

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3369 OF 2008

Smt. Lajwanti Dilip Ghorpade .. Petitioner

v/s.

1. Chief Officer / Planning Officer,
2. Municipal Council Kurundwad,
Taluka Shirol, Dist. Kolhapur and ors. ..Respondents

Mr.Y.S.Jahagirdar, Sr. Counsel i/b. V.B.Rajure for the Petitioner.
Mr.Prashant Suryawanshi i/b/ Adv. Gajanan Savagave for the
Respondent Nos.1 and 2.
Mr.V.S.Gokhale, "B " Panel Counsel for the Respondent Nos.4 and 5.
Mr. Vijay Patil i/b. D,V,Sutar a/w. Anushree Kurup and Vaibhav Birmole
for the Respondent No.6.

**CORAM : A.A.SAYED &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED : 20 FEBRUARY, 2020.**

P.C. :

1. At the outset, by consent, we permit the Petitioners to amend the prayer clause b(i) to correct the date as 29.11.2008 instead of 29.12.2008. Amendment to be carried out forthwith.
2. The Petition is filed by the Petitioner seeking the following reliefs:
 - (a) the Reservation No.44 in the Development Plan of 1985 sanctioned by the Government on 3rd June, 1985 reserving the Petitioner's land admeasuring 0.48 Ares for School and Playground be kindly quashed and set aside by reason of lapsing of reservation;
 - (b) the Letters dated 7th September, 2007 and 20th July,

2006 issued by the Respondent No.3 and Letter dated 11th September, 2007 issued by the Respondent Nos.1 and 2 be kindly quashed and set aside by issuing writ of mandamus or writ in the nature of mandamus or writ of certiorari or writ in the nature of certiorari and/or directions to the Respondent Nos.1 to 3 that the Reservation No.44 on the Petitioner's land is lapsed;

(c) By issuing writ, directions and/or order of this Honourable Court the Respondents be kindly directed not to interfere in the rights of the Petitioner being owner of the land shown as reservation No.44 in the Development Plan of 1985 to enjoy the same as per her own desire free from reservation;

3. Pending the Petition, the Notification under Section 126(1) of the Maharashtra Regional Town Planning Act, 1966 came to be issued. The same has been challenged by way of amendment by inter alia incorporating prayer clause (b)(i) which reads as follows:

“(b-i) The Notification issued by the Respondent No.8, Collector, Kolhapur under Section 126(1) of MRTP Act vide No Karyasan/11/Bhus/RR/1680/2008 dated 29.11.2008 be kindly quashed and set aside;”

4. The Petitioner claims to be the owner of Gat No.125

admeasuring 1 H. 59.4 Acres which was reserved for the purpose of High School and Play ground under the Maharashtra Regional Town Planning Act (hereinafter referred to as “the MRTP Act”). The Respondent No.1 is the Chief Planning Officer of the Municipal Council, Kurundwad. The Respondent No.2 is the Municipal Council, Kurundwad, constituted under the provisions of Maharashtra Municipalities Act, 1965. The Respondent No.3 is the Assistant Town Planning Officer, Kolhapur. The Respondent No.4 is the Secretary of the Urban Development Department. The Respondent No.5 is the State of Maharashtra, and the Respondent No.6 is a Trust registered as an Educational Institution.

5. On 03.06.1985, the Development Plan was sanctioned for Kurundwad City under the provisions of MRTP Act. The said property was reserved for the purpose of High School and Play Ground. The Development Plan came into force on 7.7.1985. On 15.6.2006, the Petitioner addressed a letter to the Municipal Council notifying that the land stands de-reserved as it was not reserved in the Development Plan after 2005. A Writ Petition being Writ Petition No. 5190 of 2007 was filed by the Petitioner seeking direction for dereservation of the land. The said Writ Petition was withdrawn with liberty to approach the Court after giving appropriate notice. On 23.7.2007, the Petitioner addressed a notice under Section 127 of the MRTP Act. On 7.9.2007 a reply was sent by the City Survey Office stating that the notice given

to the Municipal Council was not proper. On 11.9.2007 a reply was sent by the Municipal Council to the Petitioner that the land is allotted to the Respondent no.6 trust which is the “Appropriate Authority” and therefore the notice to the Municipal Council was not proper.

6. On 10.10.2008, the City Survey Office informed the Respondent No.6 Trust that unless the amount of Rs.7,36,000/- is deposited, the Notification under Section 6 of the Land Acquisition Act cannot be issued. On 23.10.2008 the Respondent No.6 deposited the aforesaid sum of Rs.7,36,000. On 29.11.2008, the Notification under Section 6 came to be issued under the Land Acquisition Act, and the same was published in the Government Gazette on 18.12.2008.

7. The learned Senior Counsel for the Petitioner has pointed out the provisions of Section 127 of the MRTP Act (as it then read). It is extracted hereunder:

“127. 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 proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1984, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or, as the case may be, Appropriate Authority to that effect; and if within six 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.”

8. It is submitted that in view of the provisions of Section 127 of the MRTP Act, the reservation has lapsed. The learned Senior Counsel has pointed out that the notice under Section 127 of the MRTP Act was given by the Petitioner on 23.7.2007 and the Notification under Section 6 of the Land Acquisition Act was issued on 29.11.2008 i.e. after a period of about 1 year 4 months and 5 days. It is submitted that in view of the provisions of Section 127 of the MRTP Act, the Notification under Section 6 ought to have been issued within six months from 23.7.2007. It is submitted that since the Notification under Section 6 was published beyond a period of six months, as per the provisions of Section 127 of the MRTP Act, the acquisition is deemed to have been lapsed. The learned Senior Counsel in support of his submissions has relied upon the following cases :

“(i) *Girnar Traders vs. State of Maharashtra & Ors.* (2007)

7 SCC 555;

(ii) *Shrirampur Municipal Council vs. Satyabhamabai*

- Bhimaji Dawkher & Ors. (2013) 5 SCC 627;*
- (iii) *Vikramsinh Jaysingrao Ghatge vs. The Municipal Council, Kagal & Ors. 2015 (1) ALL M.R. 520;*
- (iv) *Shantaram Shankar Jamsandekar & Ors. vs. State of Maharashtra & Ors. 2015(1) Mh.L.J. 719;*
- (v) *Meena Mohanlal Chauhan vs. Nashik Municipal Corporation 2015(2) Mh.L.J.315;*
- (vi) *Madhoor Buildwell Pvt. Ltd. & Ors. v. Nashik Municipal Corporation & Ors. 2015(3) Mh.L.J. 941;*
- (vii) *Hirabai w/o. Shrikriishna Chiddarwar & Ors. vs. State of Maharashtra & Anr. 2016 (4) Mh.L.J. 283;*
- (viii) *Mr. Siddharam Shivappa Patil vs. State of Maharashtra & Ors. 2017(3) Mh.L.J.159;*
- (ix) *Kishanrao Nanasaheb Deshmukh v. State of Maharashtra & Ors. 2017 (4) Mh.L.J. 588;*
- (x) *Ashok Shriram Kulkarni vs. State of Maharashtra & Anr. 2017 (4) Mh.L.J.;*
- (xi) *Anil Banarasidas Jindal through Lrs vs, State of Maharashtra & Ors. 2018(4) MH.L.J. 886;*
- (xii) *Hasina Kudbuddin Shaikh & Ors. v. Karad Municipal Council & Ors. 2019(1) Mh.L.J. 126;*
- (xii) *M/s. C.V.Shah & A.V.Bhat v. State of Maharashtra & Ors. 2005(3) All MR 197;*

9. Learned Counsel for the Respondent no.6 has submitted that the notice dated 23.7.2007 addressed by the Petitioner is bad in law in as much as the said notice has been issued to the Municipal Council, instead of Respondent No.6 Trust, which is the Appropriate Authority under the provisions of the MRTP Act. It is pointed out that after addressing the notice dt.23.7.2007 under Section 127 of the MRTP Act, the Petitioner herself obstructed the Authorities from carrying out joint measurement. The conduct of the Petitioner resulted in delay in the issuance of the Notification under Section 6 of the Land Acquisition Act. The learned Counsel pointed out that the conduct of the Petitioner does not entitle her for relief vide writ jurisdiction.

10. We have perused the records and considered the submissions advanced by learned Senior Counsel for the Petitioner and learned Counsel for the Respondent No.6 Trust and the learned AGP. Before advertng to the facts, it would be advantageous to refer to the decision of the Apex Court in ***Girnar Traders v/s. State of Maharashtra (2007) 7 SCC 555***, wherein the Apex Court has observed thus :-

“54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owners property. The intent and purpose of the provisions of Section 126

and 127 has been well explained in Municipal Corporation of Greater Bombay Case (supra). If the acquisition is left for a time immemorial in the hands of the concerned authority by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the land owner for his utilization as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for de-reservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the land owner for de-reservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition

and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilization of his land as per the user permissible under the plan. When mandate is given in a Section requiring compliance within a particular period, the strict compliance is required thereof as introduction of this Section is with legislative intent to balance the power of the State of eminent domain. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same."

11. In the instant case, it is not in dispute that the notice under Section 127 of the MRTTP Act was addressed by the Petitioner on

23.7.2007 and the Notification under Section 6 of the Land Acquisition Act was issued only on 29.11.2008. It is thus admitted position that the Notification under Section 6 was issued beyond the period of 6 months from the date of service of the notice dated 23.7.2007. In the circumstances, in view of the principle laid down by the Apex Court in the aforesaid decision, the reservation in question had lapsed by operation of Section 127 of the MRTP Act, 1966.

12. The contention of the Respondent No.3 is that the notice ought to have been served on Respondent No.6 being the Appropriate Authority. The term of Appropriate Authority has been defined under Section 2 (3) of the MRTP Act (as it then read). It is reproduced hereunder:

“Appropriate Authority” means any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorized to acquire”.

13. The question for consideration before the Division Bench of this Court in the case of **Jagdishprasad M. Poddar vs. State of Maharashtra (2019) 3 Bom. CR 543**, was whether the Respondent No.3 therein who was the Public Education Trust was the Appropriate Authority. The Division Bench after considering the definition of the Appropriate Authority, as defined under Section 2(c) of the MRTP Act held that the Educational Trust registered under Bombay Public Trust Act which is running schools and imparting education is not a Public

Authority and does not fall within the definition of the Appropriate Authority. In the light of these principles, we are unable to accept the submissions of the learned Counsel that Respondent No.6 was the Appropriate Authority. Consequently the notice cannot be invalidated on the ground that the same was not served on the Respondent No.3.

14. The contention that the Petitioner is not entitled for any relief under Section 127 of the MRTP Act in view of her conduct is devoid of any merits. This contention has been raised only by the Respondent no.6 Trust and not by the State Government. It is pertinent to note that the State Authorities have sufficient powers to take necessary steps including police protection for joint measurement. When the State or the Appropriate Authority fails to take appropriate steps, the Petitioner cannot be deprived of right accrued to her under the law.

15. For the aforesaid reasons, we allow the Petition in terms of prayer clauses (a) and (b-i).

. The State Government shall issue consequential Notification under Section 127(2) of the MRTP Act, preferably within 6 months from the date of receipt of this Order.

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Salgaonkar
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(ANUJA PRABHUDESSAI, J.)

(A.A.SAYED, J.)