

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6576 OF 2014

Manish Dhanraj Rathi	... Petitioner
Versus	
The State of Maharashtra	
and another	...Respondents

....

Ms. Leena Patil for the Petitioner.

Mr. A.A. Alaspurkar, AGP for Respondent No.1

....

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 20th JULY, 2017

P.C.:

1. On 19th January, 2015, notice for final disposal was issued. In the morning session, when the Petition was called out none appeared for the 2nd Respondent. Even in the afternoon session, none appeared for the 2nd Respondent.

2. The Petitioner claims to be the owner of the land more particularly described in the paragraph No.2 of the Petition which is hereafter referred as the said land. The Petitioner claims to have purchased the said property by a registered Sale Deed dated 16th June, 2000. A copy of 7/12 extract is annexed to the Petition. It shows that the name of the Petitioner is mutated in the *Kabjedar* column.

3. By a notification dated 23rd December, 1988, revised development plan for the City of Igatpuri (Original Limit) was sanctioned under Section 3 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act'). The development plan came into force with effect from 1st march, 1989. In the said sanctioned development plan, the said land was covered by Site No.65, which was reserved for a Garden for the benefit of the 2nd Respondent Municipal Council. It is pointed out that even in the second revised development plan submitted to the State Government for sanction in the year 2014, the same reservation has been proposed.

4. On 7th May, 2013, the Petitioner through his Advocate, served a notice under sub section (1) of section 127 of the MRTP Act to the Chief Officer of the 2nd Respondent calling upon him to acquire the said land.

5. The Petitioner has relied upon a letter dated 16th July, 2008 issued to him by the Chief Officer of the 2nd Respondent, by which the Petitioner was informed that the said land will be acquired in accordance with Clause (a) of sub section (1) of Section 126 of the MRTP Act. By a reply dated 26th August, 2008 addressed by the Petitioner to the Chief Officer, he offered to the 2nd Respondent to hand over the possession of the said land after private negotiations, on the terms stated in the said letter. As no steps were taken, ultimately the aforesaid notice dated 7th May, 2013 has been issued.

6. In terms of the order dated 1st March, 2016 passed by this Court, an affidavit of Shri Jayashreerani Balkrishna Surve, Assistant Director of Town Planning, Nashik has been filed on behalf of the State of Maharashtra. To the said affidavit, a report dated 11th March, 2016 submitted by the Chief Officer of the 2nd Respondent is annexed. The said notice dated 7th May, 2013 issued under sub section (1) of section 127 of the MRTP Act to the Chief Officer of the 2nd Respondent has been served on 9th May, 2013. Along with the notice, a copy of 7/12 extract and a plan of the said land were forwarded. It is stated in the said report that as the petitioner offered to give the land to the Municipal Council by private negotiations, the proposal for acquisition of the said land has not been submitted. In the affidavit, it is stated that a declaration under section 6 of the Land Acquisition Act, 1984 (for short 'Land Acquisition Act') has not been published.

7. After having heard the learned Counsel for the Petitioner and the learned Counsel for the 1st Respondent, we find that, within time stipulated by sub section (1) of section 127 of the MRTP Act, a declaration either under sub section (2) or sub section (4) of Section 126 of the MRTP Act has not been issued. In fact, such declaration was not issued till 11th March, 2016.

8. As far as section 127 of the MRTP Act is concerned, the law is well settled which is laid down in several decisions of the Apex Court. One such decision is in the case of *Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher and others*¹ wherein the Apex Court held that steps towards acquisition can be said to have been taken only when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of a declaration under section 6 of the Land Acquisition Act. In the present case, such a declaration has not been admittedly issued within the period prescribed by sub section (1) of section 127 of the MRTP Act. Therefore, by operation of law, the said land shall be deemed to be released from such reservation.

9. Accordingly, the Petition must succeed and we pass the following order:-

(a) We hold that the land bearing Survey No.311/1 admeasuring 27 Ares of Igatpuri, which is reserved for 'Garden' under Site No.65 under the revised development plan sanctioned on 23rd December, 1988 has been released from the reservation provided in the said revised development plan. Accordingly, the said land shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the sanctioned development plan;

1 (2003) 5 SCC 627.

(b) We direct the State Government to publish a notification in accordance with sub section (2) of section 127 of the MRTP Act, within a period of three months from today;

(c) The Petition is allowed in the above terms. There is no order as to costs.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)