

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

WRIT PETITION NO.15180 OF 2017

Umakant s/o. Kashinathappa Khubba, .. Petitioner
Age. 76 years, Occ. Retired,
R/o. Khandoba Galli, Latur,
Tq. & Dist. Latur
Died - through his legal representative
Shaileja s/o. Kashinathappa akhubba
Age. 40 years, Occ. Household,
R/o. Khandoba Galli, Latur,
Tq. & Dist. Latur.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Director of town Planning,
Maharashtra State, Pune.
3. The Deputy Director of town Planning,
Latur, Tq. & Dist. Latur.
4. The Collector,
Latur, Dist. Latur.
5. The Municipal Corporation,
Latur, Dist. Latur,
Through Commissioner.

Mr. P.P. More, Advocate for the petitioner.
Mr. P.N. Kutti, AGP for respondent Nos. 1 to 4/State.
Mr. S.P. Urgunde, Advocate for respondent No.5.

**CORAM : SUNIL P.DESHMUKH &
S.M.GAVHANE,JJ.
DATED : 01.07.2019**

ORAL JUDGMENT [PER : S.M. GAVHANE,J.] :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at admission stage.

2. By this petition under Article 226 of the Constitution of India, the petitioner [since deceased, now through his legal representative] has prayed to issue writ of mandamus to direct the respondent-authorities to release land bearing Survey No.154/2 admeasuring 60R situated at Latur within the limits of Municipal Corporation, Latur, reservation site Nos.111,112 and 113 and further directions to the respondent-authorities to notify the lapsing of reservation by publishing order in official gazette as per section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 [for short "MRTP Act"], within a period of three months.

3. Original petitioner claims that he is owner of land admeasuring 1 Hectare from Survey No.154/2 by succession. Original Latur City Development Plan was sanctioned in the year 1975. Thereafter, new Development Plan was sanctioned by the State Government on 02.01.2002 and as per said Development Plan, Eastern side 60 R land from Survey No.154/2 of the petitioner came to be reserved for garden, play ground, cultural center and library, as per reservation site Nos.111, 112 and 113. However, respondent-

authorities did not take steps in pursuance of the Development Plan to acquire land. Therefore, the petitioner issued notice dated 10.09.2015 through advocate under section 127 of the MRTP Act to the respondent-authorities to release land as the reservation was lapsed, as about 13 years have been lapsed from the revised Development Plan in 2002. Despite, receipt of said notice, respondent-authorities failed to acquire land within one year of receipt of notice as per law and hence the land shall be deemed to be released from such reservation. Therefore, this petition for directions as said earlier.

4. Mr. More, learned Counsel for the petitioner made submissions in the light of aforesaid contentions of the petitioner. It is submitted that 12 months' period of notice under section 127 of the MRTP Act has been amended from 29.08.2015 and now said period is 24 months. It is submitted that respondent-authorities, particularly respondent Nos.3 and 5 have received notice dated 10.09.2015 [Exh. "A"] under section 127 of the MRTP Act, calling upon them to acquire land within one year of receipt of said notice, failing which the petitioner would be entitled to development of land under reservation in the same manner as the use of the adjacent land is permitted. It is submitted that as the said notice was issued/given after amendment as above, in section 127 of the MRTP Act on 29.08.2015, even after expiry of two years' period from the date of receipt of aforesaid notice of the petitioner, the respondent-authorities failed to acquire the land and therefore said land is deemed to be de-reserved and therefore it is submitted that the petition be allowed and necessary

directions, as prayed, be issued.

5. Mr. More, learned Counsel for the petitioner has relied upon decision dated 02.08.2018 of Division Bench of this Court at Principal Seat in the case of **Satish Prakash Rohra & Anr. Vs. Municipal Corporation of Greater Mumbai & Ors. in Writ Petition No.2093 of 2015 along with Writ Petition No.2169 of 2015**, wherein the writ petitions were disposed of by passing order in the light of directions in paragraph No.28, which reads thus :-

“28. Accordingly, we dispose of the writ petitions by passing the following order :

(I) We hold that the reservation on the subject lands stands lapsed by virtue of the operation of section 127 of the MRTP Act, 1966 and that the subject lands shall become available to the owners thereof for the purpose of development as otherwise permissible in the case of adjacent land under the relevant sanctioned Development Plan;

(II) We grant time of one year from today to the respondents to initiate and complete the proceedings for compulsory acquisition of the subject lands in accordance with the provisions of the new Land Acquisition Act. Therefore, for a period of one year from today, notwithstanding the directions issued under clause (a) above, the petitioners or the owners of the subject lands shall not carry out any development on the subject lands or shall not create any third party rights therein and shall not part with possession thereof;

(III) On the failure of the respondents to complete acquisition and

to pay compensation to the persons interested within a period of one year from today, it will be open for the owners to deal with the subject lands as held in clause (a) above;

(IV) On the failure of the State Government to complete the acquisition and to pay compensation within a period of one year from today, the State Government shall forthwith issue a notification contemplated under sub-section 2 of section 127 of the MRTTP Act;

(V) Rule is accordingly made absolute on above terms."

