

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5509 OF 2016

Rajendra Bhupal Chougule & Anr.	.. Petitioners
Vs.	
The State of Maharashtra & Ors.	.. Respondents

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Mr.A.D. Patil, Advocate for the Petitioners.
Mrs.M.P. Thakur, AGP for Respondent - State.
Mr.G.M. Savagave, Advocate for Respondent No.4.

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**CORAM : RANJIT MORE AND
PRAKASH D. NAIK, JJ.**

DATED : JULY 20, 2018.

P.C. :

Rule. Rule is made returnable forthwith and by consent taken up for final hearing.

2 Heard learned counsel for the Petitioner, learned AGP for the Respondent-State and the learned counsel for Respondent No. 4.

3 The petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India is filed seeking direction to declare that reservation no.25 in the development plan of 1985 of Respondent No.4-Kurundwad Municipal Council

on the land bearing Gat No.206 and Gat No.207 admeasuring 45 Ares [for short “the said land”] is deemed to have lapsed and the Petitioner is at liberty to develop the said land as permissible in the case of adjacent lands under the sanctioned development plan.

4 Admittedly, the development plan of Respondent No.4-Municipal Council was sanctioned and came into force with effect from 18th May 1985 and in this plan the said land in respect of which the Petitioner claims to be the owner, came to be reserved for playground and open cinema theater under reservation no.25. There is no dispute that within the period of 10 years from the date of commencement of development plan, Respondent No.4 has not acquired the said land either by resorting to the provisions of the Land Acquisition Act, 1894 or by negotiations.

5 In that view of the matter, on 31st December 1999 the Petitioner issued purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 to Respondent No.4, which is the planning authority. Admittedly, this notice was received by Respondent No. 4. Despite receipt of

notice, no steps are taken by Respondent No.4 for acquisition of the said land within the period of twelve months from the date of receipt of the said notice and, therefore, the Petitioner has approached this Court for the declaration as stated above.

6 The period of ten years from coming into operation of the development plan has admittedly expired. The purchase notice was given after the expiry of this period and receipt of the said notice by Respondent No.4 is also not in dispute. Therefore, in terms of the decision of the apex Court in ***Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimji Dawkher¹***, we have to see whether Respondent No. 4 has taken steps for acquisition of the subject land within a period of 12 months from the date of receipt of the subject notice.

7 The Apex Court in ***Shrirampur (supra)*** held that the majority judgment in ***Girnar Traders vs. State of Maharashtra²*** lays down the correct law and does not require consideration by a larger bench. The Apex Court in ***Girnar Traders (supra)*** by majority observed that the steps towards the

1[(2013) 5 SCC 627]

2[(2007) 7 SCC 555]

acquisition would really commence when the State Government takes active steps for the acquisition of a particular piece of land which leads to publication of declaration under section 6 of the Land Acquisition Act, 1894. Any other interpretation of the scheme of sections 126 and 127 of the MRTP Act, 1966 will make the provisions wholly unworkable and leave the land-owner at the mercy of planning authority and the State Government.

8 On behalf of Respondent No.4 affidavit is filed by one Nagendra Mutakekar, Chief Officer of the council. In paragraph 9, a specific statement is made that respondent no.4 has started acquisition proceedings to acquire the land in question. The affidavit is, however, silent about what steps has been taken to acquire the said plot. Mr.Savagave, learned counsel for respondent no.4 fairly conceded that though the statement is made in the affidavit in reply, no active steps are taken as contemplated by the Apex Court in the case of ***Shrirampur Municipal Council, Shrirampur (Supra)***.

9 If the observations of the Apex Court referred to above are applied to the facts and circumstances of the present case, then, we find that within the period of 12 months from the

date of receipt of purchase notice under section 127 of the MRTP Act, 1966, Respondent No. 4 has not taken any steps for acquisition of the said land.

10 In above facts and circumstances, we allow the petition. Rule is made absolute in terms of prayer clause (b) except the bracketed portion. The State Government is directed to issue notification under Section 127(2) of MRTP Act, 1966 within three months from today. The writ petition stands disposed of.

(PRAKASH D. NAIK, J.)

(RANJIT MORE, J.)