

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

**WRIT PETITION NO. 8066 OF 2009**

Keshav Manikrao Bagal  
Age : 65 years, occu.: agri.,  
R/o Samta Colony,  
Osmanabad.

Petitioner.

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Urban Development Department,  
Mantralaya, Mumbai-32.
2. The Director,  
Town Planning Department,  
Central Office, State of Maharashtra,  
Pune.
3. The Deputy Director,  
Town Planning Department,  
Near Baba Petrol Pump,  
Aurangabad.
4. The Town Planning Officer,  
Town Planning Office,  
Osmanabad.
5. The Chief Officer,  
Municipal Council, Osmanabad.

Respondents.

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Mr. S.A. Wakure, Advocate for the petitioner.  
Mrs. D.S. Jape, A.G.P. for the State/respondent Nos.1 to 3.  
Mr. Vivekanand B. Deshmukh, Advocate for respondent No.5.

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**CORAM : T.V. NALAWADE &  
SUNIL K.KOTWAL,JJ.**

**Dated : 3<sup>rd</sup> April, 2018.**

**JUDGMENT : (PER SUNIL K. KOTWAL,J.)**

1. By this petition, the petitioner seeks declaration that Reservation of agricultural field of the petitioner bearing Survey No.129 situated at Osmanabad, initially for playground and subsequently for mini stadium and commercial complex, has lapsed in view of the provisions of Section 127 of Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "M.R.T.P. Act") and direction to the respondents to release the land of the petitioner.

2. The above-said land of the petitioner was reserved for playground as Reservation No.34 in the Development Plan of Osmanabad which was sanctioned by the Government on 01.06.1985. Subsequently, in revised development plan sanctioned on 04.04.2012 by the Government, excluding some part of the land, again the same land was reserved for mini stadium and commercial complex vide Reservation No.19. Since the land of the petitioner was not acquired for the purpose for which it was reserved for a period of 10 years from the publication of final development plan, the petitioner served notice dated 02.06.2005 to respondent No.5. However, no effective steps were taken by respondent No.5 for acquisition of the land within the period of six months, as required by the provisions of Section 127 of the M.R.T.P. Act,. Thereafter on 26.09.1989, respondent No.5 passed a Resolution deleting

Reservation No.34 of the land of petitioner. However, despite of this Resolution, the respondents did not permit the petitioner to develop his land. Subsequently, in the revised plan sanctioned on 04.04.2012 by the Government, after deleting some portion, the same land was again reserved for mini stadium and commercial complex as Reservation No.19.

3. On 04.08.2006, the petitioner again served notice to the respondents informing them about the previous reservation of the land of petitioner and deleting the same from reservation. However, the respondents did not pay any heed to it. Therefore, the petitioner has sought the above-said declaration on the premise that after lapsing of the reservation in view of the admitted facts, the publication of revised development plan in respect of the land of petitioner would be of no effect or consequence.

4. Learned Counsel for the petitioner submitted that reservation of the land of petitioner for the purpose of playground or mini stadium and commercial complex has lapsed, since respondent No. 5 did not take any effective steps for acquisition of the land within the period of six months from the date of service of notice under Section 127 of the M.R.T.P. Act. He submitted that at least after service of second notice dated 04.08.2006 to the respondents, respondent No.5 should have taken steps for acquisition of the land within the period of six months from the date of service of this

second notice. Therefore, in any case the reservation of the land of petitioner has lapsed. He placed reliance on the cases of **“Hasmukhrai V. Mehta Vs State of Maharashtra” [2015 (4) Mh.L.J. 554]**, **“Kishor Gopalrao Bapat Vs State of Maharashtra” [2005 (4) Mh.L.J. 468]**, **“Hirabai w/o Shrikrishna Chiddarwar and others Vs State of Maharashtra and another” [2016 (4) Mh.L.J.283]** and **“Jaika Vanijya Ltd. Nagpur Vs State of Maharashtra” [2013 (4) Mh.L.J.161]**.

5. In reply, learned Counsel for respondent No.5 though admitted service of notice dated 02.06.2005 issued by petitioner under Section 127 of M.R.T.P. Act, he has disputed the validity of this notice on the ground that in this notice the petitioner has nowhere requested respondent No.5 to acquire the land or to purchase it by private negotiations. According to learned Counsel for respondent No.5, this notice does not comply with the requirement of Section 127 of M.R.T.P. Act. He placed reliance on the case of **“Ramchandra Shankar Joshi Vs. The State of Maharashtra” [2016 (1) ALL MR 1]**, wherein this Court took a view that though form of notice under Section 127 of the M.R.T.P. Act is not prescribed, such notice shall meet sufficient requirement in describing the land in clear terms and require the planning authority or development authority or the appropriate authority, as the case may be, to acquire or compulsorily purchase the land so reserved,

allotted or designated in the development plan.

6. The next limb of the argument of learned Counsel for respondent No.5 is that lapsing contemplated in Section 127 of the M.R.T.P. Act is not automatic. However, as proper notice under Section 127 is not served by the petitioner before sanction of revised development plan on 04.04.2012 by the Government, the period of limitation of 10 years provided under Section 127 of M.R.T.P. Act to acquire the land, shall be restarted from 04.04.2012 and therefore, the claim of the petitioner is premature. He placed reliance on the cases of **“Prafulla C. Dave and others Vs. Municipal Commissioner”** reported in **(AIR 2015 SC 426)** and **Shrichand Girdharilal Punjabi Vs The Municipal Corporation of Greater Mumbai** reported in **[2008 (4) ALL MR 503]**.

7. To determine the question involved in this Writ Petition, it would be necessary to consider the provision of Section 127 (1) of the M.R.T.P. Act. Section 127 (1) of the Act as it then existed on the Statute Book prior to its amendment on 25.06.2009, reads as under :-

*“127 (1) : If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1984 (1 of 1984) are not commenced within such period, the owner or any person interested in land may serve notice on the Planning Authority, the Development Authority*

*or, as the case may be, the Appropriate Authority to that effect; and if within six months from the date of service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have been lapsed and, therefore, the land should be deemed to have been released from such reservation, allotment or designation and shall become available to the owner for the purpose of development or otherwise, permissible in the case of adjacent land under the relevant plan”.*

8. On plain reading of the provisions of Section 127 (1) of the M.R.T.P. Act with which we are concerned, it is clear that an owner or any person interested in the land would be required to serve a notice on the Planning Authority or the appropriate authority, if the land is not acquired within 10 years from the date on which the regional development plan or the final development plan has come in force. Section 127 (1) provides that an owner or a person interested in the land would only be required to serve a notice on the planning or the appropriate authority and if the appropriate authority does not take any steps for the acquisition of the land, the reservation, allotment or designation of the land shall be deemed to have lapsed. It was not necessary for an owner or a person interested in the land to supply the documents showing their title or interest in the land under the unamended provisions of Section 127 (1) of the M.R.T.P. Act. The requirement of supplying the documents in respect of the title or interest has been inserted in the provisions of Section 127 (1) of the Act by amendment dated 25.06.2009.

9. A bare glance at Section 127 (1) of the M.R.T.P. Act makes it clear that this provision does not speak that in the notice served on Planning Authority or Development Authority, the petitioner shall request or remind the Planning Authority to acquire the land or to take necessary steps for acquisition or purchase of the land. A plain reading of this Section indicates that only written intimation needs to be given to the Planning or Development Authority that the reserved land is not acquired despite lapse of 10 years from the date of its reservation.

10. The Division Bench of this Court in the case of **Jaika Vanijya Ltd. Nagpur Vs State of Maharashtra**” (cited supra) has already considered this point and held that the interested person has to serve a notice on the Planning Authority, Development Authority or the appropriate authority, as the case may be and it has to state that despite its reservation and after coming into force of final Development Plan for 10 years the land has not been acquired. The owner is not required by Section 127 to call upon the Authority to take steps to acquire the land within stipulated period. The Authority on which notice is served, is aware of statutory obligations cast upon it thereby. If it fails to acquire the land within the said period of service of notice or then fails to take steps towards acquisition within the said period, the reservation is deemed to have lapsed. The Division Bench of this Court in **Perfect Machine Tools**

**Vs. State of Maharashtra reported and others reported in [2008**

**(2) Mh.L.J. 404]** has stated that the person issuing notice has only to assert his rights.

11. In the notice dated 02.06.2005 the petitioner has informed respondent No.5 – Planning Authority that despite reservation of his land out of Survey No.129 as Reservation No.34, the same is not yet acquired, and therefore, permission be granted to the petitioner to develop and use this land for residential purpose. Thus, respondent No.5 was made aware by the petitioner regarding his rights in the Reservation No.34 out of Survey No. 129. Under this notice, respondent No.5 is also informed that it has not taken even possession of this land though reserved it. Thus, necessary requirements of Section 127 (1) of the M.R.T.P. Act are fully complied with by the petitioner by serving notice dated 02.06.2005 to respondent No.5.

12. In addition to the above notice, by second notice dated 04.08.2006 the petitioner has again reminded respondent Nos.4 and 5 that previous reservation in Survey No.129 has already lapsed due to inaction on the part of respondent No.5, and therefore, in revised development plan same land in Survey No. 129 cannot be reserved as Reservation No.19. Thus, even this second notice served by petitioner to respondent Nos.4 and 5 can be treated as another notice served on Planning Authority under

Section 127 (1) of M.R.T.P. Act. Despite service of this notice till the filing of petition, no action was taken by respondents to acquire the land shown as 'reserved' under development plan. Therefore, in any case the reservation of land of petitioner out of Survey No.129 is deemed to have lapsed under Section 127 (1) of the M.R.T.P. Act.

