

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

WRIT PETITION NO.2823 OF 2016

1. Fakira s/o. Razzak Rangraze,
Age : 46 years, Occ. Agri. &
Business, r/o. Pandhari Mohalla
Kannad, Dist. Aurangabad
2. Shakur @ Javed s/o. Fakira
Rangraze, Age : 24 years,
Occ. and r/o. as above,
3. Afzal s/o. Razzak Rangraze,
Age : 41 years,
Occ. and r/o. as above ..Petitioners

Vs.

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
2. The Director of Town Planning,
Maharashtra State,
Central Building, Pune
3. Assistant Director,
Town Planning,
Jubli Park, Aurangabad
4. The Municipal Council, Kannad,
Through its Chief Officer,
Municipal Council, Kannad,
Tq. Kannad, Dist. Aurangabad ..Respondents

Mr. P.F.Patni, Advocate for petitioner
Mr. P.S.Patil, AGP for respondent nos.1 to 3
Mr. S.S.Shete, Advocate for respondent no.4

CORAM : PRASANNA B. VARALE
AND
R.G. AVACHAT, JJ.
DATE : JUNE 06, 2019

JUDGMENT (PER R.G. AVACHAT, J.) :-

Rule, made returnable forthwith. Heard finally with consent of the parties.

2. A short question that falls for consideration in this Writ Petition under Article 226 of the Constitution of India is, whether reservation of the land owned by the petitioners in the development plan prepared under the Maharashtra Regional and Town Planning Act, 1966 ("the Act", for short) shall be deemed to have lapsed on account of the land having not been acquired or no steps were taken for acquisition thereof within the statutory period from service of notice under Section 127 of the Act.

FACTS :-

3. The petitioners are the owners of the land Survey No.44/1 to the extent of 1 Hectar 4 R situated

at Kannad, Taluka Kannad, Dist. Aurangabad. The land to the extent of 1.790 hector was reserved for garden from land survey nos.41, 44 and 45. Out of the said lands, land to the extent of 4977 sq. metres was reserved from the land survey no.44/1 in the development plan of 1992. The said plan was sanctioned by D.T.P., Pune vide notification No.D.P.-Kannad (second revised)/SANCTION/T.P.V.-V/2668- dated 08.05.1992. The reservation came to be recognised as site no.15 for the purpose of garden.

4. Respondent no.4 – Kannad Municipal Council is planning/development authority. For over 10 years, after the land having been reserved, respondent no.4 has not taken any steps for acquisition of the said land. The petitioners, therefore, issued purchase notice under Section 127 of the Act on 23.09.2013. In spite of service of notice, respondent no.4 did not take steps towards acquisition of the land. Similar notice had also been issued to respondent no.2 – Director of Town Planning, State of

Maharashtra. Respondent no.2 replied the notice with the contention that the notice should have been served on the local authority i.e. respondent no.4.

5. Respondent no.4 filed affidavit-in-reply admitting to have received the notice issued under Section 127 of the Act. It is the contention of respondent no.4 that Kannad Municipal Council is a Class-B municipal council. It did not receive much grant from the Government for development of urban area. It, therefore, did not have much amount to be spared for garden development. It, however, proposes to develop the garden on the land reserved for the purpose in the near future. The municipal council, by its letter dated 26.02.2014, sent a proposal to the District Collector, Aurangabad, requesting for initiation of acquisition proceeding. Since respondent no.4 took steps towards acquisition of the land, the petition is devoid of any merit.

6. An affidavit-in-reply came to be filed also on behalf of respondent no.2 contending that process of acquisition of the land is underway.

7. Mr.Patni, learned Counsel for the petitioners, would submit that the reservation of the petitioners' land stands lapsed on account of failure of respondent no.4 to take appropriate steps towards acquisition of the said land within the statutory period from service of the notice under Section 127 of the Act. Learned Counsel would further submit that mere making of the proposal to the Collector for acquisition of the land cannot be considered to be a step for acquisition of the land. In support of his submissions, learned Counsel has relied on the following authorities :-

(i) Poona Timber Merchants and Saw Mill Owners Association Vs. State of Maharashtra and ors., (2015)13 SCC 544;

(ii) Hasmukhrai V. Mehta Vs. State of Maharashtra and ors., (2015)3 SCC 154;

(iii) Shrirampur Municipal Council,
Shrirampur Vs. Satyabhamabhai Bhimaji
Dawkher and ors., AIR 2013 SC 3757;

(iv) State of Maharashtra Vs.
Bhakti Vedanta Book Trust and ors.,
(2013)4 SCC 676;

(v) Satish s/o. Soma Bhole Vs.
State of Maharashtra and ors.,
2010(6)All M.R. 65

8. Learned Counsel for respondent no.4 would, on the other hand, submit that the process of acquisition of land is in progress. The land, therefore, could not be deemed to have been dereserved. Learned Counsel, ultimately, urged for dismissal of the petition.

9. Sections 126 and 127 of the Act read thus:-

126. Acquisition of land required for public purposes specified in plans -
(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme,

any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, except as otherwise provided in section 113A] [acquire the land,—

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned [on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making in application to the State Government for acquiring such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013],

and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections [or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013] as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.]

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 [and except as provided in section 113A)] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, [in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The

declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

[Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]

[(3) On publication of a declaration under the said [section 19], the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,—

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case, the market value on the date of publication of the

interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft Town Planning Scheme:

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]

[(4) [Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration,] is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993]), the State Government may make a fresh declaration for acquiring the land [under the provisions of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.]

127. Lapsing of reservations

[(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible

in the case of adjacent land under the relevant plan.

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]

10. In the case of **Shrirampur Municipal Council (Supra)**, it has been observed thus :-

Section 127 speaks of lapsing of reservation. It lays down that if any land reserved, allotted or designated for any purpose specified in any plan prepared and sanctioned under the 1966 Act is not acquired by agreement within ten years from the date on which a final Regional plan or final development plan comes into force or if proceedings for the acquisition of such land under the 1966 Act read with Land Acquisition Act are not commenced within that period, the owner or any person interested in the land may serve notice on the planning Authority, Development Authority or Appropriate Authority to that effect. That section further lays down that if the land is not acquired or no steps are commenced for its acquisition within six months from the date of service of notice, the reservation etc. shall be deemed to have lapsed and the land shall be deemed to have been released from such reservation etc. so as to enable the

owner to develop the same. The expression 'no steps as aforesaid' used in S.127 of the 1966 Act has to be read in the context of the provisions of the Land Acquisition 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 1966 Act or the Land Acquisition Act. Steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the Land Acquisition Act. Any other interpretation of the Scheme of Section 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government. 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 Land Acquisition Act. But a holistic reading of the provisions makes it clear that while engrafting the substance of some of the provisions of the Land Acquisition 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. If mere passing of resolution or sending of letter to Collector or State Govt. to acquire land is considered to be step for acquisition, it would 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.

In the above decision, the Hon'ble Supreme Court in paragraph 19, further observed thus -

19.
In Girnar Traders v. State of Maharashtra. Speaking for the majority, P.P. Naolekar, J., referred to the relevant provisions of the 1966 Act including Sections 126 and 127, and observed:

"31. Section 127 prescribes two time periods. First, a period of 10 years

within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTTP Act or under the [LA Act](#) are commenced. Secondly, if the first part of [Section 127](#) is not complied with or no steps are taken, then the second part of [Section 127](#) will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of [Section 127](#) stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word "aforesaid" in the collocation of the words "no steps as

aforesaid are commenced for its acquisition" obviously refers to the steps contemplated by Section 126 of the MRTP Act.

If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan.

11. Let us appreciate the factual matrix of the case in the backdrop of the aforesaid legal position.

Admittedly, the writ land has been reserved for garden in the development plan of the town, Kannad, in August, 1992. During the period of ten years thereafter, the writ land has neither been acquired nor any step has been taken for its acquisition by Kannad Municipal Council (planning/development authority). The petitioners issued purchase notice under Section 127 of the Act on 23.09.2013 to respondent no.4 – Kannad Municipal

Council. Receipt of the notice and its validity as well, are the facts not in dispute. In view of the statutory mandate of Section 127 of the Act, Kannad Municipal Council was supposed to acquire the land or take steps towards its acquisition within a period of one year from the date of receipt of the notice. As has been held by the Apex Court in the case of **Shrirampur Municipal Council (Supra)**, 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 proceeding for the acquisition of land. Steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the Land Acquisition Act.

12. Admittedly, Kannad Municipal Council (planning/development authority) had simply forwarded

a proposal to the Collector, Aurangabad, requesting for initiation of acquisition proceedings of the writ land. Undisputedly, no declaration under Section 6 of the Land Acquisition Act has been published within a period of one year from the date of receipt of the notice and even, till date. The contention of the respondent – Kannad Municipal Council that it is short of funds to acquire the land can, in no way, be a ground to delay the acquisition.

13. As such, there is non-application of the provisions of Section 127 of the Act. The writ land, therefore, stands released from the reservation and would be available to the petitioners for being used for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. The State Government shall notify the lapsing of the reservation by an order to be published in the official gazette.

14. The Writ Petition is allowed in the
aforesaid terms. Rule is made absolute accordingly.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

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