

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

41 WRIT PETITION NO.11123 OF 2019

ANAND NARAYANRAO KATRUWAR

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

WITH

WRIT PETITION NO.11155 OF 2019

ULHAS NARAYANRAO KATURWAR

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Pravin S. Dighe, Advocate for the Petitioners.
Mr. S. B. Yawalkar, AGP for Respondents-State.
Mr. Raviraj R. Chandak, Advocate for Respondent
No.5.

...

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

DATED : 12th FEBRUARY, 2020.

PER COURT:-

1. The land of the petitioner in Writ Petition No.11123/2019 bearing Survey No.258/5 part of admeasuring 2H 46R at Manwat Tq. Manwat is reserved as Site No.74 for garden and land bearing Survey No.258/6 admeasuring 40R of the petitioner in writ Petition No.11155/2019 is reserved for garden as Site No.74.

2. The petitioners have issued notice on 03.04.2017 under Section 127 of the M.R.T.P. Act. The contention of petitioners is that the respondents have not taken steps for acquisition, the reservation stands lapsed.

3. The respondents have filed their affidavit. The respondents do not dispute receipt of the notice under Section 127 of M.R.T.P. Act dated 03.04.2017. It is contended that by letter dated 07.11.2019 the Planning Authority communicated the Assistant Directory, Town Planning that as the financial condition of the Municipal Council is not good, therefore, no action for acquisition of the land of petitioners has taken place.

4. The respondents do not dispute the receipt of the notice under Section 127 of the M.R.T.P. Act. Admittedly, no steps for acquisition are initiated within a period of two years from the date of service of notice under Section 127 of the M.R.T.P. Act. Section 127 of the M.R.T.P. Act is a fetter on the power of eminent domain. In view of judgment of the Apex Court in a case of **M/S. Girnar Traders vs State Of Maharashtra & Ors** reported in 2007 (7) SCC 555 the reservation stands lapsed.

5. The land is reserved for garden. The Apex Court in a case of **Municipal Corp. Of Greater Mumbai & Ors. Vs. Hiranman Sitaram Deorukhar & Ors**

under order dated 12.09.2017 observed that the gardens, playgrounds operate as lung of the city. The Planning Authority should acquire the said property

6. The balance will have to be struck considering the right of the owner and the obligation of the Municipal Council.

7. In light of that we pass the following order:

ORDER

(a) We hold and declare that the reservation on writ lands of petitioners as Site No.74 stands lapsed. The lands stand released from reservation. However, petitioners shall not use the said land for any purpose for a period of one year. The respondents-Municipal Council shall acquire the said property within a period of one year.

(b) If the Municipal Council fails to take steps for acquisition of the said lands within a period of one year, then petitioners shall be entitled to use the lands as the adjacent land is permitted to be used.

(c) The State Government shall thereafter issue Notification about the release of the lands from the reservation.

8. Writ Petitions are allowed in above terms.
No costs.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/February-2020