

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

**903 WRIT PETITION NO. 5491 OF 2012
WITH CA/8385/2019 IN WP/5491/2012**

Smt. Nuzatbegum w/o Syed Vazir Ali

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

Mr. S. S. Kazi, Advocate for Petitioner.

Mr. P. S. Patil, Addl. G. P. for Respondents-State.

Mr. R. V. Naiknavare, Advocate for Respondent No. 3.

Mr. V. S. Panpatte and Mrs. Y. M. Khirsagar, Advocates for Respondent No. 4

**CORAM : S. V. GANGAPURWALA &
 MANGESH S. PATIL, JJ**

DATED : 20th AUGUST, 2019.

PER COURT:-

1. The learned Counsel for the petitioner submits that the land of the petitioner bearing Survey No. 308 is reserved under the development plan for the purpose of playground, primary school and housing, converted in housing the dishoused. The development plan was prepared in the year 1978. The said land is reserved in the development plan for the year 1978 and modified in the year 1993.

2. The learned Counsel submits that initially notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'Act of 1966') was issued in the year 2005. Subsequently, on 10.10.2006 another notice under Section 127 of the Act of 1966 was issued. The Municipal

Council on 18.05.2007 passed resolution No. 44 resolving to pay the amount of compensation by private negotiation without resorting to acquisition proceedings. However, respondent No. 3 did not take any action. The legal notice was also issued. The learned Counsel submits that till date no steps for acquisition are taken by the Municipal Council, as such, the reservation stands lapsed.

3. Mr. Naiknavare, the learned Counsel for Municipal Council submits that on 03.04.2012 the revision of the development plan was made and the present sites were kept under reservation. According to the learned Counsel, the respondent Municipal Council has resolved to acquire the writ property. They have the necessary funds so also financial provision is made for acquisition. The learned Counsel submits that the notice did not comply the requirement under Section 127 of the Act of 1966.

4. It is not disputed that the writ site of the petitioner is reserved. The writ land of the petitioner is reserved for playground, primary school and housing the dishoused. The development plan was of the year 1978 later on revised in the year 1993. The petitioner has issued notice under Section 127 of the Act of 1966 after lapse of 10 years from the modification of the development plan. Till date declaration under Section 126 of the Act of 1966 has not been issued. The steps for acquisition have not been undertaken. It is not disputed that the notice under Section 127 of the Act of 1966 issued by the petitioner is served upon the Municipal Council. In view of the judgment

of the Apex Court in case of ***Girnar Traders (II) V/s State of Maharashtra and Others (2007) 7 SCC 555*** the acquisition stands lapsed if the steps are not taken for its acquisition.

5. In the light of the above, we declare that the reservation of the writ land stands lapsed.

6. The site is reserved for the purpose of playground, primary school and housing the dishoused. Considering the purpose for which it is reserved, we direct the petitioner not to use the writ property for any other purpose for one year. The Municipal Council may acquire the property within a period of one (01) year from today and may initiate steps within a period of three (03) months from today.

7. In case, the writ property is not acquired by the Municipal Council within a period of one (01) year from today, then the petitioner shall be entitled to use the property as the adjacent land and thereafter the necessary notification shall be issued by the State Government regarding lapsing of reservation. As far as the D. P road is concerned, petitioner may seek compensation in that regard as may be permissible and if the D. P road is constructed from the land of the petitioner, respondent may take acquisition proceedings even in respect of the same.

8. Writ Petition is disposed of. No costs.

9. In view of the disposal of the Writ Petition, Civil Application stands disposed of.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.