

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

WRIT PETITION NO.3533 OF 2017

Yogeshkumar S/o. Vitthalaldas Zaveri, **...PETITIONER**
Age-52 years, Occu-Business,
R/o.4-A, Vitthalachidaya,
Cannaught Place, Town Place,
CIDCO, Aurangabad

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32
2. Aurangabad Municipal Corporation,
Town Hall, Aurangabad
(Town Planning Department)
3. Municipal Commissioner,
Aurangabad Municipal Corporation,
Town Hall, Aurangabad

Mr.Ajit D. Kasliwal, Advocate for the petitioner
Mr.S.B.Yawalkar, AGP for respondent No.1
Mr.S.S.Tope, Advocate for respondent Nos. 2 and 3

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

RESERVED ON : 07.02.2018

PRONOUNCED ON : 14.03.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. With the

consent of the parties the matter is heard finally.

2. This petition under Article 226 of the Constitution of India is filed with following substantive prayers:

B) The respondents be directed by writ of mandamus that the reservation provided in the development plan for Aurangabad sanctioned vide Urban Development Department bearing No. T.P.S.-3099/1107/CR-47 (B)/2000/UD-3 dated 18.04.2001 for Part-1 reserved for Garden and subsequently by modifications of substantial nature made by the Government u/sec.31 of the MRTP Act, 1966 republished vide Government Notification issued by Urban Development No.T.P.S./3009/1107/CR-47 (B)/2000/UD-30 dated 18.04.2001 for Part-1 and 2 sanction u/sec.31 Notification T.P.S./3001/1566/PK/271/A/2001/UD dated 17.08.2002, under reservation No.266/B for Garden in relation to the property bearing CTS No.15335/31 admeasuring 2248.17 square meter, situated at Garkheda, Aurangabad of the petitioner, stands lapsed and said property of the petitioner is released from the reservation.

C) It be declared that, refusing grant of building permission to the petitioner in respect of CTS No.15335/31

situated at Garkheda, Aurangabad vide letter dated 25.01.2017 is bad in law and be quashed and set aside.

D) The respondents No.2 and 3 be directed to grant building permission to the petitioner in respect of property CTS No.15335/31 admeasuring 2248.17 square meter, situated at Garkheda, Aurangabad pursuant to the building permission application dated 07.01.2017 according to the byelaws.

3. Case of the petitioner is that he is the owner of Plot CTS No.15735/31, adm.2248.17 square meter, situated at Garkheda, Aurangabad (hereinafter referred to as the 'subject plot'). The subject plot is reserved and designated for proposed garden in the final development plan prepared by respondent No.2 Municipal Corporation, Aurangabad Reservation Site No.226/B. The plan was sanctioned by respondent No.1 vide Government Notification issued by Urban Development Department bearing No.T.P.S.-3099/1107/CR-47 (B)/2000/UD-3 dated 18.04.2001 for part-1 reserved for Garden and subsequently by modifications of substantial nature made by the Government u/Sec. 31 of the MRTP Act, 1966 (hereinafter referred to as the 'MRTP Act') republished vide Government Notification issued by Urban Development No. T.P.S.-3009/1107/CR-47 (B)/2000/UD-30 dated

18.04.2001 for part-1 and 2 sanctioned u/sec.31 Notification T.P.S./3001/1566/PK/271/A/2001/UD dated 17.08.2002. Thus, the subject plot is reserved and designated for proposed garden in the final development plan prepared in the year 2002, however, in spite of lapsing of ten years, respondent No.2 nor the development authority who prepared the development plan have taken any steps for acquisition of the subject plot.

4. The petitioner further contends that in the above circumstances on 30.11.2014 he issued purchase notice under Section 127 of the MRTP Act to the respondents contending that the respondents have not taken steps for acquisition of the subject plot within ten years from the preparation of final development plan and therefore, called upon the respondents to restore the subject plot to him. After receipt of the said notice respondent No.2 replied the said notice on 08.01.2015. By the said reply respondent No.2 called upon the petitioner to provide the documents mentioned in the said notice and to make the compliance. The petitioner received said notice reply on 12.01.2015. In response to the said notice reply of respondent No.2, the petitioner furnished the documents by addressing the letter to respondent No.3 dated 20.01.2015. Respondent No.2 by letter dated

28.04.2015 addressed to the petitioner stated that looking to the financial condition of the Corporation requested the petitioner for accepting the transferable development right. The petitioner received said letter on 02.05.2015 and the same was not accepted by him.

