

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

WRIT PETITION NO. 10092 OF 2015

Jagjivanram Co-operative Housing
Society Ltd., Padampura,
Through its Secretary,
Narayan s/o Gulabchand Banswal,
Age 71 years, occ. Pensioner,
R/o H. No. 5-11-30, Padampura,
Aurangabad, Tq. and Dist. Aurangabad
...Petitioner

VERSUS

- 1] The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32,
- 2] The Director of Town Planning,
Maharashtra State, Pune,
- 3] The Deputy Director of Town Planning,
Maharashtra, at Aurangabad,
- 4] The Assistant Director of Town Planning,
C/o Municipal Corporation, Aurangabad,
- 5] The Commissioner,
Municipal Corporation, Aurangabad,
- 6] The Director of Social Welfare,
Maharashtra State, Pune,
- 7] The Divisional Director of Social Welfare,
Aurangabad,
- 8] The Special District Social Welfare
Officer, Aurangabad,
- 9] The Collector, Aurangabad
...Respondents

...

Mr. N.R.Solunke, advocate for Petitioner
Mr. J.R.Shah, advocate for respondent nos. 4 and 5
Mr. A.B.Chate, A.G.P. for respondents/State

...

**CORAM : T.V.NALAWADE
AND
SUNIL K.KOTWAL, JJ.**

DATED : 24th JANUARY, 2019

ORAL JUDGMENT (Per Sunil K.Kotwal, J.)

Rule. Rule made returnable forthwith.
With the consent of the learned counsel for
contesting parties heard finally.

2. Admittedly the petitioner is the registered Co-operative Housing Society of persons from the cobbler community and on 27.2.1968, out of Survey No.2 situated at Padampura 2 acre 7 guntha land was acquired for the residence of people from cobbler community. This land was allotted to the petitioner/society to utilize it for residential purpose. Undisputedly, on 17.8.2002 revised development plan of Municipal Corporation, Aurangabad was sanctioned and under that development plan, out of the land allotted to

the petitioner/society, which is subsequently given C.T.S. No. 20154, admeasuring 9274 sq. mtrs., Site Nos. 320 and 321, total area 66 Are came to be reserved for Primary School and Secondary School.

3. Being aggrieved with that reservation, the petitioner/society made correspondence with the Municipal Corporation and other Departments, but in vain. Petitioner/society also filed Writ Petition No. 6044 of 2011, however, it was disposed of on 17.11.2014 with liberty to the petitioner to again approach the Court if contingency arises. Even it is not disputed that till the date of filing of this petition i.e. till 2015, the site reserved for Primary and Secondary School was not acquired by the Planning Authority or Development Authority and it was not utilized for the purpose it was reserved. Admittedly, on 15.1.2014, the petitioner issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as,

'the M.R.T.P. Act'), which was received by the Development Authority. Despite service of notice under Section 127 of the M.R.T.P. Act, within stipulated period of one year, the Development Authority did not acquire the land reserved as Site Nos. 320 and 321. Therefore, the petitioner/society filed this petition to declare Site Nos. 320 and 321 as deemed to have been released from reservation.

4. Respondent nos. 6 to 8 filed reply affidavit and submitted that they have no concern with lapsing of the reservation. It was pointed out that the petitioner/society is responsible for not constructing the houses on the allotted land which was made available to the petitioner/society.

By filing reply affidavit, respondent nos. 1 to 3 pointed out that they are not Development or Planning Authority as contemplated under the M.R.T.P. Act. Only the Municipal Corporation, Aurangabad is the appropriate authority for

acquisition and development of above said reservation.

Even, respondent nos. 4 and 5, who are Development Authority filed reply affidavit and contended that notice served by the petitioner under Section 127 of the M.R.T.P. Act, dated 15.1.2014 was duly replied by the Town Planning Department, Municipal Corporation, Aurangabad and the petitioner/society was informed to provide necessary documents showing title or interest in the reserved property. They challenged the validity of notice under Section 127 of the M.R.T.P. Act.

5. Heard Shri N.R.Solunke, learned counsel for the petitioner, Shri J.R.Shah, learned counsel for respondent nos. 4 and 5 and Shri A.B.Chate, learned A.G.P. for respondents/State.

6. The only point for consideration before this Court is, whether the notice under Section 127 of the M.R.T.P. Act, dated 15.1.2014 served by

the petitioner to the Development Authority is valid ?

7. Learned counsel for the petitioner submits that along with the notice all required documents were annexed, which show the interest of the petitioner/society in the reserved Site Nos. 320 and 321, which is part of City Survey No. 20154 allotted to the petitioner/society. He submits that in this petition, he has filed same documents, which were obtained from the Town Planning office, Municipal Corporation, Aurangabad, under the Right to Information Act.

