

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

87 WRIT PETITION NO. 12069 OF 2017

UDAY MANOHAR GANDEWAR

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Sharad V. Natu, Advocate for the Petitioner.

Mr. S. G. Karlekar, AGP for Respondents-State.

Mr. B. A. Darak, Advocate for Respondent No.4.

...

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATED : 01st AUGUST, 2018.

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.):—

1. Rule. Rule returnable forthwith. By consent of parties, taken up for final hearing at admission stage.

2. Mr. Natu, learned counsel for the petitioner submits that the land of the petitioner bearing Gat No.254 is reserved partly for the Primary School (Reservation No.35) and playground (Reservation No.36) to the extent of 70R and 27R. The respondent no.4 on 25.03.1998, took possession of the said land. The respondent did not pay compensation amount to the petitioner. The petitioner filed Writ Petition No.3953/2012. Under the judgment and order dated 15.12.2014, this Court disposed of the writ petition. In the order, it is

recorded that the Municipal Council was called upon to deposit the 50% of the amount i.e. Rs.67,90,000/-, the Municipal Council could not deposit it. The petitioner was given liberty to take steps as are open in law for dereservation of the land.

3. The petitioner has issued notice under section 127 of the Maharashtra Regional and Town Planning Act, 1966 on 23.1.2015. It is received by the Municipal Council on the same day. No steps are taken for acquisition within a stipulated period of one year.

4. Mr. Darak, learned counsel submits that the Municipal Council does not have funds. The Municipal Council does not dispute the receipt of the notices under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

5. we have also heard the learned A.G.P.

6. The reservation on the land of the petitioner and as referred to supra is not disputed. It is also not disputed that the petitioner gave notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 on 23.01.2015 and the same is served upon the respondent-Municipal Council. The petitioner earlier also had approached this Court by filing writ petition no.3953/2012. This Court had

directed the Municipal Council to deposit 50% of the compensation amount i.e. Rs.67,90,000/-. The respondent-Municipal Council did not deposit the said amount. Subsequently, liberty is granted to the petitioner to take steps for de-reservation. Pursuant thereto, the petitioner issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966. No steps are taken for acquisition.

7. Section 127 of the Maharashtra Regional and Town Planning Act, 1966 is fetter on the power of eminent domain. The case of the petitioner is covered by the judgment of the Apex Court in a case of **Girnar Traders vs. State of Maharashtra** reported in **2011 (03) SCC 1**.

8. In light of the above, Rule is made absolute in terms of prayer Clause (B). The consequential steps for issuing notification be taken up accordingly. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE