

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

34 WRIT PETITION NO.12601 OF 2019

1. Girish @ Rajkumar Vaijinath Rachatte,
Age: 49 years, Occu: Business,
R/o Rajnikant Steel, D-15, MIDC
Latur, Tq. & Dist. Latur.
2. Babu s/o Pundlikrao Chilme
Age: 75 years, Occu: Agril,
R/o Near Krupa Sadan School,
Vithal Society, Latur, Dist. Latur.
3. Shalik s/o Venkatrao Gojamgunde,
Age: 58 years, Occu: Agril & Legal
Practitioner, R/o Sale Galli, Latur,
Tq. & Dist. Latur.
4. Smt. Geetabai Dhanraj Joshi,
Age: 75 years, Occu: Household.
5. Sow. Nirmala Vilas Oza,
Age: 50 years, Occu: Household,
Nos.4 and 5 Both R/o flat No.303,
3rd Floor, Indralaxmi Prastha,
Building No.3/2/200/223,
Somasundaram Sreet, Kalsiguda,
Secunderabad (Telangana).
6. Mozamkhan Osmankhan Pathan,
Died through L.Rs.
- 6A. Siddikha w/o Mozamkhan Pathan,
Age: 57 years, Occu: Household.
- 6B. Abdul Razak Mozamkhan Pathan,
Age: 37 years, Occu: Business.
- 6C. Soheb s/o Mozamkhan Pathan,
Age: 35 years, Occu: Business.
- 6D. Shahabaz s/o Mozamkhan Pathan
Age: 32 years, Occu: Business.

6E. Saddam s/o Mozamkhan Pathan,
Age: 30 years, Occu: Business.

6F. Juveria d/o Mozamkhan Pathan,
Age: 30 years, Occu: Household,
All R/o Behind Ghandhi Chowk,
Police Station, Latur,
Dist. Latur

..PETITIONERS

VERSUS

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

2. The Assistant Director of Town Planning
Municipal Corporation, Latur, Dist. Latur.

3. The Municipal Corporation,
Latur, Dist. Latur,
Through its Commissioner.

..RESPONDENTS

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Mr. Vinayak Sudhakar Bedre, Advocate for the
Petitioners.

Mr. A. R. Kale, AGP for Respondents-State.

Mr. D. S. Mali h/f Mr. Mahesh S. Patil, Advocate
for Respondent Nos.2 and 3.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 08th JANUARY, 2020.

ORAL JUDGMENT (Per: S. V. Gangapurwala, J.):—

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

2. The land of petitioners bearing Survey
No.17 to the extent of 19 acres 12 gunthas is

reserved as Site No.153, 154, 155, 156 and 157 in the Draft Development Plan of the Municipal Council, Latur. The petitioners issued notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 to respondents on 04.04.2016. The learned counsel submits that no steps are taken for acquisition, even after lapse of two years. The reservation stands lapsed.

3. Mr. Mali, learned counsel for respondent nos.2 and 3 submits that resolution has been passed by Municipal Council to acquire the land within a period of six months. The Municipal Council does not dispute the receipt of notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. Section 127 of the Maharashtra Regional and Town Planning Act, 1966 is a fetter on the power of eminent domain. The notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 has been served upon respondents. Admittedly, till the date declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 126 of Maharashtra Regional and Town Planning Act, 1966 is

not issued. The steps for acquisition are not initiated by operation of statute. The reservation stands lapsed.

6. It would appear that the land is also reserved for play ground and garden apart from primary school. The Apex Court in the case of **Municipal Corporation, Greater Bombay Vs. Hiranman Sitaram** decided on August 24, 2017 has observed as under:

"8. 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 urbanization. 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."

7. It has been further observed by the Apex Court in the aforesaid Judgment that the legislative intent behind provision of the MRTP Act, by inaction of the planning authority could not be permitted to become a statutory mockery. The authorities were bound to act with circumspection and timely

steps ought to have been taken to issue the requisite declaration as per the development plan. The Judgment of the Apex Court in case of Municipal Corporation, Greater Bombay Vs. Hiranman has been considered by the Division Bench of this Court in case of Satish Prakash Rohra and Anr. Vs. Municipal Corporation, Greater Mumbai and Ors. Writ Petition No. 2093/2015 decided on August 2, 2018. This Court considered the provision of Section 127 of the MRTP Act and the Judgment of the Apex Court in case of Municipal Corporation, Greater Bombay (supra) and observed that the reservation upon the expiry of the period stipulated in the notice U/s. 127 of the MRTP Act would axiomatically lapse, if no steps for acquisition are taken within the stipulated period. However, in view of the Judgment of the Apex Court gave liberty to the Planning Authority to acquire the property within a period of one year.

8. The consequences upon the inaction of the planning authority in taking steps for acquisition of the land reserved for any purpose specified in the plan within the period stipulated in Section 127 of the MRTP Act, after service of notice is axiomatic. The reservation, allotment or designation is deemed to have lapsed and the land is available to the owner for the purpose of development as otherwise permissible in case of adjacent land under the relevant plan.
9. The provision of Section 127 of the MRTP Act is fetter on the power of eminent domain. The right to property though is not a fundamental right still is a constitutional right. Nowadays, right to property is brought within the contour of Human right. The balance will have to be struck between the individual right and the rights of the public at large. Play ground is meant for use and enjoyment of the

general public viz. for whole society and the community at large. Open spaces, playgrounds, gardens are the lungs of the city. They are necessary for maintaining the environmental and ecological balance. The principle of *Salus populi suprema lex* can be referred to. Balance has to be struck between the rights of the petitioner vis a vis. the necessity to have open land.

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.
7. In view of the aforesaid, we pass following order:

ORDER

The reservation on the writ land stands lapsed, however, petitioners shall not perform any activity on the writ land for a period of one year. The respondent-

Municipal Council is entitled to acquire the writ land within a period of one year as per the provision of the Statute. If the respondents-Municipal Council fails to acquire the land within a period of one year, then said land shall be available to petitioners for use in same manner as the use of the adjacent land is permitted.

8. Rule is accordingly made absolute in above terms. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE