

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

**WRIT PETITION NO. 8928 OF 2016**

- 1] Anil Dattatraya Girme,  
Age : 64 years, Occu. Agriculture,
  - 2] Ashok Dattatraya Girme,  
Age : 62 years, Occu. Agriculture,
  - 3] Dilip Dattatraya Girme,  
Age : 60 years, Occu. Agriculture,
  - 4] Vijaya Ashok Pandhare,  
Age : 66 years, Occu. Household  
  
All R/o.: Near Fatherwadi,  
Kopargaon, District Ahmednagar.
  - 5] Ketan Vilas Kulkarni,  
Age : 36 years, Occu. Service,  
R/o.: Bramhan Galli, Near Bharat Press,  
Kopargaon, Tal. Kopargaon,  
Dist. Ahmednagar.
  - 6] Nikhil Vilas Kulkarni,  
Age : 34 years, Occu. Service,  
R/o. As above.
- .. Petitioners

Versus

- 1] The State of Maharashtra  
Through the Ministry of  
Urban Development, Mantralaya,  
Mumbai-32.
- 2] Municipal Council, Kopargaon,  
through its Chief Officer,  
Kopargaon, Dist. Ahmednagar.
- 3] Assistant Director of Town Planning,  
Ahmednagar, At Post Taluka and District  
Ahmednagar.
- 4] Deputy Director of Town Planning,  
Nashik Division, Nashik.

- 5] Director of Town Planning,  
Maharashtra State, Central Building,  
Pune. .... Respondents

....  
Shri. A. P. Bhandari, Advocate for the petitioner  
Shri. G. O. Wattamwar, AGP for respondent/State  
Shri. Milind Patil (Beedkar), Advocate for respondent No. 2  
....

**CORAM : SUNIL P. DESHMUKH  
AND  
B. U. DEBADWAR, JJ.**

**Date : 26-02-2020**

**ORAL JUDGMENT [ Per B. U. Debadwar, J. ] :-**

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

2. Petitioners have filed this writ petition under Article 226 of the Constitution of India for quashing and setting aside the second revised development plan of respondent No. 2 – Municipal Council, Kopargaon, sanctioned on 28.12.2012, to the extent of lands bearing Survey Nos. 103 and 104 belonging to them and for declaration that they are entitled to develop the said lands.

3. The facts giving rise to the present petition in nutshell, are as under :

. Shri. L. S. Kulkarni was the owner of the lands bearing Survey No. 103, adm. 15 Hectors 17 R. including un-cultivable portion of 3H. 98R. and Survey No. 104 adm. 3H. 35R. including un-cultivable portion of 37R., both situated at Kopargaon, Tq. Kopargaon, Dist. Ahmednagar (hereinafter referred to as 'lands'). After the death of Shri. L. S. Kulkarni, his right, title and interest in the lands was succeeded by his son Vasant L. Kulkarni and heirs of pre-deceased son Vilas Vasant Kulkarni viz. Smt. Sushila (wife), Ketan (elder son) and Nikhil (younger son). After the death of Smt. Sushila, Ketan and Nikhil who are petitioner nos. 5 and 6 of this petition, succeeded her share.

4. Petitioner nos. 1 to 4 were in continuous physical possession of lands as tenants. In due course of time, the compromise took place between petitioner nos. 1 to 4 on one part and petitioners no. 5 to 6 on other part and in the said compromise, petitioner nos. 5 and 6 relinquished their ownership rights to the extent of 5H. 18R. out of Survey No. 103 and 1H. 10R. out of Survey No. 104 in favour of petitioner nos. 1 to 4 and retained ownership of remaining portion of both the lands with them. As such, petitioner nos. 1 to 6 are the owners in possession of both the lands to the extent of their shares as shown in revenue record.

5. Respondent No. 2 – Municipal Council, Kopargaon is the Planning Authority within the meaning of Section 2 Sub-section 19 r/w Section 2(15)(b) of the Maharashtra Regional Town Planning Act, 1956 (hereinafter referred to as the “Act”). Petitioner No. 2 vide its resolution No. 13-A dt. 13.11.1975 prepared revised Development Plan of Kopargaon City. The said development plan published in Official Gazette dt. 11.12.1975. Thereafter, respondent No. 2 added some additional area in proposed Development Plan by way of additional Development Plan. On 29.10.1980, respondent No. 2 submitted both the proposed development plans i.e. revised provisional development plan and revised additional provisional development plan to respondent No.1 for sanction and in turn respondent No. 1 sanctioned the same on 02.05.1988 and implemented with effect from 01.08.1988. In so sanctioned revised development plan, both the lands belonging to the petitioners shown to have been reserved for the purposes of Garden, Open Space, Kabrasthan Park and Public Latrine.