8. Learned counsel for respondent nos. 4 and 5 submits that along with the notice under Section 127 of the M.R.T.P. Act, required documents to show transferable title to the petitioner/society are not annexed, and therefore, notice is invalid.

9. Along with the petition, the petitioner

has filed certified copy of list of the documents which were annexed with notice under Section 127 of the M.R.T.P. Act served to the Commissioner, Municipal Corporation, Aurangabad (Exh. 'H'). The notice under Section 127 of the M.R.T.P. Act is received by the Municipal Corporation, Aurangabad on 21.1.2014. Even the reply notice dated 3.2.2014 (Annexure 'R-1') given by the Assistant Director, Town Planning Office, Municipal Corporation, Aurangabad shows that notice under Section 127 of the M.R.T.P. Act was duly received by even the Town Planning office, Municipal Corporation, Aurangabad and under reply notice document of Tonch Map, Survey Measurement Map and other documents were demanded from the petitioner.

10. Thus, it is clear that as required under law the petitioner served proper notice to the Planning and Development Authorities under the Act. Even it is not disputed that since the date of reservation of Site Nos. 320 and 321 under revised development plan notified on 17.8.2002,

the reserved sites are not utilized for the purpose for which those sites were reserved for the period of more than 10 years from the date of sanction of revised development plan. Undisputedly, after lapse of required period of 10 years, the petitioner/society served notice under Section 127 of the M.R.T.P. Act (Exh. 'H') to the appropriate authorities under the Act asking the authorities to take steps for acquisition of reserved Site Nos. 320 and 321. Even the list of the documents annexed with the notice under Section 127 of the M.R.T.P. Act show that more than sufficient documents were annexed with the notice to show interest of the petitioner/society in the reserved sites. Even the copies of those documents obtained by the petitioner from the Town Planning office, Municipal Corporation, Aurangabad under the Right to Information Act are filed in the petition. Out of those documents, the most relevant document is possession receipt dated 24.3.1965, which shows on 24.3.1965 out of acquired land, admeasuring 2 acre 7 guntha land

out of Survey No.2 at Padampura was delivered in possession of the petitioner/cooperative housing society. The award passed on 27.2.1968 also shows the acquisition of 2 acre 7 guntha land out of Survey No.2 situated at Padampura for the Cobbler Housing Society. Subsequent receipt dated 17.8.1990 shows that in the year 1990 the petitioner/society has paid development charges of Rs.60,000/- in the office of Town Planning Department, Municipal Corporation, Aurangabad.

11. A bare glance to Section 127 of the M.R.T.P. Act makes it clear that no particular type of document is mentioned in the said Section which is to be annexed along with the notice. Requirement of Section is that document showing title or interest in the reserved land is to be annexed with the notice under Section 127 of the M.R.T.P. Act.

12. Thus, we have no hesitation to hold that the petitioner has supplied more than required

documents to the development authority to prove its interest in the reserved sites, along with the notice under Section 127 of the M.R.T.P. Act. The petitioner has placed reliance on **Girnar Traders vs State of Maharashtra [2007 All SCR 2232]** and **Kishanrao s/o Nanasaheb Deshmukh vs The State of Maharashtra and others [2017 (3) All MR 747]**.

13. We have gone through the above authorities. The ratio laid down in those authorities is that no specific nature of document is required to be provided to the appropriate authority under the Act along with notice under Section 127 of the M.R.T.P. Act. Only certain document showing title or interest in the reserved land is to be supplied along with the notice under Section 127 of the M.R.T.P. Act. The other requirement under Section 127 of the M.R.T.P. Act, such as non-acquisition for the period of 10 years from the date of sanction of development plan and after service of notice under Section 127 of the M.R.T.P. Act subsequent inaction on the part of

the Development Authority for the period of one year, is sufficient to hold that the land reserved under development plan is deemed to have been released from the reservation and the reservation is deemed to have been lapsed.

14. As observed above, undisputedly from the date of sanction of revised development plan, for the period of 10 years the reserved land Site Nos. 320 and 321 was not acquired by the Municipal Corporation. Record shows that despite service of notice under Section 127 of the M.R.T.P. Act to the Development Authority, along with required documents to show interest in the reservation sites, no action was taken by the Development Authority to acquired the reserved sites. Accordingly, we have no other way but to hold that the reservation of Site Nos. 320 and 321 is deemed to have been lapsed and land Site Nos. 320 and 321 is deemed to be released from the reservation.

15. In the result, Writ Petition No. 10092 of

2015 is allowed. The State Government is directed to notify the lapsing of reservation order in official gazette in respect of the land admeasuring 66 Are for Primary School Site Nos. 320 and 321 which shall be done preferably within six months from the date of this order. Rule is made absolute in the above terms. No order as to costs.

[SUNIL K.KOTWAL, J.]

[T.V.NALAWADE, J.]

dbm