

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

WRIT PETITION NO. 9832 OF 2017

1. Mrs. Sunita Kshirsagar
Age : 59, Occ.: Housewife,
R/o. C-204, Kasturkunj, I.C.S. colony,
Bhosle nagar, Pune – 411 007.
 2. Sushma V. Shinde
Age : 56, Occu : Housewife,
R/o. 12, Vedang Apartment, Lane No. 5,
Dahanukar Colny, Kothrud, Pune – 38.
- ...PETITIONERS

VERSUS

1. State of Maharashtra
Through Urban Development Department
 2. Collector,
Kopargaon, District – Ahmednagar
 3. Municipal Council Kopargaon
Tq. Kopargaon, Dist. Ahmednagar
 4. Deputy Director of Town Plann1.50 ing,
Ahmednagar, Dist. Ahmednagar
- ...RESPONDENTS

Mr. R.N. Dhorde, Senior Advocate I/b Mr. N.S. Jaju & Mr. Pankaj Sutar for the petitioners
Mr. P.N. Kutti, AGP for the respondent/State
Mr. M.M. Patil (Beedkar), Advocate for responded No.3.

WITH

WRIT PETITION NO. 9833 OF 2017

Mr. Rajesh S. Girme,
Age : 58, Occu – Busienss,
Through Power of Attorney holder
Mrs. Sunita Kshirsagar,
Age : 59,
R/o. C- 204, Kasturkunj, I.C.S. colony,
Bhosle nagar, Pune – 411 007

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Mr. P.N. Kutti, AGP for the respondent/State

Mr. M.M. Patil (Beedkar), Advocate for responded No.3.

**CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE, JJ.**

DATED : 27-08-2019

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel for the appearing parties finally by consent.

2. These two writ petitions have been moved by two sisters and a brother respectively seeking declaration that reservation over lands bearing gat no. 205 and 210 respectively is arbitrary, illegal and that reservations over said lands stand lapsed and are de-reserved and notification dated 28th December, 2012 in relation to said lands is arbitrary and illegal and further writ of mandamus is sought to respondents to give effect to de-reservation.

3. Briefly stated, factual indisputed scenario appears to be, the planning authority-municipal council had proposed to reserve aforesaid lands under development plan. The proposed reservations were objected to and accordingly municipal council-planning authority had recommended deletion on 03-09-1985. Planning committee of municipal council as well recommended

deletion. However, said recommendations did not find favour with respondent No. 1 and lands were shown to have been reserved under sanctioned development plan dated 02-05-1988.

Subsequently, in 1996 Kondaji, predecessor of petitioners had complained of reservation purporting to have its removal before the planning authority again. From 1988 to 2000 no action to acquire lands had been taken by municipal council.

Planning-local authority, the municipal council proposed to revise the development plan pursuant to section 38 of Maharashtra Regional and Town Planning Act, 1966. A declaration to that effect had been published in gazette on 21-06-2001. Thereafter, on 11-10-2002 petitioners communicated to municipal council to delete the lands from reservation or to purchase the same. Said notice/ letter/ application had been taken to the general body and having found that the municipal council does not have power to delete said lands from reservation, the municipal body had proposed to cause alternation in development plan pursuant to section 37 of the Maharashtra Regional and Town Planning Act, 1966.

Yet, municipal council had also forwarded a letter to Superintendent of Police, Ahmednagar in respect of land gat no. 210, since one of the reservations on petitioners' lands had been for police staff quarters. The same had been responded to by him stating that for acquisition of land, proposal had been sent to the Collector. However, matter does not appear to have progressed further.

4. Notice inviting objections to revised development plan had been published in gazette on 26-03-2009. After hearing objections, the planning authority had submitted revised development plan to State Government proposing deletion/ release of petitioners lands from reservation. Despite the recommendations, it appears that the government did not heed the same and had sanctioned revised development plan on 15-04-2013.

5. Thereafter, it is the case of petitioners, several applications, representations were filed treating the lands as de-reserved and available for development to the petitioners. However, said applications, representations were not responded to and in the circumstances the petitioners are before this court.

