

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1326 OF 2016**

Vinayak Manohar Namjoshi and ors.Petitioners
versus
The Phaltan Municipal Council, Phaltan and ors.Respondents

Mr. V. S. Talkute, advocate for the petitioners.
Mr. Milind Deshmukh, advocate for the respondent No.1.
Mr. V. S. Gokhale, AGP "B" Panel for the State.

**CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.**

DATE : 23rd FEBRUARY, 2018.

P. C. :

Heard Mr. Talkute, learned counsel for the petitioners. Mr. Deshmukh, learned counsel for the respondent No.1 and Mr. Gokhale, learned AGP for the State waives service of notice.

2. Rule. Rule made returnable forthwith and by consent, the matter is heard finally.

3. The petition is filed under Article 226 of the Constitution of India seeking declaration that the Reservation Nos.28(60), 29(61), 30(62) and 31(63) upon the land bearing C.T.S. No.6486B/147, 148, 149 and 150 (for short "the said land") situated within the Phaltan Municipal Council

Area in the Development Plan deemed to have lapsed by virtue of provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") and release the said land from such reservation in order to make it available to the petitioners for the purpose of development of the same.

4. The petitioners claim to be the owners of the said land. The revised Development Plan of Phaltan Municipal Council came into force w.e.f. 1st March, 1993. In the said development plan, the said land belonging to the petitioners was reserved for the following purposes :

- i) Reservation No.28 for High School Playground;
- ii) Reservation No.29 for Playground;
- iii) Reservation No.30 for Hospital and Library and
- iv) Reservation No.31 for Primary School.

The total area of land under reservation is admeasuring about 32,900 sq. mtrs.

5. On 27th January, 2014, the petitioners served purchase notice under Sections 126 and 127 of the MRTP Act upon the respondent No.1 – Phaltan Municipal Council, which is also an appropriate authority in this case under the said Act.

6. It is the case of the petitioners that despite receipt of this notice, no steps are taken as contemplated under Section 127 of the MRTP Act and, therefore, the reservation has lapsed and the said land is now available to them for development in accordance with law.

7. One Mr. Dhairysheel Ramdas Jadhav, Chief Officer, Phaltan Nagar Parishad, Phaltan, has filed an affidavit-in-reply on behalf of the respondent No.1. It is stated in the said affidavit-in-reply that on 28th February, 2014, by passing resolution, the respondent No.1-Council resolved to acquire the petitioners' land bearing CTS No. 6486 situated at Phaltan, Dist. Satara and, accordingly, sent a proposal on 29th March, 2014, to the Collector's Office, Land Acquisition Department, Satara. It is further stated in the affidavit that the respondent No.1, by its letter dated 13th November 2014, submitted a proposal for getting aid for acquiring the said land to the Collector's Office, Satara and the total amount of Rs.1,10,04,000/- (Rupees One Crore Ten Lakhs Four Thousand Only) was sanctioned as aid and paid to the respondent No.1-Council. Out of this amount, Rs.55,52,000/- (Rupees Fifty Five Lakh Fifty Two Thousand Only) was deposited by the respondent No.1 with the Assistant Director Town Planning for the purpose of acquisition of the said land. It is further stated in the affidavit that the respondent No.1-

Council also gave a letter to the petitioners for acceptance of TDR towards rest of land under acquisition. It is lastly stated in the affidavit that the respondent No.1-Council has taken every effort to acquire the said land and, therefore, prayed for the dismissal of the petition.

9. The law in this regard is fairly settled by the decisions of the Apex Court in **in Girnar Traders versus State of Maharashtra and ors. (2007) 7 SCC 555 and Shrirampur Municipal Council, Shrirampur versus Satyabhamabai Bhimaji Dawkher and ors. AIR 2013 SC 3757**.

In Girnar Traders (supra), the Apex Court in paragraph 58 observed as follows:

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition

commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced."

In Shrirampur Municipal Council (supra), the Apex Court in paragraph 22 observed as follows:

22. *The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is*

utilized for execution of the Development plan/Town Planning Scheme, etc. are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

10. After having heard the learned counsel appearing for the respective parties, it is apparent that the present case is covered by the decisions of the Apex Court in both **Girnar Traders and Shrirampur Municipal Council, Shrirampur (supra)** as declaration contemplated in sub-sections (2) or (4) of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 has not been issued within a period of twelve months from the receipt of purchase notice. The sub-section (1) of Section 127 of the MRTP operates which results into lapsing of reservation on the said land.

11. In light of the above, we pass the following order :

a) Rule is made absolute in terms of prayer clause (a) with the modification that the said land shall become available to the owners for the purpose of development as otherwise permissible in the case of adjacent land under the relevant sanctioned Development Plan;

b) We direct the State Government to issue a notification in accordance with sub-section (2) of Section 127 of the MRTTP Act within a period of three months from the date of receipt of this order;

The writ petition stands disposed of.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]