13. No doubt, under the revised development plan sanctioned by the Government on 04.04.2012, again the same land of the petitioner was shown as 'reserved' as Resolution No.19. Therefore, objection has been raised by the respondents that the period of 10 years for acquisition of this land again restarted from 2012. However, this objection is already considered by this Court in the cases of **“Jairam Siddheshwar Kancharlwar Vs Municipal Council, Kinwad”** reported in **[2008 (2) Mh.L.J. 300]**, **Hirabai Vs State of Maharashtra** and **Kishor Bapat Vs State of Maharashtra** (cited supra), wherein this Court has taken consistent view that once the reservation is lapsed, the land which is released from reservation becomes available to the owner of the land for the purpose of development. A right accrued to the owner due to lapsing of reservation cannot be taken away by Planning Authority by exercising power under Section 38 of the M.R.T.P. Act. Similar view was expressed by this Court in **“Dr.Kishor Siddheshwar Wadotkar Vs Director of Town Planning and ors”** reported in **[2007 (4) ALL MR 258]**.

14. In view of this settled position of law, after lapse of reservation under Section 127 (1) of the M.R.T.P. Act, mere publication and sanction of revised development plan reserving the land of petitioner is inconsequential. The judgment of **Prafulla Dave Vs Municipal Corporation and others** (cited supra) relied on by the respondents would not be applicable in the facts of this case. In the case before the Hon'ble Supreme Court, the land was reserved by the final Development Plan on 08.07.1966 and final Development Plan was revised on 05.01.1987. Between 08.07.1966 and 05.01.1987, the owners or the persons interested in the land did not serve a purchase notice on the Planning or the Appropriate Authority. Nothing was done by the owners or the persons interested till the revised final development plan was published. In the said case, notice under Section 127 of M.R.T.P. Act was served by the owners on the Planning Authority on 05.10.1989. Since no notice was served by owners on Appropriate Authority or Planning Authority till revised development plan was published, the Hon'ble Supreme Court held that the period of 10 years under Section 127 of the Act had to get a fresh lease of life of another 10 years w.e.f. 05.01.1987. Such is not the case here. In the instant case, the petitioner had served notice under Section 127 (1) of M.R.T.P. Act on respondent No.5 on 02.06.2005 and on 04.08.2006 i.e. before the publication of revised development plan on 04.04.2012.

Therefore, merely by sanctioning revised development plan on 04.04.2012, the right accrued in favour of the petitioner under Section 127 of M.R.T.P. Act will not be adversely affected in any manner.

15. One more objection was raised by the learned Counsel for the respondents that notice to respondent Nos.4 and 5 was served by the petitioner only and not by other co-owners. However, a bare glance of Section 127 (1) of M.R.T.P. Act makes it clear that the owner or person interested in the land may serve notice on Planning Authority or Development Authority as contemplated under that provision. Thus, the service of notice by every co-owner giving intimation regarding lapsing of reservation is not at all necessary.

16. Before parting with the judgment, we must observe that in the case at hand, in the notice under Section 127 of M.R.T.P. Act land Survey No. 129 and reservation site No. 34 as well as No.19 has been properly described by the petitioner. As observed above, the notice was in compliance with Section 127 (1) of M.R.T.P. Act. Under these distinguishing circumstances the ratio of the case of **Ramchandra Vs. State of Maharashtra** and **Shrichand Vs Municipal Corporation** (cited supra) is not applicable in the case at hand.

17. In view of the above discussion, taking into consideration the totality of circumstances, we have of the view that

the Planning Authority has failed to acquire the land within the stipulated period prescribed under Section 127 (1) of the M.R.T.P. Act after receipt of the notice sent by petitioner which was served on Planning Authority. On account of failure to comply with the mandatory requirement of Section 127 i.e. initiating the land acquisition proceeding within six months after issuance of notice as contemplated under Section 127 of M.R.T.P. Act, the reservation, allotment or designation in respect of the subject-matter shall deemed to have been lapsed and the said property is available to the petitioner for the purpose of development.

18. In the result, petition succeeds.

19. The petition is allowed. It is hereby declared that Reservation No.34 (Revised Reservation No.19) in respect of the land of petitioner from Survey No.129, admeasuring 5 Acres 13 Gunthas, situated at Osmanabad, has lapsed.

20. Rule is made absolute in the above terms.

**( SUNIL K. KOTWAL )**  
**JUDGE**

**( T.V. NALAWADE )**  
**JUDGE**

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