

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

84 WRIT PETITION NO.4867 OF 2021

**HANUMANT ALIAS RAJESHWAR SHESHRAO SHETE AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

**WITH
WRIT PETITION NO. 4358 OF 2021**

**SHESHRAO S/O. HANUMANTRAO SHETE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

**Advocate for Petitioners : Mr. M.V. Ghatge
AGP for Respondents 1 to 5 : Mr. S.B. Pulkundwar
Advocate for Respondent 6 : Mr. S.V. Mundhe**

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

DATED : 25/10/2021.

PER COURT :

. In both these writ petitions, the lands of the petitioners are reserved for the purpose of play ground, shopping center, primary school and play ground, garden, cremation ground and burial garden. The details are as under :-

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Survey Number	Reservation Number	Purpose (Area as per Development Plan)	Area likely to be affected by Reservation
462	22	Play Ground (2.63 Hector)	2.45 Hector
466	32	Shopping Centre (0.43 Hector)	0.347 Hector
466	34	Primary School and Play Ground (0.80 Hector)	0.635 Hector
466	33	Play Ground (2.63 Hector)	0.245 Hector
466	35	Play Ground (0.58 Hector)	0.58 Hector

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Survey Number	Reservation Number	Purpose (Area as per Development Plan)	Area likely to be affected by Reservation
261 (Part)	82	Cremation Ground (0.77 Hector)	0.77 Hector
261 (Part)	83	Burial Ground (0.84 Hector)	0.84 Hector

2. Mr. Mundhe, learned advocate for respondent No. 6 submits that the petitioners were asked to submit the relevant

documents along with notice under section 127 of Maharashtra Regional and Town Planning Act. Upon failure to submit all the relevant documents, the notice under section 127 of MRTP Act is bad in law.

3. On perusal of the notice, it appears that notice was supported by the documents such as 7/12 extract, map.

4. The affidavit filed by the Municipal Council does not suggest that the Municipal Council at any point of time had taken steps for acquisition of lands of petitioners. Also no declaration under section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act read with section 126 of MRTP Act was issued till date. In view of that, reservation stands lapsed.

5. A reference can be had to the judgment of the Apex Court in the case of **Girnar Traders Vs. State of Maharashtra and Ors.**, reported in 2011 (2) Bom. C.R. 655 (SC).

6. Though we have observed that the reservation stands lapsed on account of non initiation of the steps by Municipal Council, we observe that the land is reserved for play ground and garden. Open spaces, playgrounds, gardens are the lungs of the cities and the planning authority has to take steps for acquiring the property. We would be required to balance right of the petitioner, so also the reservation made for garden.

7. In the light of above, we pass the following order.

O R D E R

(I) It is declared that the reservation on the writ lands stands lapsed.

(II) However, the petitioner shall not change the nature of properties or use the properties reserved for the garden and play ground for any purpose for a period of one year and shall maintain the land in the same position as it is for a period of one year.

(III) The Municipal Council within the said period may take steps to acquire the properties. If within a period of one year, the Municipal Council does not acquire the property, the petitioners would be entitled to use the said land as adjacent land.

(IV) The respondent State shall thereafter issue notification under section 127 (2) of the MRTP Act.

(V) Writ petitions are accordingly disposed of. No costs.

[R.N. LADDHA, J.]

[S.V. GANGAPURWALA, J.]

ssc/