

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

WRIT PETITION NO.9906 OF 2016

Mr. Arun Kashinath Shirode
Residing at Gulmohar Archade,
2nd Floor, Opposite Kulkarni Garden,
Sharanpur Road, Nashik – 422 002.

... Petitioner

Versus

1. The State of Maharashtra
through Principal Secretary,
Urban Development Department,
Mantralaya – 400 032.

1A. The Nashik Municipal Corporation
Rajiv Gandhi Bhavan, Sharanpur Road,
Nashik – 400 002.

2. The Commissioner
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan, Sharanpur Road,
Nashik – 422 002.

3. The Municipal Secretary
Nashik Municipal Corporation,
Rajiv Gandhi Bhavan, Sharanpur Road,
Nashik – 422 002.

4. The Joint Director of Town Planning
(Nashik Division)
1st Floor, office of the -
Divisional Revenue Commissioner,
ISP Road, Nashik Road.

5. Asst. Director of Town Planning
(Nashik Division)
1st Floor, office of the -
Divisional Revenue Commissioner,
ISP Road, Nashik Road.

... Respondents

Mr. Nikhil Wable a/w Mr. Priyank Daga and Mr. Gaurav Suralkar i/by
Jayakar and Partners for the Petitioner.
Mr.K.S. Thorat, AGP for the Respondent-State.
Mr. Subhash V. Gutte for Respondents No.1-A, 2 and 3.

**CORAM : A.A. SAYED AND
ABHAY AHUJA, JJ.**

DATE : 21ST DECEMBER 2021

PER COURT :

1. Rule. Rule made returnable forthwith. The Respondents waive service.

2. By consent of the learned counsel for the parties and at their request, matter is heard finally.

3. By this Petition, filed under Article 226 of the Constitution of India, the Petitioner is seeking a writ of mandamus against the Respondents that the Reservation No.368-A for Commercial Zone reserved in the final development plan of City of Nashik in respect of Survey

No.806/3C/2A, situate at Village Nashik within the Nashik Municipal Corporation (the “said land”) has lapsed by operation of Section 127 of the Maharashtra Regional Town Planning Act, 1966 (the “MRTP Act”) and by virtue of the said lapsing of reservation, Petitioner is entitled to use the said land for his private purpose.

4. Brief facts are as under:

Petitioner is the owner of the said land and is in possession of documents such as 7/12 extracts and other revenue records for ownership/title, occupation and possession of land. The Respondent-Corporation had sanctioned part of the development plan of Nashik under Section 31 of the MRTP Act vide Notification dated 28th June, 1993 which came into force with effect from 16th November, 1993. By another Notification dated 15th May, 1995 issued by the Urban Development Department, the first Respondent republished part of the development plan (the “said development plan”) which has come into force with effect from 29th June, 1995. By the said development plan, the said land was reserved for commercial complex vide Reservation No.368A.

5. On 2nd November, 1995, Respondent No.2 published a notice under Section 37(1) of the MRTP Act, pursuant to which it was proposed that the land which was reserved for “commercial complex” was proposed to be deleted and was proposed to be shown as “Commercial Zone”.

6. Pursuant to the above notice, a public notice was also published in the local newspaper on 7th January, 1996 by the Nashik Municipal Corporation informing about the proposed modification under Section 37(1) of the MRTP Act.

7. The Taluka Officer (Land Record Department) addressed a letter dated 1st April, 2010 to Petitioner and informed Petitioner that 16th April, 2010 was the date fixed for measurement of the land requesting Petitioner to remain present for the same.

8. Petitioner’s submission is that the said land was never acquired by Respondents No.2 and 3 for the purpose of Commercial Zone.

9. It is the case of the Petitioner that though a period of more than ten years has elapsed from the date of development plan, no steps

have been taken/initiated by Respondents No.2 and 3 for the acquisition of the said land. He would submit that no declaration has been issued by Respondent No.1 under Section 126(2) or (4) in respect of the said land. Therefore, Petitioner through his advocate issued a purchase notice dated 6th March, 2014 to Respondent No.2 alongwith copies of 7/12 extract, map and documents showing entries as Commercial Zone.

10. Respondent No.5 vide his letter dated 15th April, 2014 replied to the above said purchase notice dated 6th March, 2014 and requested Petitioner to send additional documents as per the list mentioned in the said letter.

11. Petitioner vide letter dated 11th July, 2014 submitted the additional documents requested for by Respondent No.5. It was further mentioned in the said letter that the purchase notice as contemplated under Section 127 of the MRTP Act has been served and received on 6th March, 2014.

12. Petitioner thereafter addressed a letter dated 9th July, 2015 to Respondents No.1 to 4 informing that he had not received any communication or notice from the acquiring authority or the planning

authority about the acquisition of the said land as contemplated in Section 126 read with Section 127 of the MRTP Act and that the stipulated period of twelve months as contemplated under Section 127 of the MRTP Act had elapsed on 6th March, 2015.

13. Thereafter, by letters dated 31st August, 2015 and 1st September, 2015, addressed to Respondents No.1 to 4, Petitioner once again reiterated the same, but there was no response and therefore this Petition came to be filed on 25th February, 2016.

14. Petitioner submits that from the aforesaid facts, it is clear that even after a lapse of a period of ten years, the Respondents failed to initiate any steps for acquisition of the land. It is submitted that in accordance with Section 127 of the MRTP Act, if the planning authority has not acquired the land within a period of ten years from the date of final development plan and no steps are taken from the receipt of purchase notice within twelve months then the reservation, allotment or designation shall be deemed to be released from such reservation or allotment or designation and the land shall become available to the owner for the purpose of private use/development. He submits that a period of

ten years has elapsed from the implementation of the draft development plan and a purchase notice was issued to the Respondents demonstrating the title and interest of the Petitioner in the said land in question, the notice was duly received by the Respondents and admittedly no steps were taken to acquire the land in question within a period of twelve months from the date of receipt of the notice. Petitioner submits that the period of twelve months from the receipt of the notice issued under Section 127 of the MRTP Act completed on 6th March, 2015 and, therefore, the reservation of the land in question is deemed to have lapsed and is available to Petitioner, who is the owner of the land for private use/development. Petitioner submits that in this view of the matter, the Government should notify the lapsing of the reservation in the official gazette that the land in question has been deleted from the reservation. Petitioner relies on the decision of the Supreme Court in case of **Girnar Traders vs State of Maharashtra reported in (2007) 7 SCC 555**.

15. Respondents No.1-A, 2 and 3 have filed Affidavit-in-Reply dated 23rd August, 2018 on behalf of Nashik Municipal Corporation. In the said Affidavit, it is submitted that in the absence of the documents of title to the land in question, the purchase notice is not valid, that the

Corporation does not maintain the Revenue records which are under the control of the Collector. That the said land, in the absence of documents of title nor measurement map issued by TILR/Survey Officer can not be identified and inspected. It is further submitted that the question of measurement of land under acquisition arises only after declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 (the “Fair Compensation and Land Acquisition Act”). However, no such declaration has been issued in this case. Contrary to the procedure, the land acquisition officer instead of issuing declaration under Section 19 of the Fair Compensation and Land Acquisition Act has gone ahead with the measurement of the land which went on for many years. It is submitted that this was deliberate in order to delay issuing of declaration under Section 19 of the Fair Compensation and Land Acquisition Act and many years have been taken for measuring the land for which both the LAO officer and the City Survey Officer are responsible. It is also submitted that there is a delay in filing this Petition as Petitioner had given notice on 6th March, 2014 but the Petition was filed only in the month of February, 2016.

16. On behalf of Respondent No.1 and 4, Affidavit in Reply dated 17th September, 2021 has been filed, where it has been submitted as under:-

“2. I say that, the Development Plan of Nashik Municipal Corporation had been partly sanctioned by the Government vide Notification No. TPS-1191/35/CR-88/91/UD-9, dated 28/06/1993 under section 31 (1) of The Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred as 'the said Act') & the same had come into force with effect from 16th November, 1993. The Excluded part of said Development Plan had been Sanctioned by Government vide notification TPS-1194/940/CR-48/UD-9, Dated 15/05/1995 under section 31 (1) of the said Act & the same had come into force with effect from 29th June 1995.

I further say that, as per this sanctioned Development Plan, the land bearing S.No.806 (Pt.) was shown reserved as Site No.368-A for "Commercial Complex". The total Area under reservation was shown as about 17000 Sq.mt. The suit land bearing S. No.806/3C/2A is part and parcel of land under reservation. The Appropriate Authority for acquisition & development of the said reservation is "Nashik Municipal Corporation"

It is submitted that, the Government in the Urban Development Department vide Notification No. TPS/1116/C.R.140(A)/2016/UD-9, dated 09/01/2017 has partly sanctioned the Revised Development Plan of Nashik (hereinafter referred to as "the said Revised

Development Plan") along with Development Control and Promotion Regulation under section 31 (1) of the said Act. The said Revised Development Plan has come into force with effect from 09/02/2017. The Excluded part of the said Revised Development Plan has been Sanctioned by Government vide notification No. TPS-1116/CR.140(B)/2016/UD-9, Dated 31/12/2018 & the same has come into force with effect from 01/02/2019.

As per this said Revised Development Plan, the land bearing S.No.806(pt.) is reserved for Site No.192 for " Municipal Market". Total Area under reservation is about 21710 Sq.mt. The Appropriate Authority for acquisition & development of the said reservation is "Nashik Municipal Corporation".

3.

4.

5. *I say that, from the Exhibit A and B attached with the petition, it appears that, the Nashik Municipal Corporation had initiated a modification proposal under section 37(1) of the said Act to delete of the Reservation no 368-A "Commercial Complex" and include the land thereunder in commercial zone and the notice to that effect had been published in the Government Gazette and local news paper.*

It is submitted that, as per the record available, the Government of Maharashtra had refused to accord sanction to this modification proposal vide its letter No.TPS-1100/1250/CR92/01/UD-9,Dated 28.9.2001.

6. *I say that, it is seen from the Exhibit-D attached with the petition that, the Petitioner through his Advocate, has served Notice dated 06.03.2014 under section 127 of the said Act on the Respondent No.2. i.e. Commissioner, Nashik Municipal Corporation.*

7. *I say that, most of the contention of Petitioner in this petition are more specifically related to the Respondent No.2. i.e. The Municipal Commissioner, Nashik Municipal Corporation.*

In view of the above mentioned facts and after considering the say and submission filed by the Respondent No 2, i.e. the Commissioner, Nashik Municipal Corporation, the Hon'ble High Court may pass suitable order as may deem fit and proper.”

17. An Affidavit-in-Reply dated 29th September, 2021 has also been filed on behalf of the District Collector, Nashik, wherein apart from rebutting the allegations/remarks made in the Affidavit of the Corporation, the following submissions are made :-

“4) I say that, the land acquisition proceeding of the aforesaid suit land is in progress before the Deputy Collector Land Acquisition, No.2, Nashik under Land Acquisition Case No.379 of 2015 for the purpose of designated reservation of the Commercial Complex and following steps has been taken by this office.

a. I say that, after receipt of the proposal for acquisition of the suit land for its designated purpose, the District Collector, Nashik by his order dated 30.11.2015 has passed the order U/s 3G of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of the suit land. Annexed hereto and marked as **Exhibit - 1** is copy of the Order dated 30.11.2015 for kind perusal of this Hon'ble High Court.

b. I say that, by Letter dated 21.12.2015 this office has requested the T.I.L.R. Nashik for joint measurement of the suit land. I say that, with reference to the above said letter the Estate Manager of the Respondent Nashik Municipal Corporation by his Letter dated 30.01.2016 has also requested to the T.I.L.R, Nashik for joint measurement of the suit land. Annexed hereto and marked as **Exhibit '2' Colly** are copies of the Letters dated 21.12.2015 and 30.01.2016 for kind perusal of this Hon'ble High Court.

c. I say that, by Letter dated 08.06.2016 the Estate Manager of the Respondent Nashik Municipal Corporation has requested the District Collector, Nashik for change in area of reservation of the suit land. I say that, in response to above said letter, by Letter dated 23.08.2016 this office has asked the Estate Manager of the Respondent Nashik Municipal Corporation to convey the exact area of reservation and also asked to submit revised index. Annexed hereto and marked as **Exhibit "3' Colly** are copies of the Letters dated 08.06.2016 and 23.08.2016 for kind perusal of this Hon'ble High Court.