. Mr. More, learned Counsel also relied upon decision of Division Bench of this Court dated 11.04.2019 in the case of **M/s. Trimurthy Enterprises Vs. The State of Maharashtra & Ors. in Writ Petition No.11452 of 2018** and in the said case directions were issued in paragraph Nos.10 and 11, which read thus :-

"10. The reservation site No.145 for the play ground stands lapsed. However, the petitioner shall not perform any activity on the said land for the period of one year. The Municipal Corporation is entitled to acquire the said land under the provisions of the statute within this period. If the Municipal Corporation fails to acquire the land within a period of one year, then the said land would be available to the petitioner for use in the same manner as the use of the adjacent land is permitted.

11. The reservation of primary school is concerned, admittedly, no steps for acquisition has been taken within a stipulated period. In view of that, reservation for the primary school i.e. reservation site No.144 stands lapsed. The petitioner is entitled to use the said

available in the same manner as the use of the adjacent land is permitted.”

6. Mr. Kutti, learned AGP for respondent Nos.1 to 4 referring the affidavit-in-reply submitted on behalf of respondent Nos.1,2 and 3 of town planner, submitted that as per the amended provision of section 127 of the MRTD Act, period of acquiring land under notice is 24 months. The legality of notice dated 10.09.2015 [Exh."A"] needs to be ascertained from the record of respondent No.5. It is necessary to see whether the petitioner has submitted all the relevant documents along with such notice and that suitable orders may be passed.

7. Mr. Kutti, learned AGP has placed reliance upon decision of the Apex Court in the case of **Municipal Corp. of Greater Mumbai Vs.Hiraman Sitaram Deorukhar, 2017 SCC OnLine SC 1739** and in paragraph 13 the Apex Court has observed thus :-

“13. Thus the provisions for open spaces in the statutory scheme were in effect made a statutory mockery. The authorities were bound to act with circumspection and to act timely to take steps to issue the requisite declaration as per development plan. They were well aware of the consequences. The inaction was impermissible in such an issue of great public importance, having constitutional imperative under Article 21 read with Article 48A and further it was in breach of fundamental duty imposed under Article 51A(g) to protect natural environment, and having the potential to lead to the derogation of the public interest. Such inaction is intolerable,

and the area ought to be preserved for park only. More so, considering its situation that it is encircled by garden area, the court cannot be a moot spectator and permit statutory provisions to become a mockery by inaction or lethargy on the part of the unscrupulous authorities. No reason is coming forth as to why steps were not taken by the concerned authorities to act in the public interest, as per the statutory mandate, and as per development plan. The duty is cast upon the authorities to act as *cestui que* trust with respect to the public park. As a matter of fact, Authorities ought to have issued forthwith a requisite declaration and ought to have completed the proceedings. Be that as it may, since there is lapse of reservation, and the land is still required for public park, and since now the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'the 2013 Act') have come into force, obviously the compensation has to be paid in accordance with the provisions contained in the said Act. In the circumstances, we direct that the land shall continue to be reserved and to be used for the public garden. However, the compensation shall be determined and paid in accordance with the principles laid down in the 2013 Act. Thus, we set aside the order passed by the High Court. Let compensation be determined after hearing the interested parties and it shall be decided within a period of six months from today. The appeals are accordingly allowed. No order as to costs."

8. Mr. Urgunde, learned Counsel appearing for respondent No.5 - Municipal Corporation, Latur, referring to the affidavit-in-reply of the Additional Commissioner of Municipal Corporation, submitted that period of one year of notice under section 127 of the MRTP Act is extended up to two years and the

petitioner has not annexed the relevant documents along with notice Exh."A". It is submitted that there is necessity of garden, play ground, cultural hall as well as library and therefore town planning department of State of Maharashtra has sanctioned development plan on 02.01.2002, vide reservation site Nos. 111 to 113. It is submitted that in pursuance of the draft development plan dated 02.01.2002, the Municipal Corporation vide office order bearing No.8555 dated 12.09.2017 has informed to the Standing Committee and Accounts Department about funds and the said proposal is under consideration of the Standing Committee and as such, after notice, the Corporation has forwarded the proposal to the Standing Committee and work of acquisition proceedings is going on. Therefore, some time and funds are required for the purpose of initiation of acquisition proceedings. Therefore, land of the petitioner may not be declared as de-reserved as prayed by the petitioner.