6. Learned senior counsel Mr. Dhorde, submits that as a matter of fact, the lands stood de-reserved long back, immediately after expiry of six months' period after notice dated 11-10-2002, as per the then prevailing position pursuant to provisions of section 127 of the Act. Despite the same, legal position was not being taken into account and the respondents purportingly proceeded with exercising their powers under Maharashtra Regional and Town Planning Act, 1966. He submits that such an exercise of power had been an exercise in futility, having regard to facts and circumstances which are no longer *res-integra*, as would easily emerge from decision by a division bench of this high court in the case of *Uday Madhavrao Patwardhan & Ors. Vs. Sangli, Miraj & Kupwad Municipal Corporation, Sangli and ors* reported in *MANU/MH/0866/2015*. He submits that paragraphs No.11 and 14 therein, gives exposition of the legal position, which is reproduced below;

“11. The second issue which arises for consideration is the effect of the revised D.P which came into force subsequent to the lapsing of reservation on the basis of the notice dated 26th September 2008. As stated earlier, in the revised D.P, the same reservation was shown on the said lands. The learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of the Bhavnagar University which has been extensively considered by a Division Bench in the case of Baburao Salokhe. In the said case before the Division Bench, the petitioner was the owner of a land which was reserved under the sanctioned D.P which came into force with effect from 15th October 1977. On 8th August 1991, a notice under section 127 of the MRTP Act was served by the petitioner. On the basis of the said notice, writ petition No.1193 of 2008 was filed in this Court seeking a declaration that the reservation is deemed to have lapsed and that the petitioner are entitled to develop the land in question. During the pendency of the Writ Petition, a revised D.P was sanctioned on 18th December 1999 in which same reservation was shown on the land in respect of which the notice under section 127 was served earlier. After considering the decision in the case of Bhavnagar University, in paragraph 17, the Division Bench has held thus :

"17. The legal position as regards M.R.T.P.Act on the basis of aforesaid observations made by Apex Court in Bhavnagar University emerges that by imposition of a statutory obligation under section 38 on the part of the State or the appropriate authority to revise the Development Plan the rights of the owners accrued in terms of section 127 are not taken away. Section 38 of M.R.T.P.Act, in our opinion, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested under section 127 is taken away. In other words, section 38 does not envisage that despite the fact that in terms of section 127, the reservation lapsed, only because of a draft revised Development Plan or final revised Development Plan is made would automatically result in revival of reservation that had lapsed. If the reservation of the petitioners land for the purposes of garden had lapsed and as we found in fact has lapsed on 28.2.1992, because of draft revised plan made in the year 1992 and thereafter final revised Development Plan sanctioned in the year 1999 would not revive the lapsed reservation...."

(underline supplied)

14. Therefore, the scenario which emerges is that the law laid down by the Division Bench in the case of Baburao Salokhe (Supra) will squarely apply to this case. The revised D.P. was sanctioned on 4th April 2012. Before the date of sanction of revised D.P., on the basis of the notice dated 26th September 2008, the reservation imposed under the original sanctioned D.P. stood lapsed by operation of section 127 it is an admitted position that the reservation under the revised D.P is the same as the one under the sanctioned D.P which had lapsed. Therefore, by the revised D.P, the right accrued to the petitioner by virtue of the notice dated 26th September 2008 is sought to be taken away. It is not permissible to do so in view of the law laid down by the Apex Court and this Court. Therefore, the reservation of the said lands in the revised D.P for "Housing for

Dishoused & E.W.S. Housing" will have no legal effect."

7. Learned senior counsel goes on to submit that a possible resistance to the petition is likely to be on the ground that the notice issued by petitioners on 11-10-2002 would not be said to be in the form of a notice and would be merely an application or an intimation. He submits that this resistance as well is no longer *res-integra* and has been elaborately dealt with by another division bench of this high court in the case of *Vikramsingh Jaysingrao Ghatge Vs. The Municipal Council, Kagal & Ors*, reported in 2015(1) All MR 520. He particularly refers to head note (B) and paragraphs No. 13 and 14 thereunder which as well are reproduced below, reading, thus;

"(B) Maharashtra Regional and Town Planning Act (1966), S.127- Notice u/S. 127- What amounts to – S.127 does not contemplate any particular form – It contemplates an intimation that the land kept under reservation for ten years from commencement of development plan has not been acquired by an agreement.

13. Having considered the rival submissions it appears that the respondent no.1 had duly received letters dated 7.5.2003, 12.7.2004 and 11.7.2009 addressed by the petitioner. By these letters petitioner had called upon the respondent no.1 to undertake acquisition of the petitioner's land in question for the public purpose namely primary school and playground and extension for MSEB as set out in the development plan. By these letters, the petitioner had categorically requested the respondent no.1 to take possession of the land and to pay compensation to wp1226.11.doc the petitioner in that regard. A perusal of resolution no.47 dated 22.10.2003 passed by the respondent no.1 clearly shows that respondent no.1 treated these letters as an intimation under section 127 of the MRTP Act for acquisition of the land and payment of compensation. By this resolution, the respondent no.1 expressed its inability to acquire the land due to financial difficulties. Letters dated 7.5.2003, 12.7.2003 and 11.7.2009 issued by the petitioners were not rejected by the respondent no.1 or for that matter by respondent nos.3 and 4. In fact it appears that even respondent nos 3 and 4 insisted that further steps be taken to acquire the land which is clear from the affidavit filed on behalf of the respondent nos. 3 and 4. For the first time in the affidavit in reply filed on behalf of respondent nos.3 and 4 a plea has been taken that the letters dated 7.5.2003, 12.7.2004, 11.7.2009 of the petitioner cannot be treated as a notice under section 127 of the MRTP Act. We cannot accept this submission as made on behalf of respondent nos. 3 and 4 that these letters of the petitioner cannot be treated as a notice under section 127 of the MRTP Act, for two reasons, firstly, the letters clearly call upon the planning authority namely respondent nos.1 to acquire the land for public purpose under reservation and pay compensation in that regard to the

wp1226.11.doc petitioner and secondly the respondents at no point of time rejected these letters on this ground as averred in the reply affidavit. Moreover, for all purposes respondent no.1 treated these letters to be a notice under section 127 of the MRTP Act and understood the same as a purchase notice as is clear from various letters addressed between the parties. To appreciate this contention as raised by respondent nos. 3 and 4 it would be useful to refer to section 127 of the MRTP Act as it then stood. Section 127 reads thus:

Section 127: Lapsing of reservations:

"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 for if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act 1894 are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority as the case may be, Appropriate Authority to that effect and if within six 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." (Emphasis supplied)

A perusal of the aforesaid provision indicates that what is contemplated is intention on the part of the owner of the land or a person interested in the land to serve a notice to the planning authority or appropriate authority to acquire the land for public purpose for which it is reserved. The word 'notice' in this provision would contemplate an intimation that the land which is kept under reservation for ten years from the commencement of the development plan or approved plan has not been acquired by an agreement. This section does not contemplate any particular form in which a notice to that effect is required to be given by the owner of the land. To appreciate that as to what meaning can be attributed to the word 'notice' as used in section 127 it would be useful to examine the dictionary meaning of the word 'notice.'

The WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY of the English language, refers the word "notice" as :-

" information or intelligence to give notice of one's departure (2) and intimation; warning : to serve notice that smoking is not allowed; (3) a note placard, or the like conveying information or a warning: to post a notice about the fire laws (4) a notification of the termination, at a specified time, of an agreement, as for renting or employment, given by one of the parties to the agreement ; (5) observation, perception, attention, or heed ; a book worthy of notice (6) interested or favourable attention; to take notice of an unusual feature in the construction of a building." (Emphasis supplied)

In the light of the aforesaid meaning of the word 'notice' by applying the principles of literal interpretation to the word 'notice' as used in section 127 of the MRTP Act it would imply that what is contemplated

is an intimation or attention of the authorities by the owner or the person interested in the land under reservation that the land has remained under reservation for a period of 10 years from the commencement of the development/regional plan and that the authority should acquire the reserved land after the receipt of such information/notice.

14. In our opinion, a perusal of the letters dated 7.5.2003, 12.7.2004 and 11.7.2009 addressed by the petitioner to the respondents clearly indicate the intention of the petitioner to intimate the planning authority that the land of the petitioner is kept under reservation from the commencement of the development plan and the same is not acquired by an agreement and that the authorities should acquire the land of the petitioner for the said public purpose and pay compensation to the petitioner in that regard. Considering the language by section 127 it would be inappropriate to say that these letters cannot be construed to be a notice under section 127 of the MRTP Act. What is significant is that the intention of the petitioner is borne out in these letters of the petitioner which is in conformity and in terms of section 127 of the MRTP Act, hence wp1226.11.doc the submission on behalf of the respondent nos.3 and 4 that these letters of the petitioner cannot be treated as a notice under section 127 of the MRTP Act cannot be sustained and deserves to be rejected. It is noteworthy that these letters were never objected by the respondents on this ground that these letters are not purchase notices. The respondents in fact treated these letters of the petitioner as a notice under section 127 of the MRTP Act and accordingly further action was resorted to."

8. During to course of submissions he also refers to a Supreme Court decision in the case of *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. And others* reported in 2003(2) Supreme Court Cases 111 to submit that a vested right by virtue of operation of law would not be taken away from land owner. He refers to paragraphs No. 30 to 35 and 39 from the same. It may be expedient to reproduce paragraphs No. 33, 34, 35 and 39 from the same, reading, thus;

33. " The purpose and object of creating a legal fiction in the statute is well known. When a legal fiction is created, it must be given its full effect. In *East End Dwellings Co. Ltd. v. Finsbury Borough Council* Lord Asquith. J. stated the law in the following terms:

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you

must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The said principle has been reiterated by this Court in *M. Venugopal v. Divisional Manager, LIC of India*. See also *Indian Oil Corpn. Limited v. Chief Inspector of Factories, Voltas Ltd v. Union of India*, *Harish Tandon v. ADM, Allahabad* and *G. Viswanathan v. Hon'ble Speaker T.N. Legislative Assembly*.

34. *The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.*

35. *This Court in Municipal Corporation of Greater Bombay's case (supra), in no uncertain terms while construing the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 held the period of ten years as reasonable in the following words :-*

"8. While the contention of learned counsel appearing for the appellant that the words 'six months from the date of service of such notice' in Section 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a Development Plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. By enacting Section 127 the legislature has struck a balance between the competing claims of the interests of the general public as regards the rights of an individual."

It was observed that :

"The Act lays down the principles of fixation by providing first, by the proviso to Section 126(2) that no such declaration under sub-section (2) shall be made after the expiry of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub- section (4) of Section 126 that if a declaration is not made within the period referred to in sub-section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under Section 6 and not the market value at the date of the notification under Section 4, and thirdly, by Section 127 that if any land reserved, allotted or designated for any purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such

reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land. It cannot be doubted that a period of 10 years is long enough., The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed."

It is true that Section 21 of the Act imposes a statutory obligation on the part of the State and the appropriate authorities to revise the development plan and for the said purpose Section 9 to 20' so far as may be' would be applicable thereto, but thereby the rights of the owners in terms of sub-section (2) of Section 20 are not taken away.

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39. Sub-section (1) of Section 20, as noticed hereinbefore, provides for an enabling provision in terms whereof the State become entitled to acquire the land either by agreement or taking recourse to the provisions of the Land Acquisition Act. If by reason of a revised plan, any other area is sought to be brought within the purview of the development plan, evidently in relation thereto the State will be entitled to exercise its jurisdiction under sub-section (1) of Section 20 but it will bear repetition to state that the same would not confer any other or further power upon the State to get the duration of designation of land, which has been lapsed, extended. What is contemplated under Section 21 is to meet the changed situation and contingencies which might not have been contemplated while preparing the first final development plan. The power of the State enumerated under sub-section (1) of Section 20 does not become ipso facto applicable in the event of issuance of a revised plan as the said provision has been specifically mentioned therein so that the State may use the same power in a changed situation.

As a responsible counsel he also draws attention to paragraph No.

41 thereunder;

"41. There is another aspect of the matter which cannot be lost sight of. Despite statutory lapse of designation of the land, the State is not denuded of its power of eminent domain under the general law, namely, the Land Acquisition Act in the event an exigency arise therefore."

9. He, therefore, submits that having regard to a very strong

emerging prevailing legal position, it is the fittest case wherein court should intervene and grant reliefs as claimed in the petition.

10. Learned counsel for the State Mr. Kutti and for the municipal council Mr. Milind Patil (Beedkar) strenuously urge to consider that the notice would not be said to be a notice as ordinarily contemplated. It is a simple request under an application either to purchase or to de-reserve the land. Apart from aforesaid it is being submitted that it would not be said that even said application/ intimation claimed to be a notice had been accompanied by title documents as would be required pursuant to section 127 of the Act.

11. Learned counsel Mr. Patil (Beedkar) fairly submits that municipal council as a planning authority, under revision of development plan, had indeed proposed deletion/release of said lands from the reservation, having regard to various aspects involved, particularly the material one about council being not possessed of wherewithal that would be required to be paid for acquisition of land.

12. The State in its reply has referred to that respondent No. 4 Deputy Director of town planning has been wrongly added as party instead of Assistant Director of town planning. Mr. Kutti submits that purported notice was nothing but a simple application and thus cannot be treated as a notice under section 127. Further, it is being referred to that it would not be said that the application is signed by the owners and the application would not be treated anything more than a mere request. He further submits, in the reply it has been referred to that the petitioners had been communicated in 2014-2015 about their application for deletion of reservation on the lands and that

the same had been passed over to municipal council for necessary action and the municipal council has not sent resolution to the government till this date and the government may consider the matter accordingly if a proposal is submitted by the municipal council by following due procedure pursuant to section 37.

13. After hearing learned counsel for the appearing parties, position clearly emerges that the lands concerned have been under reservation continuously right from 1985 onwards. No steps as yet appear to have been taken with respect to development of said lands for the purpose for which those were reserved. The government has further referred to that it will consider a proposal for alteration upon a request by municipal council under a resolution. It further appears that the municipal council has expressed inability to acquire the lands for want of money required for acquisition. As a matter of fact it emerges that the municipal council had never been interested in acquisition of the lands of petitioners shown under reservation right from the beginning to date. There had been resolution passed in 2002 and there had been recommendation to release/delete the lands at the stages of revision of plans, and even after reservation under revised plans there have been no steps taken for acquisition or for development of the land.

14. It is not disputed that the lands have descended on petitioners as ancestral lands and they would be entitled to said lands by succession. The predecessor of petitioners appears to have served a communication dated 11-10-2002 requesting either to purchase or to de-reserve the lands. This appears to be undisputed position. It is also not disputed that after communication dated 11-10-2002 no steps whatsoever as contemplated under provisions of

MRTP Act have been taken for acquisition of land. Communication dated 11-10-2002 addressed to the municipal council had indeed been taken cognizance of and meetings of the council appear to have taken place and it has been proposed to move for revision of the plan since the municipal council is not in a position to acquire the lands. Not only this the municipal council had correspondence with the Superintendent of Police, since one of the lands had been reserved for police department and the Superintendent of Police, Ahmednagar had purportedly moved Collector for acquisition. However, even thereafter, no steps have been taken. All these events give clear indication of that a construction had been placed on the communication as a notice pursuant to section 127, lest local authority/ municipal council the planning authority under MRPT Act would not have moved government in respect of said notice. In the circumstances, it is difficult to accept the contention that said communication was not a notice pursuant to section 127 of MRPT Act.

15. One of the arguments advanced on behalf of respondents had been about the notice not being accompanied with title documents as would be required under prevailing provisions of section 127. It may have to be taken note of that the notice had been issued in 2002 under unamended provisions reading, thus;

*“127. Lapsing of reservation: 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 proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, **the owner of any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six 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 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.”

From aforesaid provision it does not appear that before amendment to section 127 referring to accompaniment to notice, it was not prerequisite. Position that lands are ancestral lands of petitioners is not disputed. In the circumstances, said contention as well loses out on efficacy.

16. Having regard to all aforesaid undisputed factual aspects and the legal position as enunciated under the citations, relied on behalf of the petitioners, we deem it appropriate to grant the petitions. Writ petition stands allowed in terms of prayer clauses (B) and (C). Respondent, if it is deemed appropriate may issue a notification pursuant to sub section (2) of section 127 of the MRTP Act. Rule is made absolute accordingly.

17. Writ petition accordingly is disposed of

[S.M.GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]