

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

1003 WRIT PETITION NO. 6997 OF 2019

ANANTRAO NARAYANRAO PHUTANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Tope Sambhaji S.
AGP for Respondents No. 1 to 4 : Mr. S. B. Narwade
Advocate for Respondent No. 5 : Mr. S. S. Bora
Advocate for Respondent No. 6 : Mr. M. S. Deshmukh

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**CORAM: S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATE: 31st JANUARY, 2020

PER COURT:

1. We have heard Mr. Tope, learned counsel for the petitioner, Mr. Bora, learned counsel for the planning authority and Mr. Deshmukh, learned counsel for the Agricultural Produce Market Committee (APMC).

2. The land of the petitioner bearing Survey No. 53 situated at Parbhani is reserved as Site No. 4/08 for APMC to the extent of 12 H. 01 R. The development plan came into effect from 16.12.1999.

3. The petitioner issued a notice U/Sec. 127 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) on 01.02.2016. The receipt of the said notice by the planning authority is not disputed.

4. It is also not disputed that no steps are taken for acquisition by issuance of a declaration U/Sec. 126 of the MRTP Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*Act-2013*) within a period of two years from the date of service of the said notice. In fact, no such declaration is issued even till date. The Agricultural Produce Market Committee, it appears has communicated the planning authority that the reservation be released under its communication dated 10.04.2017.

5. It is abundantly clear that steps for acquisition would be initiated by issuance of declaration U/Sec. 126 of the MRTP Act read with Section 19 of the Act-2013 as held by the Apex Court in case of *Girnar Traders Vs. State of Maharashtra and others* reported in (2011) 3 S.C.R. 1.

6. Section 127 of the MRTP Act is a fetter on the power of eminent domain. The right to property, though is not a fundamental right still is constitutional right and now it has been brought within the contours of human right. The rightful owner of the property cannot be deprived of use and enjoyment of the property in perpetuity.

7. As no steps for acquisition are taken within a period of two years from the issuance of notice U/Sec. 127 of the MRTP Act, the reservation stands lapsed.

8. In light of the above, it is held that the reservation on the writ land of the petitioner stands lapsed. The petitioner is entitled to use the land as the adjacent land is permitted to be used. The State Government shall issue notification to that effect, preferably within a period of six (06) months.

9. Writ Petition is disposed of accordingly. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

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