

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

40 WRIT PETITION NO.9031 OF 2018

Satish s/o Bhagwan Malba
Age 62 years, Occu: Agriculture,
R/o. At. Tuljapur,
Tq. Tuljapur & Dist. Osmanabad. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. Regional & Town Planning Officer,
Osmanabad, Dist. Osmanabad.
3. Municipal Council,
Tuljapur, Dist. Osmanabad,
Through Chief Executive Officer ..RESPONDENTS

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Mr. Sujit Patil h/f Mr. V. D. Salunke, Advocate for
the Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

Mr. Krishna K. Kulkarni, Advocate for Respondent
No.3.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 16th APRIL, 2019.

ORAL JUDGMENT (Per: S. V. Gangapurwal, J.):—

1. Rule. Rule made returnable forthwith.
With consent of the parties, matter is taken up for
final hearing at admission stage.

2. The land of the petitioner was reserved in the development plan prepared in the year 1986. The petitioner served notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 to the planning authority on 12.02.2002. At the relevant time the notice period was six months. No steps were taken for acquisition of the land. During the said period the petitioner filed writ petition bearing no.6755/2007. This Court under order dated 22.07.2008 allowed the writ petition and held that the land stands released from reservation and is available to the petitioner for development. The State challenged the said order before the Apex Court. The Special Leave to Appeal was withdrawn.

3. It is contended that the land of the petitioner is now again placed in reservation for Yatri Niwas in the revised development plan sanctioned in the year 2014. The same is assailed.

4. The petitioner has placed reliance on the judgment of the Apex Court in a case of **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and Others** reported in 2015 (11) SCC 554 and judgment and order of the Division Bench of this Court in **Writ Petition No.8202 of 2015** dated 03.02.2016.

5. Mr. Kulkarni, learned counsel for Municipal Council submits that the steps to prepare the revised development plan commenced in the year

2006 and final revised development plan was sanctioned in the year 2014. The petitioner did not file objection at the relevant time. The Municipal Council has power under Section 38 of the M.R.T.P. Act, 1966 to prepare the revised development plan. The learned counsel relies on the judgment of the Apex Court in case of **Praful C. Dave and Ors Vs. Municipal Commissioner and Ors.** reported in **2014 AIR SCW 6911** and another judgment of the Apex Court in case of **Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. And Others** reported in **AIR 2003 SCC 511(1)**.

6. Section 127 of M.R.T.P. Act is a fetter upon the power of eminent domain.

7. The reservation of the land of the petitioner stood lapsed, as the respondents did not take any steps for acquisition of the land of the petitioner. The land of the petitioner was reserved in development plan sanctioned in the year 1986. The petitioner issued notice on 12.02.2002 under Section 127 of M.R.T.P. Act. No steps were taken for acquisition. On the contrary, the Resolution was passed in the general body meeting bearing Resolution No.117 dated 16.09.2002. The Municipal Council showed inability to acquire the land and pay the compensation to the petitioner and it was resolved that the land should not be acquired. The land is released from

reservation. The petitioner filed writ petition no.6755/2007. The same was allowed under judgment and order dated 22.07.2008.

8. It appears that, at the relevant time the respondents took up the proceedings for revised development plan. However, the said fact it appears was not brought to the notice of the Court also. The order of this Court dated 22.07.2008 in writ petition no.6755/2007 was also challenged before the Apex Court. However, the SLP was withdrawn.

9. The judgment in case **Praful C. Dave and Ors Vs. Municipal Commissioner and Ors.** (supra) relied by the learned counsel for respondents would not inure to the benefit of the respondents. In the said judgment the Apex Court has observed as under:

"19. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or provisions for acquisition is not initiated

within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years

with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in *Municipal Corporation of Greater Bombay vs. Dr. Hakimwadi Tenants' Association & Ors.* in the following terms:

"If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."

10. The Apex Court in a case of **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and Others** (supra) has observed thus:

"16. It is also an undisputed fact that after 10 years, notice dated 4.9.2002 served by the appellant under Section 127 of the MRTP Act upon the respondent No.1 stating that if, the reserved land was needed for the notified purpose, Railway department may acquire the same by adopting acquisition proceedings, but if the same is not acquired, the clarification to that effect be issued. Thereafter, on 3.3.2003 the period of 6 months as prescribed under the provision of Section 127 of the MRTP Act, after issuance of the above notice by the appellant and served on the respondent No.1, was also lapsed long back. Therefore, the reservation of the land in favour of the Railway was deemed to be released under the above said provision of the MRTP Act. The respondent No. 2-Ministry of Railways informed the Urban Development Department of the State Government on 1.11.2004 stating that there was no proposal for acquisition of the land in the Railways in the near future, is evident from the undisputed fact of the correspondence made between the Ministry of Railways and the Urban Development Department of the State Government, which would clearly go to show that the land reserved even after 10 years and on expiry of service of notice of 6 months there was no intention on the part of the State Government to acquire the reserved land for the purpose reserved in favour of the Railways department to form the Railway tracks between "Thane and Kurla". In that view of the matter, the land reserved for the purpose under Section 127 of the MRTP Act, is lapsed and the appellant is entitled for developing the land as it likes. The

State Government instead of clarifying to the notice issued by the appellant, has proceeded further to initiate proceedings under Section 37 of the MRTP Act, proposing the modification in the Development Plan by deleting Railway reservation and adding reservation for Development Plan Road. Section 37(1) of the MRTP Act, which deals with modification of Final Development Plan reads thus:-

we have to hold that the impugned notification is bad in law and liable to quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTP Act and interpretation of the above said provision made in the case of Girnar Traders (2) (supra), therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10

years and expiry of 6 months notice served upon the State Government."

11. The land of the petitioner cannot be kept under reservation in perpetuity. The concept of ownership would be defeated.

12. Considering the observations of the Apex Court in a case of **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and Others** referred to supra, the impugned notification reserving the land of the petitioner in Gut No.219 for Yatri Niwas is quashed and set aside.

13. Rule accordingly made absolute. No costs.

(A. M. DHAVAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE