

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

**WRIT PETITION NO. 9778 OF 2014**

Smt. Mangalbai W/o Subhash Patil,  
Age : 50 years, Occu.: Household,  
R/o. Village Madkani, Tq. Shahada,  
Dist. Nandurbar

**PETITIONER**

**VERSUS**

1. The State of Maharashtra  
(Urban Development Division),
2. The Collector, Nandurbar,  
at Nandurbar
3. The Town Planning Officer Nandurbar,  
Dist. Nandurbar
4. The Director of Town Planning,  
Maharashtra State, Pune,  
Central Building, Pune
5. The Chief Executive Officer,  
Municipal Council, Shahada,  
Tq. Shahada, Dist. Nandurbar

**RESPONDENTS**

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Mr. C.R. Deshpande, Advocate for the Petitioner  
Mr. A.R. Borulkar, A.G.P. for the respondents/State  
Mr. J.R. Shah, Advocate for respondent no.5

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**CORAM : T.V. NALAWADE AND  
SANGITRAO S. PATIL, JJ.**

**JUDGMENT RESERVED ON : 2<sup>nd</sup> MARCH, 2017  
JUDGMENT PRONOUNCED ON : 20<sup>th</sup> MARCH, 2017**

**JUDGMENT (PER : SANGITRAO S. PATIL, J.):**

Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties and the learned A.G.P., heard finally.

2. The petitioner has sought a direction against respondent Nos. 1 to 5 to release 26 R of land out of survey No. 49/1 and 380.75 sq. mtrs. of land out of Survey No. 49/2, situate at village Maloni, Taluka Shahada from reservation no. 14 of Development Plan of Shahada town so as to enable her to develop or dispose of the same as per her own desire.

3. The learned counsel for the petitioner submits that the above mentioned lands of the petitioner were shown as reserved in the Development Plan of 2006 of Shahada town for shopping centre and vegetable market. However, no steps have been taken by the respondents for acquisition of the said lands, even the period of more than five years has been elapsed after reserving the said lands. Due to the reservation of the lands of the petitioner, it has become difficult for her to develop those lands or dispose them off as per her own desire.

She is suffering from loss. Therefore, she issued a purchase notice dated 22<sup>nd</sup> May, 2012 vide section 49 of the Maharashtra Regional and Town Planning Act, 1966 ("the Act", for short). Respondent No. 4 – the Director of Town Planning, Maharashtra State, Pune confirmed the said notice as per the letter dated 20<sup>th</sup> October, 2012 vide section 49 (4) of the Act. However, no final order has been passed by respondent No. 1 within six months of receiving the purchase notice. Moreover, an application to acquire the lands of the petitioner has not been made properly within one year from the date of confirmation of purchase notice. Therefore, as per sub-section (7) of section 49 of the Act, reservation in respect of the lands of the petitioner would be deemed to have lapsed and the said lands would be deemed to be released from the reservation and would become available to the petitioner for the purpose of development or otherwise. He, therefore, submits that the directions as sought by the petitioner may be given against the respondents.

4. The learned A.G.P., relying on the contents of the reply filed on behalf of respondent Nos. 1, 3 and 4, submits that after receiving the purchase notice and

after its confirmation by respondent No. 4 under sub-section (4) of section 49 of the Act, respondent No. 5 Municipal Council submitted the land acquisition proposal to respondent No. 2 – the Collector, Nandurbar on 4<sup>th</sup> May, 2013 i.e. within the stipulated period of one year as mentioned in sub-section (7) of section 49 of the Act. Therefore, the question of lapsing of the said reservation would not arise.

5. The learned counsel for respondent No. 5 – Municipal Council, Shahada, on the basis of the reply filed on behalf of respondent No.5, submits that respondent No. 2 sent back the proposal for acquisition of the lands of the petitioner to respondent No. 5 on 22<sup>nd</sup> August, 2013 for compliance of certain documents. However, for want of regularly appointed Chief Officer, the proposal remained to be re-submitted to respondent No.2. He submits that the proposal would be re-submitted to respondent No. 2 since the reserved site is necessary for planned development of Shahada town, particularly for vegetable market and shopping centre. He also submits that since the proposal for acquisition of the lands of the petitioner was submitted within the

stipulated period, the reservation would not get lapsed.

6. The learned counsel for the petitioner has cited the judgments in the cases of ***M/s Girnar Traders V. State of Maharashtra and others AIR 2007 SC 3180*** and ***Satyabhamabai w/o Bhimaji Dawkher Vs. State of Maharashtra and others 2008 (2) Mh.L.J. 104***, which pertain to de-reservation of the land vide section 127 of the Act. Since the said judgments are not on the point of lapsing of reservation under the provisions of section 49 of the Act, they would not be applicable to the facts of the present case.

