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

WRIT PETITION NO. 9159 OF 2014

Shri Ganpatrao Khalojirao Bhosale ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Khandeparkar, i/b Khandeparkar & Associates for the
Petitioner.

Mr. N.C. Walimbe, AGP for Respondent No.1.

Mrs. Varsha Palav, i/b The Laureate for Respondent No.2.

Mr. D.S. Mhaispurkar, for Respondent No.3.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**

DATED: 10TH NOVEMBER 2017

PC:-

By this writ petition, the petitioner seeks a declaration that the reservation of the land of the petitioner specifically described in prayer clause (a) of the petition has lapsed due to the provisions of section 127 of the Maharashtra Regional and Town Planning Act and the petitioner would be free to develop the land as is permissible to the adjacent land as per the relevant final development plan.

The land of the petitioner was reserved for a playground for the respondent no.3 in the final development plan for Sindhudurg, published on 15th November 1971. On 17th January 1983, a proposal for deletion of the land of the petitioner from the reservation was made by the respondent municipal council but the land was not de-reserved. The petitioner served the notice under

Section 127 of the MRTP Act on the respondent municipal council as also the respondent no.3 for whom the land was sought to be reserved. At the relevant time, as per the provisions of Section 127 (1) of the Act, then in force, it was necessary for the municipal council to take steps for the acquisition of the land within a period of six months. Since the municipal council did not take any effective steps in the matter of acquisition of the land, the petitioner filed a civil suit seeking a declaration that the reservation of the land of the petitioner had lapsed in view of the provisions of 127 of the Act. The suit of the petitioner was decreed. During the pendency of the appeal, the petitioner realised, that the suit was not maintainable and hence the petitioner has filed the instant petition seeking the aforesaid declaration.

Mr. Khandeparkar, the learned counsel for the petitioner submitted that since the appropriate authority – planning authority had not taken any steps for the acquisition of the land, as were required to be taken under the provisions of Section 127 (1) of the Act within six months from the date of service of the notice dated 25th July 2000, it would be necessary to declare that the reservation of the land of the petitioners for a playground for the respondent no.3 has lapsed in view of the provisions of the Act. It is submitted that section 6 notification was not issued for the acquisition of the land of the petitioner within six months from the date of the receipt of the notice or even thereafter. It is stated that in view of the clear provisions of the Act, the reservation of the land of the petitioner is deemed to have lapsed. It is stated that the petitioner would not seek the execution of the decree passed in favour of the petitioner as the petitioner had realised that the

suit filed by the petitioner for the aforesaid declaration was not tenable and it was necessary for the petitioner to seek an appropriate declaration by filing the writ petition.

Mrs. Palav, the learned counsel for the municipal council fairly admits that despite the receipt of the notice dated 25th July 2000, the notification for the acquisition of the land of the petitioner was not issued under section 6 of the Act within six months. It is stated that though the municipal council had sent a proposal for the acquisition of the land for respondent no.3 to the State Government, the Section 6 notification could not be issued within the stipulated time.

Mr. Mhaispurkar, the learned counsel for the respondent no.3 submitted that since at the relevant time the respondent no.3 desired to secure the land for the playground, the respondent no.3 had asked the municipal council to take steps for the acquisition of the land and a sum of Rs.25,37,666/- had deposited before the SDO, Sawantwadi for the said purpose. It is however, fairly stated that if at all, it is not possible for the respondent no.3 to secure the land in view of the deemed lapsing of reservation, a direction may be issued against the government to return the amount deposited by the respondent no.3, with interest accrued thereon.

On a hearing the learned counsel for the parties, it is clear that the reservation of the land of the petitioner has lapsed in view of the provisions of Section 127 (1) of the Act. The purchase notice was duly served on the municipal council and the respondent no.3 in July 2000. Though certain communications

were exchanged between the municipal council, the respondent no.3 and the State Government in respect of the acquisition of the land of the petitioner for the respondent no.3, the notification under Section 6 of the land acquisition Act, 1894 was not issued within a period of six months from the date of the receipt of the notice. It is pertinent to note that a notification under Section 6 of the land acquisition Act and / or a notification under the provisions The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not issued till date. Be that as it may, since no steps were taken by the municipal council for the acquisition of the land within six months from the date of the receipt of the notice, the reservation of the land of the petitioner for the respondent no.3 stands lapsed. It is also necessary to note that though the respondent no.3 was desirous to secure the land of the petitioner for the purpose of playground, on 16th December 2004, the respondent no.3 had sold the adjacent land owned by it to a third party.

Since the reservation of the land of the petitioner has lapsed in view of the provisions of Section 127 (1) of the Act, it would be necessary to direct the Sub Divisional Officer, Sawantwadi and / or the State Government to refund the amount of Rs.25,37,666/- deposited by the respondent no.3 for the acquisition of the land with interest accrued thereon, if at all it was placed in a bank. If the amount was not placed in a nationalised bank, it would be necessary for the State Government / Sub Divisional Officer, Sawantwadi to refund the amount of Rs.25,37,666/- to the respondent no.3 with 6% interest within three months.

Hence, for the reasons aforesaid, the writ petition is allowed. It is hereby declared that the reservation of the land of the petitioner specifically described in prayer clause (a) of the petition stands lapsed in view of the provisions of Section 127 (1) of the MRTP Act and the petitioner would be free to develop the land as is permissible for the adjacent land as per the relevant development plan with a view to avoid multiplicity of proceedings. The State Government / Sub Divisional Officer, Sawantwadi are directed to refund the amount of Rs.25,37,666/- to the respondent no.3 with interest accrued thereon if the amount was deposited in the bank and if it was not deposited in the bank, to refund the sum of Rs.25,37,666/- with 6% interest thereon within three months.

Rule is made absolute in the aforesaid terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)