9. We have carefully considered the submissions made by the learned Counsel appearing for the parties and the learned AGP and perused the pleadings and the documents placed on record.

10. There is no dispute that the land Survey No.154/2 is owned by the petitioner. Out of the said land, as per Development Plan sanctioned on 02.01.2002 by the Government, 60R land has been reserved for garden/play ground, cultural center and library as per the site Nos.111, 112 and 113 for Latur Municipal Corporation. The respondent/ authorities have not acquired said

land for a period of ten years from the date of sanction of Development Plan on 02.01.2010. There is also no dispute that the petitioner served notice (Exh. "A") dated 10.09.2015 on the respondent - authorities, particularly on respondent No.5 - Commissioner, Latur Municipal Corporation and Competent Authority of the Town Planning Department of respondent No.3. Though, it is the contention of the respondent Nos.1 to 3 that the petitioner is required to annex with the notice the documents showing title or interest, respondents have not contended that they have not received said notice of the petitioner with documents of title. Even if, respondent No.5 has contended that the petitioner did not annex with the notice the relevant documents, it is seen from Exh. "A" notice that the petitioner annexed with the said notice 7/12 extract of the land in question. Therefore, it is obvious that the petitioner, who is owner of property by succession, has served notice under section 127 along with documents showing interest on the respondent-authority. It appears that said notice Exh. "A" was issued on 10.09.2015, after amendment in section 127 raising period of 12 months to 24 months. It is seen that even after receipt of this notice by the respondent - authorities in September, 2015, they seem to have not taken steps to acquire the land for a period of two years and then this petition was filed on 28.09.2017.

11. Part plan of sanctioned Development Plan of Latur shows that four sites i.e. site Nos.111, 112, 113 and 114 from land Survey No. 154 of Latur, were reserved respectively for garden, play ground, cultural center and library

and public & semi public. As regards reservation site of 111 and 112 are concerned, they are respectively reserved for garden and play ground. Since, respondent-authorities have not taken steps to acquire land for said site Nos.111 and 112 even after two years of service of notice and after ten years of the sanction of Development Plan, in 2002, said sites are deemed to be de-reserved. However, in the light of decisions of this Court in the cases of **M/s. Trimurty Enterprises (supra)**, **Satish Prakash Rohra (supra)** and decision of the Apex Court in the case of **Municipal Corporation of Greater Mumbai (supra)**, one year time is required to be given to the respondent-authorities to acquire the land reserved for garden and play ground. As regards, site No.113 reserved for cultural center and library is concerned, said site is deemed to be de-reserved in view of the fact that respondent-authorities have not taken steps to acquire said site for said purpose and therefore said site needs to be released as prayed by the petitioner. Therefore, following order is passed :-

(A) Petition is partly allowed.

(B) In respect of reservation sites No. 112 and 113, we grant time of one year from the date of receipt of writ of this order to the respondents to initiate and complete the proceedings for compulsory acquisition of the subject lands under reservation site Nos.111 and 112, in accordance with the provisions of the new Land Acquisition Act. Therefore, for a period of one year as above, notwithstanding the directions issued under clause (C) below, the petitioner or the owner of the subject lands shall not carry out any development on the subject lands or shall not create any third party rights therein and shall not part with possession thereof.

(C) On failure to comply with clause (B) above, reservation of site Nos.111 and 112 in land Survey No.154/2 shall stand lapsed

by virtue of operation of section 127 of the MRTP Act and that the subject lands shall become available to the owner thereof for the purpose of development as otherwise permissible in the case of adjacent land under the relevant sanctioned Development Plan.

(D) On failure of the respondents to complete acquisition and to pay compensation to the person interested within a period of one year as above, it will be open for the owners to deal with the subject lands i.e. Site Nos.111 and 112 as held in clause (C) above.

(E) On failure of the State Government to complete the acquisition and to pay compensation within a period of one year as above, the State Government shall forthwith issue a notification contemplated under sub-section (2) of section 127 of the MRTP Act.

(F) Reservation of site No.113 for cultural center and library stands lapsed by virtue of operation of section 127 of the MRTP Act and the subject land shall become available to the petitioner-owner for the purpose of development as otherwise permissible in the case of adjacent land under relevant sanctioned development plan.

(G) The State Government shall forthwith issue a notification contemplated under sub-section (2) of section 127 of the MRTP Act, in respect of site No.113.

12. Writ Petition is disposed of. Rule is accordingly made absolute on above terms.

[S.M.GAVHANE,J.]

[SUNIL P.DESHMUKH,J.]