served upon the State Government."

14. With respect, applying the same analogy to the facts in the matter in hand, we hold that the submission of the learned Advocate for the respondent no.3-Municipal Council banking upon such modification/revision of the development plan is not sustainable in law.

15. In the result, the petition succeeds and deserves to be allowed.

16. The petition is allowed. The rule is made absolute in terms of prayer clause 'B', 'C' and 'D'.

17. Needles to state that by virtue of sub-section 7 of Section 49 of the MRTP Act, the petition land will be available to the petitioners for the purpose of development which is otherwise permissible in the case of adjacent land in the relevant plan.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]