

Sharayu Khot.

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

WRIT PETITION NO. 7605 OF 2010

Mohd. Irfan Mohd. Mushtafa & Ors. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Amit B. Borkar, for the Petitioners.

Mr. Manish M. Pabale, AGP, for the Respondents No. 1, 2 and 4.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 3 May 2018

ORDER :

1. Heard the learned Counsel appearing for the
Petitioners. The Petitioners are claiming to be the owners of the
land bearing Survey No. 104/2B/1 situated at Malegaon,

District Nashik. The said land was covered by Site Nos. 151, 153 and 154 under the Development Plan for the city of Malegaon sanctioned with effect from 1 April 1986 under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”). The subsequent Revised Development Plan was sanctioned on 15 September 2006 in which the same reservation was maintained.

2. The Petition is based on the notice dated 30 April 2007 served by the Petitioners to the Malegaon Municipal Corporation purporting to be a notice under Sub-Section (1) of Section 127 of the MRTP Act. The prayer in this Petition is for a declaration that the reservation on the subject land stands lapsed on the failure of the Planning Authority to take steps for acquisition of the said land within the stipulated period from the date of service of notice i.e. 30 April 2007.

3. Under Sub-Section (1) of Section 127 of the MRTP Act, a notice under the said provision can be served only after

the expiry of period of ten years from the date on which the Development Plan comes into force. The Development Plan was sanctioned with effect from 15 September 2006.

4. The submission of the learned Counsel appearing for the Petitioners is that within the period of ten years from 1 April 1986, the subject land was not acquired and therefore, the reservation lapses.

5. Section 127 of the MRTP Act provides for a legal fiction under which the reservation lapses. The condition precedent for the lapsing of the reservation is the service of notice on the appropriate Authority. Such a notice can be served only after the expiry of the period of ten years from the date on which the Development Plan comes into force. In the present case, the Revised Development Plan came into force on 15 September 2006. Therefore, the notice is premature and on the basis of the said notice, the legal fiction under Section 127 of the MRTP Act will not operate.

6. Therefore, no relief can be granted in this Petition on the basis of the notice under Section 127 of the MRTP Act.

7. It will be open for the Petitioners to serve a fresh notice under Sub-Section (1) of Section 127 of the MRTP Act on the basis of the Development Plan which came into force on 15 September 2006. All the contentions of the Petitioners in that behalf as well as remedies are kept open.

8. Subject to what is observed above, the Petition is rejected.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]