

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
1015 WRIT PETITION NO.9355 OF 2019**

Sandeep S/o. Kashinath Gadekar
Age – 42 years, Occu: Agril.,
R/o "Rajrush", Bhawan, Purushottam Nagar,
Near Water Tank, Rahuri,
Tq. Rahuri, Dist. Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through: The Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Assistant Director of Town Planning,
Ahmednagar having its office at near
Akashwani Centre, Savedi, Ahmednagar.
3. The Municipal Council Rahuri,
Through its Chief Officer,
At Rahuri, Dist. Ahmednagar. ..RESPONDENTS

AND

WRIT PETITION NO.9489 OF 2019

Somnath S/o. Kashinath Gadekar
Age – 50 years, Occu: Agril.,
R/o "Rajrush", Bhawan, Purushottam Nagar,
Near Water Tank, Rahuri,
Tq. Rahuri, Dist. Ahmednagar. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through: The Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Assistant Director of Town Planning,
Ahmednagar having its office at near
Akashwani Centre, Savedi, Ahmednagar.
3. The Municipal Council Rahuri,
Through its Chief Officer,
At Rahuri, Dist. Ahmednagar. ..RESPONDENTS

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Mr. R. R. Chandak, Advocate for the Petitioners.
Mr. K. N. Lokhande, AGP for Respondents-State.
Mr. R. V. Naiknavare, Advocate for Respondent No.3.

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CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.
DATED : 12th 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 admission stage.

2. The contention of petitioners is that the lands of petitioners are reserved in the development plan of the Municipal Council at site no.33 for Dispensary and Maternity Home. The said final development plan is sanctioned in the year 2003. The notice under Section 127 of the Maharashtra Regional Town Planning Act (hereinafter referred to as 'M.R.T.P. Act') Act is issued on 24.04.2017. No steps for acquisition are initiated. The reservation stands lapsed.

3. Mr. Naiknavare, learned counsel for Municipal Council does not dispute the factual matrix as narrated by petitioners. He also admits that, notice under Section 127 of the M.R.T.P. Act is served upon the Municipal Council on the same date. The learned counsel further submits that, the Resolution is passed by the Municipal Council and no decision was taken. The same was kept in abeyance. The Municipal Council is short of funds.

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

5. It is not disputed by respondent no.3 that lands of petitioners bearing Survey No.392/6, 392/7 and 392/8 situated at Rahuri Budruk, Tq. Rahuri, Dist. Ahmednagar to the extent of 20,000 Sq. Mtrs. are reserved for Dispensary and Maternity Home at site no.33 in the final development plan of the year 2003. It is also not disputed that, the respondent no.3 did not take any steps for acquisition. The petitioner on or about 24.04.2017 issued notice to respondents. The Planning Authority though served with notice did not take any further steps for acquisition. Till date, no declaration under Section 19 of the the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 126 of the M.R.T.P. Act has been issued.

6. Section 127 of the M.R.T.P. 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.

7. The Apex Court in a case of **Girnar Traders Vs. State of Maharashtra and Others** reported in 2011 (3) SCC 1 has observed that steps for acquisition means issuance of declaration under Section 126 of the M.R.T.P. Act read with Notification under the Land Acquisition Act.

8. In light of the above, lands of petitioners stand released for acquisition. The petitioners are entitled to use the lands as the user of the adjacent land. The State shall issue Notification under Section 126(2) of the M.R.T.P. Act preferably within a period of six (06) months from today.

9. Rule accordingly made absolute in above terms. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE