

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

WRIT PETITION NO.1532 OF 2017

. Anant S/o. Bappaji Kulkarni
Age: Major, Occu: Nil,
R/o Sailu, Tq. Sailu,
District: Parbhani
Petitioner

versus

1. The State of Maharashtra,
Through Department of urban development,
Mantralaya, Mumbai.
2. Director of Town Planning,
Central Building,
Pune.
3. The Municipal Council,
Sailu, through its Chief Officer,
Municipal Council, Sailu, Tq. Sailu
District: Parbhani
Respondents.

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Mr. M.D. Narwadkar advocate for petitioner
Mr. A.V. Deshmukh, Assistant Government Pleader for respondent
Nos.1 and 2
Mr. S.S. Rathi advocate for respondent No.3.

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CORAM : **SUNIL P. DESHMUKH & SMT. VIBHA KANKANWADI, JJ.**

Date: November 6th, 2019

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ORAL JUDGMENT: (Per: Sunil P.Deshmukh, J)

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the parties by consent finally.
2. Petitioner is owner and possessor of land bearing survey No.249 situated at Sailu - Satona Road. Petitioner had sought permission pursuant to section 44 of the Maharashtra Regional &

Town Planning Act, 1966 (MRTP Act) for non-agriculture use of land and the same has been granted to him for an area of 13,800 square meter in October, 1989.

3. In 1994 development plan of Sailu was approved and sanctioned. The land of the petitioner to the extent of 3080 square meter came under reservation under the sanctioned plan for the purpose of primary school. Thereafter, however, no steps for development of the said land for reserved purpose had been undertaken by the authorities. After waiting for about 22 years after 1994, petitioner had issued a notice pursuant to section 127 of the Maharashtra Regional & Town Planning Act, 1966, asking the appropriate authority to acquire the land or to dereserve the same. As a matter of fact, thereafter, the planning authority appears to have considered under resolution No.144 dated 20.06.2018 its inability to purchase/acquire reserved land of the petitioner and that it would not have any objection if the land is de-reserved as referred to under section 127 of the Maharashtra Regional & Town Planning Act, 1966.

4. While the position is as aforesaid so far as the planning authority is concerned, the State Government, in response to the writ petition has purportedly referred to, which is relevant for us to consider that the notice issued by petitioner on 12.04.2016 had not been accompanied with documents showing his title or

interest in concerned land as required by section 127 of the Maharashtra Regional & Town Planning Act, 1966.

5. Learned counsel for the petitioner states that subsequently relevant documents of title and interest have been submitted to the appropriate authority/planning authority as appendices to the notice. This position as well is not disputed by the respondents.

6. Learned counsel for the petitioner refers to a decision of the division bench (in which one of us, Justice Smt. Vibha Kankanwadi, had been a Member) at principal seat delivered on 21.08.2017, particularly paragraph No.7 thereof, relevant extract of which is being reproduced herein below;

" 7.....

... Even if for the sake of arguments, it is accepted that along with notice dated 27th June 2012, no document of title was forwarded; yet, that defect was cured in the reply dated 31st July, 2012. The Revised Development Plan had come into force on 18th December, 1999, the further process of acquisition ought to have been started within the stipulated period of 10 years thereafter. Therefore, we do not see any defect in the notice that has been issued by the petitioner."

and submits that while it is obvious that even after submission of relevant document, for more than two years, no steps whatsoever have been taken for acquisition of the land. He submits that subject matter of present petition is squarely covered under aforesaid observations and statutory effect shall

follow.

7. The respondents did not dispute the ownership of the petitioner over the land. While the factual position remains undisputed and the land is reserved for primary school since 1994 and despite notice in 2016, till this date, there have been no steps whatsoever taken with regard to acquisition of the land or for that matter development for reserved purpose, it is a case where, under statutory operation the land stands dereserved and would be available for use by the owner as referred to under section 127 of the Maharashtra Regional & Town Planning Act, 1966.

8. In view of aforesaid, the procedure viz; issuance of notification in gazette may have to be followed by the authorities. In view of aforesaid, following order:-

ORDER

(a) It is hereby declared that the reservation on land bearing CS No.249 situated at Sailu – Satona road, Taluka Sailu, District: Parbhani belonging to the petitioner has lapsed and the said land is available to the owner for development as otherwise permissible in respect of the adjacent land;

(b) The State Government is directed to notify the lapsing of the reservation by an order to be published in the official

gazette as per the requirement of section 127 (2) of the MRTP Act, which should be done as expeditiously as possible and preferably within a period of 3 months from the date of uploading of this order;

(c) The petitioner is at liberty to make an application for grant of development permission on the aforesaid land which shall be considered in accordance with law.

(d) The writ petition stands allowed in aforesaid terms.

(e) Rule is made absolute.

(SMT. VIBHA KANKANWADI, J)

(SUNIL P. DESHMUKH, J)