6. Though revised development plan was sanctioned in the year 1988, there was no acquisition of land of the petitioners for the purposes, for which they were reserved during the period of 10 years.

Therefore, after completion of more than 10 years, petitioners issued notice u/s 127 of Act, calling upon the respondent no.2-Municipal Council, Kopargaon, to acquire the lands belonging to them. In spite of service of the said notice, respondents did not initiate acquisition proceedings and issue notification u/s 6 of the Land Acquisition Act, 1894, within the period of six months from the date of service of the notice. Consequently, petitioners approached this court and filed writ petition bearing No. 6959 of 2008 against the respondents of present writ petition, for direction to them to release the lands. The said writ petition came to be allowed on 31.08.2009 and thereby their lands came to be released from the revised development plan of Kopargaon city sanctioned on 02.05.1988.

7. In spite of releasing the lands in pursuance of the Judgment and Order dated 31.08.2009 delivered by this Court in Writ Petition No. 6959 of 2008, respondent No. 2 published draft of second revised development plan of Kopargaon city, showing addition of certain other portion of lands reserved again for the purpose almost similar to earlier purpose. Petitioners raised objection to the same. In pursuance of the written objection dated 04-09-2009, respondent no. 2 called them upon for hearing on 25.10.2010 by issuing notice dt. 07.10.2010. Even after bringing to their notice the

aforesaid judgment and order by which their lands came to be released draft of second revised development plan reported to have been sanctioned on 28.12.2012 reserving their lands, by making cosmetic changes in the purpose to which they were reserved in earlier revised development plan. As such, they have approached this court under present writ petition.

8. Respondents No. 1, 3, 4 and 5, though appeared through AGP, failed to file affidavit-in-reply of competent authority. However, respondent No. 2 – Municipal Council and Planning Authority of Kopergaon by filing affidavit-in-reply of Mr. Nilesh Anil Mirikar, its competent authority, resisted the petition *inter-alia* contending that draft of second revised development plan was published prior to the judgment and order passed in Writ Petition No. 6959 of 2008. After raising the objections, petitioners were called upon for hearing before the Planning Committee constituted as per Section 28(2) of the Act, on 25.10.2010. Planning Committee did not consider their objection, but its General Body after considering the same resolved not to maintain the reservation of the lands belonging to the petitioners and forwarded resolution to the respondent No. 1 for removing the lands from proposed second revised development plan. However, Government approved and sanctioned the second revised

development plan on 28.12.2012, as it is. It is also contended by respondent No. 2 that, respondent No.1 – Government of Maharashtra u/s 37 of the Act is empowered to take appropriate steps for deleting the lands belonging to the petitioners which are under reservation in second revised development plan. They are also taking the steps and pursuing the matter before the Government for deleting the lands. Besides, it is contended that, in second revised development plan, for first time some portion of lands reserved as green belt for maintaining eco-system and some portion reserved for construction of vegetable market and shopping complex. Therefore, said reservations will not lapse for non-compliance of notice u/s 127 of the Act, issued in 2007. Accordingly, prayed for passing suitable order.

9. Heard the learned counsel for the petitioner and the learned counsel for respondents.

10. Aspects pertaining to the title of the petitioners over the lands in question and de-reservation of the same in pursuance of the judgment and order dt. 31.08.2009 passed in Writ Petition No. 6959 of 2008, need not be looked into as the said judgment attained finality. The only issue needs to be considered is, whether the lands

which have already been de-reserved from the revised development plan, can be reserved again in second revised development plan due to non-compliance of notice u/s 127 of the M.R.T.P. Act.

11. Mr. Bhandari, learned counsel representing petitioners vehemently argued that both the lands belonging to the petitioners were reserved in revised development plan of Kopargaon city, Dist. Ahmednagar, for various purposes, sanctioned in the year 1988. Since Planning Authority and Municipal Council, Kopargaon could not acquire the same within the statutory period of 10 years, the notice u/s 127 of the Act was issued by the petitioners and served on respondent no. 2 – Municipal Council & Planning Authority of Kopargaon. Despite due service of notice, respondent no. 2 failed to initiate acquisition proceedings to acquire the lands within the period of six months from the date of service of notice, therefore, both the lands came to be released by virtue of Section 127 of the Act. Declaration to this effect is also made in Writ Petition No. 6959 of 2008. In spite of the de-reservation of the lands by virtue of law, respondents again reserved the same in second revised development plan of Kopargaon city with some modification in purpose, which is unsustainable. Therefore, both the lands need to be deleted from second revised development plan sanctioned on 28.12.2012. In

support of the aforesaid submissions, he has placed reliance on as many as six judgments rendered by Hon'ble Supreme Court and this Court viz.

- 1] **Prafulla C. Dave and ors. Vs. Municipal Commissioner & ors.** [2008 (3) Mh.L.J. 120]
- 2] **Godrej & Boyce Manufacturing Co. Ltd. Versus State of Maharashtra & Ors** [2015 AIR (SCW) 826]
- 3] **Kishor Siddheshwar Wadotkar Vs. Director of Town Planning** [2007 (4) MhLJ 427]
- 4] **Kishor Gopalrao Bapat Vs. State of Maharashtra** [2005 4 MhLJ 466]
- 5] **Dinkar s/o. Balwantrao Kadam Vs. The State of Maharashtra & Ors.** [Writ Petition No. 5281 of 2005, decided on 11-02-2016].

12. Per contra, Shri. G. O. Wattamwar, learned Additional Government Pleader representing respondents no. 1, 3 & 5 and Shri. Milind Patil (Beedkar), learned counsel representing respondent no. 2 have made twofold contentions. As far as first contention is concerned, they argued that, reservation for vegetable market, play ground and green belt shown in second revised development plan was not shown in revised development plan. Therefore, these three reservations would not be covered by notice u/s 127 of the Act, which was held to be valid in Writ Petition No. 6959 of 2008. As far as second contention is concerned, they argued that the effect of the

purchase notice u/s 127 of the Act given to the Planning Authority & Municipal Council, Kopargaon, on 11.12.2007 will not wipe out the effect of the second revised development plan sanctioned in the year 2012. Therefore, the present writ petition is not maintainable.

13. In light of the aforesaid submissions made at bar by the counsel representing both the sides, we have carefully gone through the record in its entirety.

14. In view of the facts which are not disputed by either side, it is necessary to see whether the lands once de-reserved from revised development plan by operation of law can be reserved again, in second revised plan with some variation in purpose.

15. In the case of *Godrej & Boyce Manufacturing Co. Ltd. Versus State of Maharashtra & Ors* [2015 AIR (SCW) 826], in the year 1991, appellants' land in question was reserved under sanctioned development plan of Greater Mumbai for laying down additional Railway tracks between Thane and Kurla. No steps were taken by the concerned authorities despite passing of ten years of period as contemplated u/s 127 of the MRTP Act to acquire the reserved land. Therefore, the appellants issued purchase notice under said section on 04.09.2002 to the Ministry of Railways-

respondent no.2, stating that, if it is in need of lands in question, the same may be acquired by them and if the same is not required, a notification to that effect may be issued. After issuing the same notice, the period of six months as prescribed u/s 127 of the MRTP Act was expired on 03.03.2003. Ministry of Railways-respondent No. 2 informed the Urban Development Department that there was no proposal for acquisition of the reserved land for railway development works in the Railways in the near future, vide communication dated 01.11.2004. Despite that, the Urban Development Department of the State Government issued notification on 24.05.2006 u/s 37(1) of the MRTP Act, proposing the modification to the development plan by deleting "Railway reservation" and adding "Reservation for DP Road". The land which was reserved earlier in the Development Plan for railway line, the period of 10 years and 6 months after issuing notice was lapsed, now proposed to be reserved for Development Plan Road. The same was followed by another notification issued by the State Government under Section 37(1) of the MRTP Act dated 5.8.2008 for modification of the land deleting from the Railway reservation and reserving the same for Development Plan Road.

