

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

WRIT PETITION NO.11677 OF 2017

1. Kiran s/o. Govindrao Tirmanwar,
Age : 43 years, Occ. Business,
r/o. Velmapura, Near Ramesh,
Talkies, Kinwat, Dist. Nanded
 2. Kishanrao s/o. Govindrao Tirmanwar,
Age : 61 years. Occ. Retired,
r/o. Sai Kunj, VIP Road,
SVM Colony,
Kinwat, Dist. Nanded
 3. Ravi s/o. Govindrao Tirmanwar,
Age : 52 years, Occ. Service,
r/o. Velmapura, Near Ramesh
Talkies, Kinwat,
Kinwat, Dist. Nanded
 4. Anil s/o. Govindrao Tirmanwar,
Age : 49 years, Occ. Business,
r/o. Saraswati Colony, Kinwat,
Tq. Kinwat, Dist. Nanded
 5. Manoj s/o. Govindrao Tirmanwar,
Age : 47 years, Occ. Business,
r/o. Velmapura, Kinwat,
Tq. Kinwat, Dist. Nanded
- ..Petitioners

Vs.

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32

2. The Director of Town Planning,
Town Planning Office,
Central Building, Pune
3. The Assistant Director of
Town Planning,
Town Planning Office, Nanded
4. The Municipal Council,
Kinwat, Dist. Nanded
Through its Chief Officer ..Respondents

Mr.U.B.Bilolikar, Advocate for petitioners
Mr.S.B.Yawalkar, AGP for respondent nos.1 to 3
Mr.B.A.Darak, Advocate for respondent no.4

**CORAM : PRASANNA B. VARALE
AND
R.G. AVACHAT, JJ.
DATE : JANUARY 24, 2020**

JUDGMENT (PER R.G. AVACHAT, J.) :-

Rule, made returnable forthwith. Heard finally with the consent of learned Counsel for the parties.

2. This petition under Article 226 of the Constitution of India has been filed with the following main prayers :-

"(B) By an appropriate writ, order or direction in the like nature, it may be held and declared that reservation to the extent of 1 Hectar 21 R from survey Nos.233, 233/1, 233/2, 233/3 and 233/4 situated at Kinwat, Tq. Kinwat, Dist. Nanded reserved for play ground as part of development plan of Kinwat City dated 27.05.2002 is lapsed.

(C) By an appropriate writ, order or direction in the like nature, respondent no.1 may kindly be directed to publish notification under Section 127(2) of the Maharashtra Regional and Town Planning Act for deleting of land to the extent of 1 Hectar 21 R from Survey Nos.233, 233/1, 233/2, 233/3 and 233/4 situated at Kinwat, Tq.Kinwat, Dist. Nanded reserved for Play Ground from the development plan dated 27.05.2002 of Kinwat Municipal Council."

3. A short question that falls for consideration in this petition is, whether reservation of the land owned by the petitioners in the development plan prepared under the Maharashtra Regional and Town Planning Act, 1966 ("the M.R.T.P Act", for short) shall be deemed to have lapsed on account of the land having not been acquired or no

steps were taken for acquisition thereof within the statutory period from service of notice under Section 127 of the M.R.T.P. Act.

4. The petitioners are owners of land survey nos.233, 233/1, 233/2, 233/3 and 233/4 to the extent of 4 Hectar 60 R. The petitioners are brothers *interse*. Their father was original owner of the land comprised in Gat No.233. By virtue of mutation entry No.223, names of the petitioners have been recorded in the revenue record of land survey nos.233 and 233/1 to 233/4. The land ad-measuring 1 H 21 R has been reserved as site no.48 in the draft development plan of city of Kinwat on 27.05.2002. The land has been reserved for the purpose of play ground.

5. It is averred in the petition that since the land of the petitioners has been reserved in the development plan, they could not develop it. They have, thus, suffered financial loss. A period of over twelve years has passed post the development plan of

2002 came into being. Respondent no.4 – Municipal Council, Kinwat, did not take any step for acquisition of land reserved for play ground. The petitioners, therefore, issued a purchase notice under Section 127 of the M.R.T.P. Act to the respondents on 28.09.2015. On receipt of the notice, the Director of town planning, State of Maharashtra, directed respondent no.4 to act in accordance with the provisions of M.R.T.P. Act. Respondent no.4, in turn, asked the petitioners to submit the map and relevant documents. The petitioners complied with the requisition. Still, no steps have been taken for acquisition of the land. The reservation, therefore, lapsed. Hence, the petition.

6. Affidavit-in-reply came to be filed on behalf of respondent nos.1 to 3, stating therein that the land belonging to the petitioners has been reserved in the development plan of city of Kinwat. The development plan has been notified on 27.05.2002. On receipt of the notice, respondent no.4 has been

requested to take necessary steps in accordance with the provisions of M.R.T.P. Act. It is further averred in the affidavit-in-reply that the M.R.T.P. Act came to be amended. Amendment has been notified in the Government Gazette dated 31.12.2015. By virtue of the said amendment, the words "twelve months" appearing in Section 127(1) of M.R.T.P. Act, came to be replaced with the words "twenty four months" from the date of service of notice under Section 127 of the M.R.T.P. Act.

