

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
980 WRIT PETITION NO.4706 OF 2021**

1. Anil Mohanlal Vyas  
Age: 46 years, Occu.: Business.
2. Mahesh Mohanlal Vyas  
Age: 48 years, Occu.: Agriculturist.
3. Bhagwatiprasad Mohanlal Vyas  
Age: 60 years, Occu.: Agriculturist.
4. Hemraj Mohanlal Vyas  
Age: 57 years, Occu.: Agriculturist.
5. Ashok Narsingdas Vyas  
Age: 54 years, Occu.: Agriculturist.
6. Omprakash Mohanlal Vyas  
Age: 71 years, Occu.: Agriculturist.
7. Govardhan Mohanlal Vyas  
Age: 73 years, Occu.: Agriculturist.

All R/o. Near New Bridge, Ramadevi Building,  
Old Mondha, Nanded,  
Taluka & District Nanded.                      ..PETITIONERS

**VERSUS**

1. The State of Maharashtra,  
Through Secretary,  
Urban Development Department  
Mantralaya, Mumbai.
2. The District Collector,  
Nanded, Taluka & District Nanded.
3. Assistant Director,  
Town Planning Department, Nanded.
4. Nanded Waghala Municipal Corporation,  
Through its Commissioner,  
Nanded Waghala Municipal Corporation,  
Nanded, Taluka & District Nanded...RESPONDENTS

...  
Mr. Sushilkumar H. Tripathi, Advocate for the  
Petitioners.

Mr. K. N. Lokhande, AGP for Respondents-State.

Mr. R. K. Ingole, Advocate for Respondent No.4.

...  
**CORAM : S. V. GANGAPURWALA &  
R. N. LADDHA, JJ.**

**DATED : 25<sup>th</sup> AUGUST, 2021.**

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

1. Rule. Rule made returnable forthwith.  
With the consent of parties, matter is taken up for  
final hearing at the stage of admission.

2. The land of petitioners bearing Gat  
No.125, 127/2 and 129 was reserved under the  
revised development plan dated 03.08.2006 that came  
into force with effect from 17.09.2006 for the  
purpose of garden, primary school, playground and  
D.P. road. The petitioners issued notice under  
Section 127 of the Maharashtra Regional Town  
Planning Act, 1966 (hereinafter referred to as  
'M.R.T.P. Act') on 05.02.2019. It is served upon  
respondent-Municipal Corporation on the same date.  
No steps are taken for acquisition. According to  
petitioners reservation stands lapsed.

3. Mr. Ingole, learned counsel submits that,  
financial position of respondent-Municipal  
Corporation is not good. The respondent had agreed  
to give T.D.R. to petitioners. The steps could not  
be taken for acquisition.

4. The ownership of petitioners and the reservation on the said land is not disputed.

5. No further steps are taken since the year 2006 to use the said land or to acquire it by the Planning Authority. Section 127 of the M.R.T.P Act is a fetter on the power of the eminent domain. As no declaration under Section 126 of M.R.T.P. Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been issued within the stipulated period of two years, the reservation by operation of statute stands lapsed.

6. The garden and playground are the lungs of the city. They are necessary for maintaining the environmental and ecological balance. The Planning Authority has to make every endeavour to acquire the said land. Reference can be had to the judgment of the Apex Court in **Municipal Corporation, Greater Bombay Vs. Hiranman Sitaram** reported in 2017 SCC Online SC 1739.

7. The right to property though is not a fundamental right still is a constitutional right. Nowadays, right to property is brought within the contours of Human right. The balance will have to be struck between the ownership rights of petitioners and maintaining the ecology and the environment.

8. In light of the above, we pass the following order:

**ORDER**

- a. The reservation of the petitioners' land of D.P. road, primary school and playground on land bearing Gat No.125, 127/2 and 129 situated at Nanded stands lapsed.
  - b. Though, we have observed that, reservation stands lapsed, still considering that the reservation is for the garden and playground and also for the D.P. road, petitioners shall not use the said land for any purpose for a period of one year. Within the period of one year, the Planning Authority may take steps to acquire the property.
  - c. If within a period of one year, Planning Authority does not take further steps, then petitioners would be entitled to use the land as adjacent user. Thereafter, the State Government shall issue Notification under Section 126(2) of the M.R.T.P. Act.
9. Rule accordingly made absolute in above terms.

(R. N. LADDHA)  
JUDGE

(S. V. GANGAPURWALA)  
JUDGE