. Being aggrieved by the said notification dated 05.08.2008 proposing the modification of reservation of the land in question from the Railway line to Development Plan Road, the

appellant approached the Principal Seat of this Court by filing Writ Petition No. 2274 of 2011 challenging the correctness of the said notification by placing strong reliance upon Section 127 of the MRTTP Act, contending that the proposed modification by the Urban Development Department is impermissible in law as the State Government has no power to do so. The Principal Seat of this Court vide order dated 12.12.2011 dismissed the writ petition by holding that the action of the State Government is only proposed modification and therefore, the writ petition cannot be entertained at this stage. However, given liberty to the appellant to raise objections before the Urban Development Department of the State Government regarding the proposed modification. Further, it is observed that, impugned notification was issued in the month of August, 2008, whereas the appellant has filed the petition in the month of August, 2009. In the absence of explanation by the appellant for filing a petition about one year after the issuance of impugned notification, the writ petition was also rejected on this ground. Being aggrieved by the aforesaid judgment and order passed by the Principal Seat of this Court, the appellants rushed to the Hon'ble Supreme Court with present civil appeal and Hon'ble Supreme Court held as under:

“The impugned notification is bad in law and liable to be quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTTP Act and interpretation of the above said provision made in the case of Girnar Traders (2) (supra),

therefore, giving liberty to the appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided under Section 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months notice served upon the State Government.”

16. In the case of **Prafulla C. Dave and ors. Vs. Municipal Commissioner & ors.** [2008 (3) Mh.L.J. 120], the land belonging to the appellant measuring 83 Ares, situated at village Aundh, Pune, was included in the development plan of city of Pune, notified on 08.07.1966 and shown to be kept under reservation for public purpose i.e. garden. The land was not acquired by resorting to any of the modes under Section 126 of the MRTP Act at any point of time prior to the sanction of a revised development plan dated 05.01.1987 which continued the reservation of the land for the same purpose i.e. garden. Appellants who purchased the land in the year 1989 i.e. after sanctioning of the revised development plan, first time served the notice dated 05.10.1989 u/s 127 of MRTP Act, on Planning Authority and Municipal Corporation, Pune, since Planning Authority and Municipal Corporation, Pune, did not comply with the notice.

Appellant submitted lay-out plan for sanction which came to be rejected by Corporation in 1990. Against rejection of lay-out plan, initially appellants filed appeal u/s 47 of MRTP Act and appeal came to be rejected holding that the notice u/s 127 of the MRTP Act was premature as it was issued before completion of the period of 10 years from the date of revised development plan and therefore he filed writ petition before the Principal Seat of this Court. On dismissing the writ petition, they rushed to the Hon'ble Supreme Court with appeal and Hon'ble Supreme Court held as under :

“Notice under Section 127 of the MRTP Act was issued only two years after the final revised plan under Section 38 of the MRTP Act which had come into operation. The rejection of the appellants' plea before the appellate authority under Section 47 of the Act as well as the rejection of the writ petition filed by the appellants before the Bombay High Court was, therefore, fully justified. Consequently, we find no reason to interfere with the impugned order dated 20.09.2007 passed by the High Court of Bombay. Accordingly, the appeal is dismissed. However, in the facts and circumstances of the case, we make no order as to costs.”

17. The facts of the case at hand are different from the facts in the case of Prafulla C. Dave (supra). In case at hand, notice u/s 127 of the Act was given to respondent no. 2 – Municipal Council, Kopergaon and Planning Authority, more than 10 years after final revised plan had come into operation and that, notice declared to be valid in Writ Petition No. 6959 of 2008. In spite of that, lands came to be reserved in second revised plan with some modification in

purpose. Therefore, the aforesaid ratio laid down by the Division Bench of this Court does not apply to the case at hand.

18. The issue involved in the case of **Kishor Siddheshwar Wadotkar Vs. Director of Town Planning** [2007 (4) MhLJ 427] was, whether after lapsing of reservation under Section 127 of the MRTP Act, the Planning Authority is entitled in law to again reserve the said land in the revised development plan for public purpose or the owner of the land is entitled to get the land released from reservation as per scheme of Section 127 of the MRTP Act and while answering the issue, the Division Bench of this Court in para 8 of its judgment held as under.