7. The Chief Officer of respondent no.4 filed affidavit-in-reply in his personal capacity. It has been averred in the affidavit-in-reply that he had, time and again, requested the President of Municipal Council to take appropriate steps. Elections for the Municipal Council were declared in October, 2017 and took place in December, 2017. A new body came to be elected. No decision has, however, been taken regarding acquisition of the land belonging to the petitioners.

8. Learned Counsel for the petitioners took us through the provisions of Sections 126 and 127 of the M.R.T.P. Act. He also invited our attention to the 7/12 extract of the land belonging to the petitioners. A copy of the notice issued under Section 127 of the M.R.T.P. Act has also been pointed out to, ultimately, submit that on receipt of the notice, the respondents failed to take steps for acquisition of the land. The land, therefore, stood de-reserved, submitted by learned Counsel for the petitioners.

9. Learned Counsel for respondent no.4 would, on the other hand, submit that the land has been reserved for play ground. It could not be deemed to have been de-reserved. Steps are being taken for acquisition of the said land. He, therefore, urged for dismissal of the Writ Petition.

10. Learned AGP representing respondent nos.1 to 3 reiterated the contentions raised in the affidavit-in-reply.

11. Section 127 of the M.R.T.P. Act reads thus:-

127. Lapsing of reservations-

[(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.]

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]

12. In the case of **Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabhai Bhimaji Dawkher and ors.**, AIR 2013 SC 3757, it has been observed thus :-

" Section 127 speaks of lapsing of reservation. It lays down that if any land reserved, allotted or designated for any purpose specified in any plan prepared and sanctioned under the 1966 Act is not acquired by agreement within ten years from the date on which a final Regional plan or final development plan comes into force or if proceedings for the acquisition of such land under the 1966 Act read with Land Acquisition Act are not commenced within that period, the owner or any person interested in the land may serve notice on the planning Authority, Development Authority or Appropriate Authority to that effect. That section further lays down that if the land is not acquired or no steps are commenced for its acquisition within six months from the date of service of notice, the reservation etc. shall be deemed to have lapsed

and the land shall be deemed to have been released from such reservation etc. so as to enable the owner to develop the same. The expression 'no steps as aforesaid' used in S.127 of the 1966 Act has to be read in the context of the provisions of the Land Acquisition Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under 1966 Act or the Land Acquisition Act. Steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the Land Acquisition Act. Any other interpretation of the Scheme of Section 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the Land Acquisition Act. But a holistic reading of the provisions makes it clear that while engrafting the substance of some of the provisions of the Land Acquisition Act in the 1966 Act and leaving out other provisions, the State Legislature

has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. If mere passing of resolution or sending of letter to Collector or State Govt. to acquire land is considered to be step for acquisition, it would lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

13. Let us appreciate factual matrix in the light of the statutory amended Section 127 of the M.R.T.P. Act and the legal position adumbrated in the **Shrirampur Municipal Council's** (supra) case.

14. Admittedly, the land belonging to the petitioners has been reserved in the development plan of the city of Kinwat. The land has been reserved for play ground. The development; plan came to be notified on 27.05.2002.

15. Respondent no.4 – Kinwat Municipal Council is the planning authority. It has, admittedly, been served with notice under Section 127 of M.R.T.P. Act in September, 2015. The petitioners had also submitted necessary documents to respondent no.4 as per its requisition. About eighteen years have lapsed after the land came to be reserved, while little over four years have passed after the notice under Section 127 of M.R.T.P. Act has been served upon the respondents. No effective steps have still been taken towards acquisition of the land belonging to the petitioners. As such, there is non application of Section 127 of M.R.T.P. Act. The land would, therefore, stand released from the reservation and

would be available to the petitioners for being used for the purpose of development, as otherwise permissible in the case of the adjacent land under the relevant plan. The State Government is under statutory obligation to notify lapsing of the reservation.

16. While reading papers of this file, we came across a copy of the judgment of Hon'ble Supreme Court in the case of **Municipal Corporation of Greater Mumbai and ors. Vs. Hiranman Sitaram Deorukhkar and ors., Civil Appeal No(s).11258 of 2017 (arising out of SLP (C) No.30524 of 2014, wherein it has been observed thus :-**

" This court has laid down that public interest requires some areas to be preserved by means of open spaces of parks and play grounds, and that there cannot be any change or action contrary to legislative intent, as that would be an abuse of statutory powers vested in the authorities. Once the area had been reserved, authorities are bound to take steps to preserve it in that method and manner only. These spaces are meant for the common man, and there is a duty cast

upon the authorities to preserve such spaces. Such matters are of great public concern and vital interest to be taken care of in the development scheme. The public interest requires not only reservation but also preservation of such parks and open spaces. In our opinion, such spaces cannot be permitted, by an action or inaction or otherwise, to be converted for some other purpose, and no development contrary to plan can be permitted.