5. According to the petitioner, respondents have not initiated any action within the stipulated period as provided in the Statute at the relevant time and thus, as no action has been initiated within ten years from the preparation of the final development plan and furthermore within two years from the date of service of the purchase notice dated 03.11.2014, the reservation of the subject plot lapses and the subject plot is automatically released from the reservation. Therefore, the petitioner is entitled to declaration and directions in the light of the prayer clauses-B, C and D in the petition.

6. Respondent Nos. 2 and 3 have filed affidavit-in-reply of Avinash S/o. Bhaskarrao Deshmukh, Incharge Assistant Director Town Planning, Municipal Corporation, Aurangabad stating that the subject plot is reserved and designated for proposed garden in the final development plan sanctioned by the Government vide reservation site No.226/B. As per plan sanctioned by the Government

notification dated 18.04.2001 and subsequently by modification of substantial nature made by the Government u/sec. 31 of the MRTP Act as per the notification under said section dated 17.08.2002 the subject plot was reserved for garden as contended by the petitioner. The said area which is reserved for garden is surrounded by the residential zone and there is necessity of the garden in that area. Respondent No.2 being planning authority and development authority has proposed said CTS owned by the petitioner for the purpose of garden. The purpose of keeping reservation of garden over the said land is in the interest of public at large. Considering the residential zone surrounding to the said land and considering the public interest it is required to maintain the said reservation of the garden over the said area. After receipt of the purchase notice dated 03.11.2014 of the petitioner, the Assistant Director Town Planning of Municipal Corporation, Aurangabad subsequently intimated to the petitioner that there are several defects in the said purchase notice and that defects are also intimated to the petitioner by letter dated 08.01.2015. The petitioner was intimated to remove the said defects within a period of one month otherwise the purchase notice would be rejected. The petitioner through his counsel by letter dated 20.01.2015 has

enclosed some documents and replied to the letter of Corporation dated 08.01.2015. Thereafter Assistant Director Town Planning of Municipal Corporation, Aurangabad again by letter dated 28.04.2015 informed the petitioner that considering the financial condition of Municipal Corporation accept the transferable development right as per Section 126(B) and (C) of the MRTP Act. The same intimation has been given by Municipal Corporation to the petitioner again by letter dated 25.05.2015. The Assistant Director Town Planning again by letter dated 03.07.2015 intimated the petitioner to accept the TDR against said land reserved for garden. Therefore, contention of the petitioner that in spite of the purchase notice, Corporation did nothing is completely false and baseless. In other land the Municipal Corporation, Aurangabad has already submitted proposal for acquisition of land CTS No.15735/A, situated at Shahanurwadi, Aurangabad to the District Collector by proposal dated 17.08.2015.

7. It is further stated in the affidavit that respondent No.3 has forwarded detail proposal the Collector, Aurangabad for acquisition of CTS No.15735/A, Shahanurwadi, Aurangabad in respect of reservation No.266/B. Respondent No.3 also forwarded all the relevant

documents alongwith said proposal dated 17.08.2015 to the Collector, Aurangabad. After filing of the said proposal dated 17.08.2015 the Collector, Aurangabad by the Commissioner of Municipal Corporation, Aurangabad again the Assistant Director Town Planning of Municipal Corporation, Aurangabad by letter dated 01.09.2015 intimated the Collector District Aurangabad to take immediate steps in respect of the acquisition of the said area of which reservation No.266/B is shown in the development plan. Further it is submitted that the Assistant Director Town Planning by letter dated 17.11.2015 requested the Collector of Aurangabad to take immediate steps in respect of said reservation No.266/B as the proposal is submitted in the office for the acquisition. It is submitted that in the present case steps are already taken and the proposal is already forwarded for acquisition. Moreover, from time to time intimation is given to the Collector, Aurangabad for acquisition of said land. Therefore, as the steps are properly taken by the Municipal Corporation, Aurangabad reservation shall not be lapsed. The Collector, Aurangabad is also necessary party as the Municipal Corporation has forwarded the proposal to the Collector, Aurangabad and further steps are required to be taken by the said authority. It is submitted that as per modified

and final development plan dated 17.08.2002 the reservation of garden under reservation No.266/B is on CTS No.15735/31 owned by present petitioner. However, in the present writ petition the petitioner has claimed to laps of reservation of property bearing CTS No.15335/31. Thus, the prayers of the petitioner are itself not proper and hence on this count alone the petition deserves to be dismissed.

8. We have heard learned Advocate appearing for the petitioner, learned AGP appearing for respondent No.1 and learned Advocate appearing for respondent Nos. 2 and 3. We have gone through the pleadings in the petition, affidavit-in-reply filed on behalf of respondent Nos. 2 and 3 and the documents produced by the petitioner and respondent Nos. 2 and 3.