“8. In view of settled legal position, it is evident that right accrued to the petitioner to get the land released from the reservation under Section 127 of the MRTP Act cannot be taken away merely because land in question is again shown to be reserved in the revised development plan. On the other hand, plain reading of provisions of Section 127 of the MRTP Act demonstrate that after lapsing of period of ten years, if the concerned Authority fails to take steps in respect of acquisition of land or does not acquire the land within a period of six months from the date of service of notice as contemplated under Section 127, reservation shall be deemed to have lapsed and land shall be deemed to be released from such reservation. As per the scheme prescribed under Section 127 of the MRTP Act, it is implicitly clear that once the period of ten years is lapsed and the Planning Authority has not taken steps to acquire the land within a period of six months from the date of service of notice, by virtue of deeming fiction, reservation shall be deemed to have been lapsed and land shall be deemed to have been released from such reservation. Similarly, right which is accrued to the owner of the land after lapsing of reservation cannot be taken away by the Planning Authority by exercising power under Section 38 of the MRTP Act, by again reserving the land for the public purpose in the revised development plan. The issue is answered accordingly.”

19. In the aforesaid case of Kishor Wadotkar (supra), initially plot was reserved for extension of dispensary in the development plan of city of Jalgaon Jamod of the year 1976 and after de-reservation of the same, due to non-compliance of the notice u/s 127 of the Act, again in revised development plan it was reserved for construction of shopping complex. Therefore, the aforesaid legal position emerging from the judgment squarely applies to the case at hand.

20. In the matter of **Kishor Gopalrao Bapat Vs. State of Maharashtra** [2005 4 MhLJ 466], the Division Bench of this Court while dealing with the question, whether the Planning Authority exercising power under Section 38 of the M.R.T.P Act, which deals with revision of the development plan, can take away the rights accrued to the owner of the land on account of lapsing of reservation in view of contingencies mentioned in Section 127 of the M.R.T.P Act. Relying on the ratio laid down by the Hon'ble Supreme Court in the case of **Bhavnagar University v. Palitana Sugar Mills (P) Ltd., and Ors.** 2003 (1) S.C.C. 111, held as under.

“14. In view of the above referred **settled legal position**, the **land of the petitioners cannot be again subjected to same reservation**, which was made earlier in 1978 development plan and, **therefore, we have no hesitation to hold that the act of the Planning Authority subjecting the land of the petitioners once again to reservation is unsustainable in law** and therefore, **we declare the said reservation as illegal and**

**unsustainable in law** and land of the petitioners, i.e. Plot No. 90/1 and 90/2 is declared to be released from reservation made in the final development plan, which was published on 9-1-2004. The petitioners are entitled to make appropriate application for permission to develop the land in question to the Planning Authority. If such application is made by the petitioners, respondent No. 2 Planning Authority is directed to decide the same on its own merits according to law as early as possible and in any case not beyond the period of three months from the date of receipt of such application.”

21. In the matter of **Dinkar s/o. Balwantrao Kadam Vs. The State of Maharashtra & Ors.** [Writ Petition No. 5281 of 2005, decided on 11-02-2016], the final development plan was published in the year 1975. The land of the petitioner to the extent of 82 *Ares* of Survey No. 334-A was reserved for open space. On 13.02.1995, the petitioner issued a **purchase** notice to the respondent - Municipal Council. The said notice u/s 127 of the MRTP Act was served upon the respondent – Municipal Council in the year 1997. Revised development plan was sanctioned. In the said revised development plan, 36 *Are* land of the petitioner was deleted and 48 *Are* land again reserved for play-ground instead of open space. In view of these facts, the Division Bench of this Court held as under.

“Once the respondents failed to acquire the land within the statutory period as laid down u/s 127 of the Act, then the land would automatically stand released from the reservation and obligation casts upon the respondent No. 4 – Municipal Council to notify the same.”

22. The facts of the case at hand are quite close to relevant facts in Godrej & Boyce Manufacturing Co. Ltd. (supra). It appears

that the judgment delivered by the Hon'ble Apex would hold sway over the case in hand.

23. Having considered the admitted facts of the case at hand and the judgment of Hon'ble Supreme Court in the case of Godrej Boyce Manufacturing Co. Ltd. and the Division Benches of this Court discussed supra, we consider that the reservation of the lands in second revised development plan of respondent No. 2, which were declared to be de-reserved by the judgment and order passed by this court in Writ Petition No. 6959/2008, to the extent of said lands is unsustainable and revised development plan dated 28-12-2012 impugned in petition to the extent of said lands is inoperative and inefficacious. The writ petition is accordingly partly allowed.

24. Rule made absolute accordingly.

**[ B. U. DEBADWAR ]**  
**JUDGE**

**[ SUNIL P. DESHMUKH ]**  
**JUDGE**