The importance of open spaces for parks and play grounds is of universal recognition, and reservation for such places in development scheme is a legitimate exercise of statutory power, with the rationale of protection of the environment and of reducing ill effects of urbanisation. It is in the public interest to avoid unnecessary conversion of 'open spaces land' to strictly urban uses, for gardens provide fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. Once such a scheme had been prepared in accordance with the provisions of the MRTP Act, by inaction legislative intent could not be permitted to become a statutory mockery. Government authorities and officers were bound to preserve it and to take all steps envisaged for protection.

It could be legitimately expected of the authority to take timely steps in which they have failed. Their inaction tantamount to wrongful deprivation of open spaces/garden to public."

The Hon'ble Supreme Court has further observed as under :-

" 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."

17. The Division Bench of this Court in the case of **Satish Prakash Rohra and ors. Vs. Municipal Corporation of Greater Mumbai and ors., MANU/MH/2520/2018**, considered the aforesaid judgment of the Apex Court and observed as under:-

23. We have carefully perused the decision of the Apex Court. On page 10 of the said decision, the Apex Court has held thus:-

"It cannot be disputed that reservation made under section 127 of the MRTTP Act stands lapsed. At the same time area had been reserved for garden."
(emphasis supplied)

24. The Apex Court thereafter proceeded to discuss how there was a negligence on the part of the Planning Authority and the State Government to take steps for initiating acquisition proceedings. The Apex Court observed that no steps were forthcoming to act in the public interest as per the Development Plan. The Apex Court observed that the Authorities of the State ought to have published a declaration under the old Land Acquisition Act and ought to have completed the acquisition proceedings. After making this observation on pages 17 and 18, the Apex Court proceeded to observe thus:-

"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 appeal is accordingly allowed. No order as to costs."

(emphasis supplied)

25. Thus, careful perusal of the decision of the Apex Court shows that the finding of this Court that the reservation had lapsed has been affirmed and in fact, the Apex Court has held that it cannot be disputed that the reservation has lapsed. However, after finding that the reservation of the subject land was necessary for a public park, a direction has been issued by the Apex Court to acquire the said land by paying compensation in accordance with new Land Acquisition Land. After holding that the reservation has lapsed, the aforesaid direction has been issued by the Apex Court in exercise of its plenary powers under

Article 142 of the Constitution of India. The decision of the Apex Court in the case of Girnar Traders(2) (supra) and Shrirampur Municipal Corporation (supra) are of larger Benches. Therefore, we are unable to issue the same directions which are issued by the Apex Court. As observed earlier, the directions have been issued in exercise of power under Article 142 of the Constitution of India. There is no more reason why we have held that the said direction was in exercise of the power under Article 142. The day on which the judgment in the case of Deorukhkar was delivered, Special Leave Petitions arising out of the judgments of this Court in these two petitions were disposed of by the same Bench by passing an order of remand. Though the facts of these two cases were similar, the Apex Court has not chosen to issue similar directions in these two cases.

26. Notwithstanding the lapsing of reservation, the respondents can always acquire the land subject matter of these two petitions by taking recourse to the new Land Acquisition Act, though the provisions of sections 125 and 126 of the M.R.T.P. Act will not be available for such acquisition in view of lapsing of the reservations. Therefore, while acceding to the prayer made by the petitioners, we propose to grant time of one year to the State Government to acquire the subject lands by directing that for the said period, the petitioner shall not carry on any

development. In fact, in both the Writ Petitions, there is a statement made on oath by the petitioner without prejudice to the other contentions by the petitioners that if compensation as stated in the affidavit is paid within the reasonable period of six months, they have no objection for acquisition of the subject lands.

18. In view of the above, the Writ Petition stands disposed in terms of the following order :-

(a) Reservation of the site to the extent of 1 Hecter 21 R from Survey Nos.233, 233/1, 233/2, 233/3 and 233/4 situated at Kinwat, Tq. Kinwat, Dist. Nanded, for play ground, as part of development plan of Kinwat City dated 27.05.2002, stands lapsed.

(b) The petitioners, however, shall not perform any activity on the said land for a period of one year.

(c) Respondent no.4 - Municipal Council is entitled to acquire said land in accordance with law.

(d) On failure on the part of the Municipal Council to acquire the land within the period of one year from 1st June, 2020, the said land would be available to the petitioners for use in the same manner as the use of the adjacent land is permitted.

(e) Rule made absolute accordingly.

[R.G. AVACHAT, J.]

[PRASANNA B. VARALE, J.]

kbp