9. There is no dispute that the petitioner is owner and possessor of the subject plot i.e. plot CTS No.15735/31, adm. 2248.17 square meter, situated at Garkheda, Aurangabad. Referring the said subject plot the petitioner had served the purchase notice dated 03.11.2014 on all the three respondents. Therefore, even if in the clauses B,C & D of prayer clause of the petition, the petitioner has mentioned the subject plot

as CTS No.15335/31 instead of 15735/31, we find that the same has been inadvertently mentioned in the said clauses and proceed to decide the petition holding that the petition is in respect of the subject plot.

10. Admittedly, the subject plot is reserved for the garden as per plan sanctioned by respondent No.1 State vide notification dated 18.04.2001 and subsequently there was modification by the Government under Section 31 of the MRTP Act and the Government republished notification dated 17.08.2002 under Section 31 of the MRTP Act and the subject plot is reserved for the garden. As such the subject plot was reserved for the garden in the final development plan prepared in the year 2002. Thus, it is obvious that purpose of reservation of subject plot reserved as per notification dated 18.04.2001 has not been changed by the subsequent notification dated 17.08.2002.

11. Learned Advocate appearing for the petitioner referring to the above facts and ratio laid down by the Apex Court in the case of Godrej & Boyce Manufacturing Co.Ltd. Vs State of Maharashtra and Ors reported in 2015(2)ALL MR 921 (SC) submitted that as there is a change in the earlier reservation of the subject plot by

the subsequent notification issued on 17.08.2002 the reservation of the subject plot for the garden cannot be continued and hence the petitioner is entitled to de-reserve the subject plot. In the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) the land of the appellant was reserved for railway use. There was no acquisition of said land for railway use for which it was reserved. The State Government after expiry of ten years and six months of reservation of land for railway use intended to modify the same for development of road. So also, notice period under Section 127 of the MRTP Act was over. Therefore, it was held that reservation has lapsed and it enures to the benefit of the appellant and notification issued by the State Government is liable to be set aside and quashed. In the present case, as noted earlier there is no change of reservation by the subsequent notification dated 17.08.2002 because as per earlier notification dated 18.04.2001 the subject plot is reserved for the garden and as per subsequent notification also it is continued to be reserved for the garden with some modification. So also, in the present case, it is not the case that the subsequent notification dated 17.08.2002 has been issued after expiry of ten years of earlier notification dated 18.04.2001 reserving the subject plot for the garden after the notice period under Section

127 of the Act is over. Therefore, the ratio laid down in the above decision cannot be made applicable to the present case to state that reservation of subject plot is lapsed.

12. According to the petitioner the respondents have not taken steps to acquire the subject plot for the garden within ten years from final development plan prepared in the year 2002. Therefore, the petitioner has served the purchase notice dated 03.11.2014 under Section 127 of the MRTP Act on the respondents to restore the subject plot to him as reservation is lapsed. It is not the case of the respondents that they have taken any steps to acquire the subject plot within ten years from publication of final development plan prepared in the year 2002 particularly on 17.08.2002. Therefore, it is obvious that respondents have not taken steps to acquire the subject plot within ten years of publication of final development plan prepared in the year 2002.

13. As referred earlier admittedly the petitioner served the purchase notice dated 03.11.2014 on the respondents calling upon them to acquire the subject plot within twelve months from the date of service of said notice under Section 127 of the MRTP Act, failing which

reservation would be lapsed and the subject plot would be restore to him. In the reply affidavit submitted on behalf of respondent Nos. 2 and 3 in paragraph No.8 it is stated that respondent No.3 has forwarded the detailed proposal to the Collector, Aurangabad for acquisition of the subject plot alongwith relevant documents on 17.08.2015. From the said statement it can be said that the proposal to acquire the subject plot was forwarded by respondent No.3 to the Collector, Aurangabad within nine months of service of purchase notice dated 03.11.2014. But, mere sending of such proposal is not sufficient to state that respondents have taken steps within twelve months of the service of the purchase notice on them to acquire the subject plot within the meaning of section 127 of the MRTP Act. Because, respondents were required to show that there is notification under Section 6 of the Land Acquisition Act to acquire the subject plot but such is not the case of the respondents. Therefore, it cannot be said that the respondents have taken steps to acquire the subject plot within the meaning of section 127 of the MRTP Act. This conclusion is based on the ratio laid down in the case of M/s. Kolte Patil Developers Limited Vs The State of Maharashtra and others reported in 2015(1)ALL MR 832 (FB) wherein it was held that steps for acquisition would really commence upon publication of

notification u/s 6 of the Land Acquisition Act and making of an application u/s 126(1)(c) to State Govt. for acquisition would not be a step for acquisition of reserved land. Thus, we hold that the respondents have not taken steps to acquire the subject plot within twelve months of service of the purchase notice on them within the meaning of the then prevailing provision under Section 127 of the MRTP Act as said provision has been amended on 29.08.2015 changing the said twelve months period to twenty four months period to be given to the authorities to acquire the property after service of purchase notice on authorities.

