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

WRIT PETITION NO. 12472 OF 2016

Mr. Abdul Gani N. Wadwan ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

**WITH
WRIT PETITION NO. 12474 OF 2016**

Mrs. Khairunnisa Abdul Gani N. Wadwan & ... Petitioners
Anr.
Versus
The State of Maharashtra & Ors. ... Respondents

Dr. Ramdas P. Sabban and Mr. Pravin Sabban for the Petitioner in both Petitions.
Mrs. R.A. Salunkhe, AGP for the Respondent Nos. 1 and 2.
Mr. Samir Kumbhakoni for the Respondent No.3 and 4.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 27TH FEBRUARY 2018.

ORAL JUDGMENT :- (Per A.S. Oka, J.)

1. Notice for final disposal was ordered to be issued on 11th January 2018 in both the Petitions. In Writ Petition No. 12472 of 2016, the Petitioner claims to be the owner of the land described in paragraph 3 thereof. It is not in dispute that the development plan of city of Solapur 1997-2017 was sanctioned by the State Government 28th October 2004 and it was brought in to force with effect from 15th December 2004. The land subject matter of Writ

Petition No. 12472 of 2016 is shown as reserved therein for Development Plan road (DP Road). The Petitioner served a notice purporting to be a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “**MRTP** Act”) in respect of the land admeasuring 1 H 21-R bearing Survey No. 139/2 corresponding New Gat No. 137/2 of Solapur. According to the notice, out of the said land, an area of approximately 8,336 sq.mtrs. stands reserved under the said Development Plan for 60 meter wide DP road.

2. The Petitioners in Writ Petition No. 12474 of 2016 are claiming to be the owners of land more particularly described in paragraph 3 of the said Petition. The Petitioners served a notice date 7th January 2015 under Section 127 of the MRTP Act to the third Respondent Solapur Municipal Corporation in respect of the land bearing Survey No. 139/1 (pt.) corresponding to new Gat No. 137/1 of Solapur admeasuring 80 R. It is stated in the notice that out of the said land, an area of approximately 780 sq.mtrs. is affected by DP road reservation. Rest of the factual aspects in both Petitions are same and therefore, we are hereinafter referring to facts of the Writ Petition No. 12472 of 2016.

3. In response to the notice under Section 127 of the MRTP Act, the Assistant Director of Town Planning addressed a letter to

the Petitioner on 3rd February 2015. The said letter refers to the notice dated 7th January 2015 as a notice under Section 127 of the MRTP Act. In the said letter, it is specifically mentioned that a copy of 7/12 extract as well as a copy of survey map which is faint have been annexed to the notice. It is further stated that up to date map of hissa numbers of the concerned survey number has not been provided by the Petitioner. It is further stated that as per the Development Control Regulations, the Petitioner can apply for grant of FSI or TDR in respect of the reserved land. Along with the letter dated 3rd March 2015, the Petitioner forwarded a copy of 7/12 extract, a copy of extract in form 6-D and a clear copy of survey map. The contention of the Petitioner in the Petition is that on account of the failure of the third Respondent which is admittedly the Planning Authority to take steps for acquiring land by way of publication of a declaration either under sub section 2 or sub section 4 of Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 within the period stipulated under Section 127, the reservation shall be deemed to have lapsed.

4. In the present case, the notices are of 7th January 2015. On that date the period specified under sub-section (1) of Section 127 was 12 months, which was altered to 24 months, with effect from

29th August 2015.

5. The learned counsel appearing for the Petitioners relies upon various decisions of the Apex Court and this Court including the decision of the Apex Court in the case of ***Shrirampur Municipal Council, Shrirampur v. Satyabhabai Bhimaji Dawkher***¹. The learned counsel appearing for the third Respondent does not dispute that notices were issued by the Petitioners invoking Section 127 of the MRTP Act. His contention is that these notices cannot be valid as a proper survey plan and 7/12 extracts were not submitted along with the notice. He pointed out that though the names of the Petitioners appear on 7/12 extracts, in the other rights column, a charge of a co-operative bank has been recorded and therefore, the notices cannot be valid notices under Section 127 of the MRTP Act.

6. We have considered the submissions. The requirement of sub section 1 of Section 127 is that owner or any person interested in the land may serve a notice along with documents showing his title or interest in the reserved land. In the present case, third Respondent is not disputing that the Petitioners are the owners. Their contention is that the lands are encumbered by a charge of a co-operative bank. Even if the charge is recorded, the

1 (2013) 5 Mh.L.J (SC) 492.

Petitioners do not cease to be the owners or the persons interested. The requirement of sub section 1 of section 127 is not of producing documents of title. The requirement is of producing documents showing title. Entries in the 7/12 extract constitute sufficient material to come to the conclusion that the Petitioners are certainly persons interested in the land, if not the owners thereof.

7. The law is very settled as held in the case of (***Shrirampur Municipal Council (Supra)***). The steps towards acquisition contemplated by sub section 1 of Section 127 would commence only when there is a publication of a declaration under sub section 2 or sub Section 4 of Section 126 of the MRTP Act read with Section 6 of Land Acquisition Act, 1894. In the present case, going by the Affidavit in Reply tendered across the bar by Respondent No.3, even within the period of 24 months from the date of service of notices, no steps as contemplated under sub section 1 of Section 127 have been taken. Therefore, the consequences provided by Section 127 must follow and accordingly the Petition must succeed.

8. Hence we pass the following order:-

(a) The reservation on the lands described in the notices

under Section 127 of the MRTP Act 1966 (Exhibit – 'B' to both the Petitions) imposed by the Development Plan which came into force with effect from 15th December 2004 stands lapsed and that the said lands are available to the owners thereof for the purpose of development as otherwise permissible in case of adjacent lands under the relevant plan;

(b) We direct the State Government to a issue Notification contemplated by sub Section 2 of Section 127 within a period of two months from the date on which this judgment or order is uploaded;

(c) We make it clear that this judgment and order will not preclude the third Respondent or the State Government from initiating acquisition proceedings in respect of the subject lands in accordance with law;

(d) The Petitions are allowed on the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)