

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

WRIT PETITION NO. 6888 OF 2015

Vaijayantabai Murlidhar Barhate and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri. G. S. Rane, Advocate for the Petitioners.

Shri. K. N. Lokhande, A.G.P. for Respondent No.1.

Shri. G. V. Wani, Advocate for Respondent No. 2.

**CORAM : S.V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATED : 16th April, 2018

PER COURT:

. Leave to amend the prayer clause.

2. Mr. Rane, learned advocate for the petitioners submits that the properties bearing CTS No. 166/10+12/1 is reserved for primary school and play ground. The development plan is revised in the year 2006. The petitioners issued notice under section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to 'MRTP Act') on

07.06.2014. The reply is given by the respondent that the town planning scheme has come into existence in the year - 1989. The notice under section 127 is not applicable and compensation of Rs. 3006/- is given. The learned counsel submits that the petitioners are the owners of the writ land. The writ land does not vest with the respondent. The petitioner had challenged the award passed by the arbitrator before the District Judge. Thereafter, against the decision of the District Judge writ petitioners have filed the writ petition before this court bearing No. 3945 of 1989 (Aurangabad) and Writ Petition No. 1210 of 1982 (Bombay). In the said writ petition the order of the status quo was passed in the year 1991. Subsequently, on 26th November, 2001, the writ petition was dismissed. The possession still vests with the petitioners. Even the 7/12 extract records the name of the petitioners. The reply is erroneous.

3. According to Mr. Wani, learned counsel for the Municipal Council, the writ land vests with the respondent- Municipal Council. In view of that, town planning scheme had become final. The notice is also premature.

4. Section 127 of the MRTP Act would come into play only after ten (10) years have lapsed, upon the declaration of the development plan.

5. It is not disputed that the revised development plan came into effect in the year – 2006. Prior to the year - 2006 the notice under Section 127 of the M.R.T.P. Act was not issued. In view of that, the respondent would be entitled to reserve the plot in the revised development plan reference can be had to the Judgment of the Apex Court **Prafulla C. Dave Vs. Municipal Commissioner, reported in AIR 2015 SC 426.**

6. The notice issued in the year - 2014 is premature. Ten years would lapse in the year - 2016. As per the amended provision of the MRTP Act after August - 2015, two years notice is required to be issued under section 127 of the MRTP Act.

7. In the light of above, we need not enter into the other aspects of the matter. The writ petition is premature. On that count only, we dispose of the writ petition. It is made clear that, we have not entered into the discussion about the status of the writ land and whether the Town Planning Scheme had come into effect and had become final. The contention in respect of the same are kept open. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]