14. For the above reasons we hold that as the respondents have not acquired the subject plot within ten years of publication of the final development plan in the year 2002 and they have not taken steps to acquire the subject plot within twelve months of service of purchase notice dated 03.11.2014 on them, the reservation on the subject plot has been lapsed.

15. Now, it is to be seen, when the reservation of the subject plot has lapsed, whether the petitioner is entitled to reliefs as claimed in clauses-(B),(C) & (D) of para 20 of the prayer in the petition.

16. In this respect, here it is useful to refer the decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Greater Mumbai and other Vs Hiranman Sitaram Deorukhar and others in Civil Appeal No.11258/2018 arising out of SLP (C) No.30524/2014 decided on 24.08.2017. As per the facts of the said case in the year 1967 the disputed property was reserved for garden in the development plan prepared under the provision of MRTP Act, 1966. The said development plan was revised in the year 1991-1992. The reservation of the disputed property was further continued for the purpose of garden. On 05.10.1992, respondent Nos.2 to 12 and the deceased named Sitaram V. Deorukhkar entered into an agreement for sale dated 05.10.1992 in favour of respondent No.13. On 18.10.1992 the power of attorney had been executed in favour of respondent No.13 to institute a suit in relation to the property. Power of attorney served a notice for purchase under Section 127 of the MRTP Act on 25.07.2007. The Municipal Corporation gave its approval to initiate the purchase proceedings of the land. On 25.02.2008 the petitioner-attorney had been informed that his application for permission to allow development on land under reference could not be considered under the provision of the MRTP Act.

Consequently, a writ petition was preferred by the respondent Nos. 1 to 13 in the High Court i.e. W.P. No.2535 of 2008 requesting that reservation may be quash and set aside as it had lapsed and permission was sought to develop the said property in accordance with the Rules and Regulations of the Corporation. The High Court held that the reservation had lapsed and that the land is deemed to have been released from the reservation and that the area reserved for garden has become available to the owners thereof for the purpose of development. Therefore, the Corporation has preferred the appeal before the Apex Court.

. In the appeal the Hon'ble Apex Court observed that it is shocking in the instant case that in spite of prayer having been made on behalf of the Municipal Corporation, the State Government did not issue declaration under Section 126 of the MRTTP Act. The authorities were bound to act with circumspection and to act timely to take steps to issue the requisite declaration as per development plan. They were all aware of the consequences. Further it was observed that no reason is coming-forth as to why the steps were not taken by the concerned authorities to act in the public interest, as per statutory mandate and as per development

plan. The duty is cast upon the authorities to act as *cestui que trust* with respect to the public park. As a matter of fact, authorities ought to have issued forthwith a requisite declaration and ought to have completed the proceedings. Be that as it may, since there is lapse of reservation, and the land is still required for public park, and since now the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 have come into force, obviously the compensation has to be paid in accordance with the provisions contained in the said Act. In the circumstances, the Apex Court issued directions that the land shall continue to be reserved and to be used for the public garden and it was directed that compensation shall be determined and paid in accordance with the principles laid down in the 2013 Act.

17. In the present case also the subject plot has been reserved for the garden. So also, in reply affidavit submitted on behalf of respondent Nos. 2 and 3 in paragraph No.4 it is stated that the said area which is reserved for garden is surrounded by residential zone and there is necessity of garden in that area. The purpose of keeping reservation of the garden over the said plot is in the interest of public at large, the same is to be

maintained. In such circumstances we hold that the decision of the Apex Court in the Municipal Corporation of Greater Mumbai & Ors. (supra) is applicable to the present case and therefore, even if reservation of the subject plot has been lapsed the petitioner is not entitled to directions and declaration (as per clauses 'B', 'C' and 'D') as claimed in the petition and respondents are required to be directed in the light of above decision to take steps to acquire the subject plot. Hence we proceed to pass the following order.

O R D E R

a. It is directed that the subject plot shall continue to be reserved and to be used for public garden. However, the compensation of the subject plot shall be determined and paid by the respondents in accordance with the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The compensation shall be determined after hearing the interested parties and it shall be decided within a period of one year from today.

b. Accordingly, rule is made absolute in above terms. Writ Petition stands disposed of. No order as to costs.

[S . M . GAVHANE , J .]

[S . S . SHINDE , J .]