7. The learned counsel for the petitioner further cited the judgment in the case of ***Subhash s/o Ramrao Jadhav and others Vs. State of Maharashtra and others 2012 (4) Mh.L.J. 236***, wherein the same issue, which is involved in the present petition, was under consideration. In that case also, the effect of failure on the part of the appropriate authority to make an application as per the provisions of section 126 of the Act to acquire the land in respect of which purchase notice has been confirmed vide sub-section (4) of section 49 of the act, was under consideration. Here, it

would be necessary to reproduce paras 7 and 9 of the said judgment, which read as follows :-

*"7. It can thus be seen that Section 49 of the MRTTP Act, is a complete code in itself. When a owner of the land claims that on account of designation of the land, he is unable to sell it, except at a lower price, he can serve a purchase notice on the State Government. A discretion is vested under Sub-section (4) of said Section, with the State Government to, either confirm the purchase notice, or direct the concerned authority for granting planning permission without condition or subject to such conditions as will make the land capable of reasonably beneficial use. The said sub section also provides that in case the State Government refuses to confirm the purchase notice, a reasonable opportunity of being heard will be given to the applicant. Sub-section (5) provides that in case the State Government fails to take any steps within six months from the date of service of purchase notice, the notice shall be deemed to have been confirmed at the expiry of that period, and sub-section (7) provides that in case the appropriate authority fails to make an application for acquiring the land as required under Section 126 of the MRTTP Act within one year from the date of confirmation of the purchase notice, the reservation or allotment or restriction on the land shall be deemed to have lapsed and the owner will be entitled to develop his land as permissible in the case of adjacent land.*

*9. Indisputably, in the present case, though the purchase notice was confirmed on 28.12.2005. No doubt, that an application was made by the appropriate authority on 28.11.2006, so that it would be within a period of one year from the date of confirmation of the purchase notice. However,*

*a perusal of the communication dated 22.2.2007 by the Collector, itself would reveal that the said proposal was not consistent with the statutory provisions. It can, thus, be seen that in the present case, the Appropriate Authority had even failed to make an application as per the provisions of Section 126 of the MRTP Act for acquiring the land within a period of one year from the date of confirmation of purchase notice, and as such, reservation stood lapsed on expiry of one year's period from the date of confirmation of the purchase notice, and therefore, the petitioners were free to develop their lands as was permissible in case of adjacent land. It is further to be noted that the Municipal Corporation itself has passed a resolution that if the proceedings were not initiated within one year from the date of confirmation of purchase notice, the land would be de-reserved.*

8. In the present case also, though the application/proposal for acquisition of the lands of the petitioner was made by respondent No. 5 within the stipulated period of one year, as seen from the reply filed on behalf of respondent No.5, the said proposal was incomplete, in the sense that some of the documents were not annexed thereto. Such incomplete proposal/application cannot be said to have been made as per the provisions of section 126 of the Act. If that be so, mere sending of an application/proposal, which is not complete as required under section 126 of the act, would

be of no help to respondent No. 5 to save the reservation in respect of the lands of the petitioner. In the circumstances, we hold that the reservation in respect of the lands of the petitioner stood lapsed and the said lands would be deemed to be released from the reservation on expiry of the period of one year from the date of confirmation of the purchase notice. The petitioner would be free to develop her lands.

9. In view of the above facts and legal position, the Writ Petition is allowed. Rule is made absolute in terms of prayer clauses (B) and (C), which read as under:-

(B) By issuing a writ of mandamus or any other appropriate writ or order or direction in the like nature, the respondent Nos. 1 to 5 be directed to release the land of the petitioner i.e. the land out of survey No. 49/1 admeasuring 26R and land out of Sy. No. 49/2 admeasuring 318.75 sq.m. situated at village Maloni, Tq. Shahada from reservation No. 14 from development plan of Shahada town and to permit the petitioner to develop or dispose the same as per her own desire.

(C) It be declared that the reservation No. 14 of the land of the petitioner out of survey No. 49/1 admeasuring 26R and out of Sy. No. 49/2A admeasuring 318.75 sq.m. situated at village Maloni, Tq. Shahada has been lapsed and the petitioner is entitled to develop the land as per the lay out submitted by her along with her application dated 31/12/2013.

10. The Writ Petition is disposed of.

11. No costs.

Sd/-  
[ **SANGITRAO S. PATIL** ]  
**JUDGE**

Sd/-  
[ **T.V. NALAWADE** ]  
**JUDGE**

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