

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4453 OF 2021

SANJAY KADUBA KAKDE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Mahesh V. Ghatge
AGP for Respondents No.1 to 5 – State : Mr. S. P. Tiwari
Advocate for Respondent No.6 : Mr. S .N. Janakwade

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**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 20th DECEMBER, 2021

PER COURT :-

1. Heard learned counsel for the petitioner, learned AGP for respondent Nos. 1 to 5 and learned counsel for respondent No. 6 - Municipal Council.
2. The property of the petitioner bearing Survey No.162/1 admeasuring 2H. 70 R situated at Purna is reserved for play ground and School as per reservation site Nos. 12 and 15.
3. The petitioner has issued notice under Section 127 of the Maharashtra Regional Town Planning Act,1966 ("MRTP Act") on 6th April, 2018 and the same is served upon the Planning Authority.
4. The aforesaid facts appear to be undisputed.
5. It also appears that within a period of twenty four (24) months the Planning Authority has not taken steps for acquisition i.e. declaration under Section 126 of the MRTP Act read with Section 19 of the Right to Fair Compensation and Transparency in Acquisition (Rehabilitation and Resettlement) Act,2013 (for short "Act of 2013") till this date. The reservation stands lapsed.

6. A reference can be made of the Judgment of the Apex Court in the case of *Girnar Traders Versus State of Maharashtra and others* reported in *(2011) 3 SCC 1*, wherein it has been observed that steps for acquisition means issuance of declaration under Section 126 of the MRTP Act read with notification under the Land Acquisition Act.

7. Section 127 of the MRTP Act is a fetter on the power of the eminent domain. The right to property is a Constitutional right under Article 300-A of the Constitution of India and nowadays it has been brought within the contours of human right.

8. It also appears that the land of the petitioner is reserved for play ground. It has been observed by the Apex Court in the case of *Municipal Corporation, Greater Bombay Versus Hirman Sitaram* reported in *2017 SCC online SC 1739* that the garden and playground are the lungs of the city. The Planning Authority has to make every endeavour to acquire the land reserved for the said purpose, at the same time, the balance will have to be struck between the ownership rights of the petitioner and maintaining the ecology and the environment.

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

(a) Reservation of the play ground and school on site Nos. 12 and 15 to the extent of petitioners land Survey No.162/1 stands released from the reservation.

(b) The petitioner shall not utilize the said land for any purpose for a period of one year. Planning Authority may acquire the property and for that purpose shall take steps within a period of one year. If within this period of one year, the Planning Authority fails to take steps for acquisition, then petitioner is

entitled to use the land as adjacent user. Therefore, the Government shall issue notification under Section 127(2) of the MRTP Act.

10. Writ petition is disposed of. No costs.

(S.G. DIGE)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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