

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

WRIT PETITION NO.7509 OF 2016

Mohd. Najiroddin s/o. Mohd.
Aminoddin

..Petitioner

Vs.

The State of Maharashtra
and ors.

..Respondents

Mr.Y.B.Bolkar, Advocate for petitioner

Mr.S.K.Tambe, AGP for respondent nos.1 to 3

Mr.S.P.Urgunde, Advocate for respondent nos.4 and 5

Mr.Y.B.Pathan, Advocate for respondent no.6

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATE : OCTOBER 17, 2018

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

Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, taken up for final hearing.

2. The petitioner claims to be the holder of Muntakhab in respect of property bearing survey nos.34-

A and 34-B, situate at village Wadi, Tq. and Dist. Nanded and C.T.S. Nos.1048 and 1047 at Itwara, Nanded. The petitioner claims to have been granted succession certificate on 06.08.2002.

3. C.T.S. No.1048, situate at Itwara, Nanded, has been reserved for the Vegetables Market by Nanded-Waghala Municipal Corporation under the development plan dated 26.08.1996. However, no steps have been taken for acquisition of the said land. Therefore, the petitioner issued a notice under Section 127 of the the Maharashtra Regional and Town Planning Act, 1966 ("M.R.T.P. Act", for short), initially on 12.01.2011 and subsequently, on 25.08.2014, 09.09.2014, 13.10.2014, 10.11.2014 and 22.06.2015. It is the contention of the petitioner that the respondents – Corporation did not take any steps for acquisition of the said land within one year from the date of service of notice under Section 127 of the M.R.T.P. Act.

4. Mr.Bolkar, learned Counsel for the petitioner submits that the respondents asked the petitioner to submit the documents as mentioned in the letter. Pursuant thereto, the petitioner submitted the documents on 15.04.2015. According to the learned Advocate, the reservation on the land of the petitioner stands lapsed. The learned Advocate, in support of his contentions, relied on the judgment in the case of **Girnar Traders Vs. State of Maharashtra, (2007)7 SCC 555.**

5. Mr.Urgunde, learned Advocate for respondent nos.4 and 5, submits that the petitioner did not submit the necessary documents along with the notice under Section 127 of the M.R.T.P. Act. As the documents were not served with the notice, the notice is bad in law. The respondents – Corporation requires the land for the purpose for which it was reserved. The period of statutory notice is two years. He submits that the Writ Petition is premature. The respondents – Corporation is ready to

grant T.D.R. to the petitioner. He submits that the petitioner is not the interested person in the said land.

6. Mr.Pathan, learned Advocate for respondent no.6 – Waqf Board submits that the petitioner is the Mutwalli and the land in question is the Waqf property. The petitioner issued the notice under Section 127 of the M.R.T.P. Act, as no steps were taken by the Corporation in respect of the reserved land, the reservation has lapsed. Moreover, as provided under Section 91 of the Waqf Act, 1995, before an award is made in case the property under acquisition is a waqf property, notice of such acquisition shall be served by the Collector. No such notice has been served on the Waqf board.

7. We have heard the learned AGP also.

8. The petitioner was granted Succession Certificate under the Atiyat Enquiries Act. The Waqf Board does not dispute that the petitioner is

Mutawalli, occupying the land and an interested person. Interested person would be entitled to issue notice under Section 127 of the M.R.T.P. Act. A reference can be made to the decision in the case of **Anil Dattatraya Girme and ors. Vs. State of Maharashtra and ors., 2010(3) All. M.R. 385.**

9. The steps for acquisition, as contemplated under Section 127 read with Section 126 of the M.R.T.P. Act, contemplates publication of a declaration under sub-section (2) or (4) of section 126 in the Official Gazette, as has been clarified in the decision in the case of **Girnar** (Supra). The petitioner has submitted the documents, as sought by the Corporation, which have been received by the Corporation. There is no dispute about the same. The notice period of two years would not inure to the benefit of the respondent – Corporation. The notice has been issued prior to the amendment, the period of notice would be one year. Even otherwise, the respondents – Corporation and the State Government

has not issued any declaration under Section 6 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

10. In the light of the above, the reservation on the land bearing C.T.S. No.1048, situated at Itwara, Nanded, stands lapsed. Necessary notification be issued accordingly.

11. The Writ Petition is disposed of accordingly. Rule made absolutely accordingly. No costs.

[R.G. AVACHAT, J.]

[S.V. GANGAPURWALA, J.]

kbp