

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

WRIT PETITION NO. 3471 OF 2009

1. Pankaj s/o. Suresh Borole,
Age : 28 years, Occ. Business,
r/o. Pankaj Nagar, Chopda,
Dist. Jalgaon
 2. Hemlata w/o. Suresh Borole,
Age : 48 years, Occ. Business,
r/o. Pankaj Nagar, Chopda,
Dist. Jalgaon
- ..Petitioners

Vs.

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai
 2. The Director of Town Planning,
Maharashtra State, Pune
 3. The Administrative Officer,
Town Planning and Valuation
Department, Central Building,
Pune
 4. The Assistant Director,
Town Planning and Valuation
Department, B.J. Market,
Jalgaon
 5. The Commissioner,
Municipal Corporation,
Jalgaon
- ..Respondents

Mr.V.D.Hon, Senior Advocate i/b. Mr.K.B.Jadhav,
Advocate for petitioners

Mr.A.V.Deshmukh, AGP for respondent nos.1 to 4

Mr.P.R.Patil, Advocate for respondent no.5

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.
DATE : OCTOBER 17, 2018**

ORAL JUDGMENT (Per S.V.Gangapurwala, J.):—

Heard Mr.Hon, the learned Senior Advocate for the petitioners, the learned AGP for respondent nos.1 to 4 and Mr.Patil, learned Advocate for respondent no.5.

2. Mr.Hon, the learned Senior Advocate for the petitioners contends that the petitioners are the owners and possessors of the land survey no.183 ad-measuring 13765 sq. metres, situate at Mehrun, Tq. and Dist. Jalgaon, within the limits of Municipal Corporation, Jalgaon. The said survey number is reserved for garden under reservation no.154 in the Development Plan dated 11.02.2002. On 26.08.2002, the previous owner issued purchase notice under

Section 49 of the Maharashtra Regional Town Planning Act, 1966 ("M.R.T.P. Act", for short). The learned Advocate submits that on 08.01.2003, respondent no.2 replied to the previous owner that the notice ought to have been given to respondent no.1. Thereafter, on 22.01.2003, the original owners issued a fresh purchase notice to respondent no.1. On 30.05.2003, the State Government confirmed the purchase notice. On 04.06.2003, the Collector granted N.A. Permission and thereafter, the petitioners purchased the land from the original owner under a registered sale-deed. On 14.11.2005, the petitioners made a representation to the respondents that the reservation has lapsed. On 31.10.2008, the State Government wrote to Municipal Corporation to send a proposal under Section 37 of the M.R.T.P. Act for deletion of the said land. The learned Senior Advocate submits that since no steps were taken by respondent no.5 within the stipulated period, the reservation on the said land has lapsed.

3. Mr.Patil, the learned Advocate for respondent no.5, submits that the land is reserved for garden. As such, the reservation would not lapse. The learned Advocate relies on the judgment in the case of **Chhabildas Vs. State of Maharashtra and ors., (2018) 2 SCC 784** to contend that even if the notice under Section 49 of the M.R.T.P. was issued, still a second purchase notice must be served under Section 127 of the M.R.T.P. Act. Mr.Patil, the learned Advocate for respondent no.5, further submits that the proposal was sent by the Corporation to the Collector on 17.09.2003 for acquisition.

4. The aforesaid factual matrix is not disputed. The writ land is reserved for garden in the development plan published on 11.02.2002. The original owner issued a purchase notice under Section 49 of the M.R.T.P. Act on 26.08.2002. The purchase notice was confirmed on 30.05.2003. On 17.09.2003, the proposal was sent by the Corporation to the

Collector for acquisition of the land. It appears that after issuance of the notice under Section 49 of the M.R.T.P. Act, notice under Section 127 of the M.R.T.P. Act has not been issued. The Apex Court in the case of **Chhabildas** (supra) has observed in paragraph 23 as under :-

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23. On a conspectus of the above authorities, the following position in law emerges:

23.1. In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

23.2. If within the period specified in Section 49(7), the

appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of the Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

23.3. If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section

127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

It was further observed in paragraph 30, as under :-

"30. In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed since the date of the purchase notice issued under Section 49. Considering the fact that there has been no stay at any stage by any Court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26.9.2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the

aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed. We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed, i.e. that after 10 years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section."

5. The Apex Court has observed that in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed i.e. upon lapse of 10 years from the date of

publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. Mr.Hon, the learned Senior Advocate for the petitioners, submits that in the present case, the purchase notice under Section 49 of M.R.T.P. Act, was issued much prior to the date of the judgment of the Apex Court in the case of **Chhabildas** (supra) and as such, the said judgment is not applicable to the facts of the present case.

6. In the case of **Chhabildas** (supra), the Apex Court exercised its jurisdiction under Article 142 of the Constitution of India. The present case would be covered by the judgment of the the Apex Court in **Chhabildas** (supra). The purchase notice under Section 49 of M.R.T.P. Act issued on 22.01.2003 is confirmed by the State Government on 30.05.2003. On 17.09.2003 viz. within one year, the proposal is sent by the Municipal Corporation to the Collector for

acquisition of the writ land. In absence of issuance of second purchase notice under Section 127 M.R.T.P. Act and in view of judgment of Apex Court in **Chhabildas** (supra), the reservation on the writ land would not lapse, merely by giving notice under Section 49 of the M.R.T.P. Act.

7. In the light of the above, no relief can be granted to the petitioners. The Writ Petition is dismissed. No costs. Rule is discharged.

[**R.G. AVACHAT, J.**]

[**S.V. GANGAPURWALA, J.**]

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