d. I say that, on account of pendency of total 85 land acquisition proposals (including suit land) with respect to reservations concerning Respondent Nashik Municipal Corporation for joint measurement, this office has issued a Letter on 22.11.2019 to the Estate Manager of the Respondent Nashik Municipal Corporation thereby requesting to complete the joint measurement of lands in co-ordination with the T.I.L.R., Nashik. Annexed hereto and marked as **Exhibit '4'** is copy of the Letter dated 22.11.2019 to the Estate Manager for kind perusal of this Hon'ble High Court.

e. I say that, in pursuant to Government Notification dated 01.08.2016, this office by Letter dated 22.11.2019 had requested the Estate Manager of Nashik Municipal Corporation for depositing an amount of Rs.18,40,59,163/- which is 30% amount of approximate award amount for issuing notification under section 19 of the Act, 2013. Annexed hereto and marked as **Exhibit '5'** is copy of the Letter dated 22.11.2019 for kind perusal of this Hon'ble High Court.

f. I say that, by Letter dated 17.09.2021, this office requested the T.I.L.R., Nashik for completing the joint measurement of the suit land. Annexed hereto and marked as **Exhibit "6"** is copy of the Letter dated 17.09.2021 for kind perusal of this Hon'ble High Court.”

18. We have heard Mr. Nikhil Wable, learned Counsel for Petitioner, Mr.K.S. Thorat, AGP for the Respondent-State and Mr. Subhash Gutte for Respondents No.1-A, 2 and 3. With the assistance of the learned counsel for the parties, we have perused the paper Book of the Writ Petition and Affidavits in Reply filed by the Respondents. We also place on record that learned Counsel for the Respondent-Nashik Municipal Corporation as well as the District Collector, Nashik have on instructions withdrawn the allegations and the counter allegations made against each other in the respective Affidavits in Reply.

19. On considering the facts as placed on record it appears to be an admitted position that Petitioner is the owner of the land in question. The development plan has come into force on 29th June, 1995 and the tenure period has elapsed on 30th June, 2005. That a purchase notice under section 127 of the MRTP Act was served on 6th March, 2014 and the same was received by the concerned Respondent and that further action under Section 127 of the MRTP Act was required to be taken by the said Respondent. Section 127 of the MRTP Act as it stood when the purchase notice dated 6th March, 2014 was issued by Petitioner is quoted as under :

Section 127: Lapsing of reservations:

"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 (for if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act 1894 are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority as the case may be, Appropriate Authority to that effect and if within twelve 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."

20. A plain reading of the aforesaid provision makes it clear that when any land is reserved, allotted or designated for any public purpose specified in the Development Plan and if it is not acquired within ten years from the date on which the final regional plan or final development plan comes into force, or if proceedings for acquisition of such land under the MRTP Act or under the Fair Compensation and Land Acquisition Act are

not commenced, the owner or any person interested in the land, may serve a notice to the Planning Authority calling upon the Planning Authority to acquire such land within a period of 12 months from the date of service of such notice and if the land is not acquired or no steps are commenced for its acquisition the reservation designation of such land shall be deemed to have lapsed and the land thereupon shall be deemed to be released from reservation on such designated land shall become available to the owner for the purpose of private use or development as otherwise permissible under the relevant plan. It is well settled that the proceeding for acquiring the land for the purpose of Section 127 can be said to have commenced only when a Notification under Section 19 of the Fair Compensation and Land Acquisition Act is issued.

21. The facts in the present case clearly demonstrate that the plot in question was kept under reservation for the purpose of commercial complex from the commencement of the Development Plan for the city of Nashik which was brought into effect on 29th June, 1995. Admittedly, for a period of ten years from the commencement of the Development Plan, the Respondents No.2 and 3 did not take any steps to acquire the land for the purpose for which it was kept under reservation. That Petitioner had

issued a purchase notice dated 6th March, 2014 and the same was received by the Respondent. The Respondents within a period of twelve months from the receipt of the purchase notice were required to acquire the land or take steps for commencement of the acquisition of the land in question. We observe that despite bald pleadings to that effect, no such steps were taken to commence the acquisition proceedings. It is therefore, clear that by plain application of the provisions of Section 127 the reservation of Petitioners land is deemed to have lapsed and the land had become available to Petitioner for the purpose of private use/development under the relevant plan.

22. The contention as raised on behalf of Respondent No.1A, 2 and 3 that the purchase notice in question is not valid as there are no documents of title to the land in question as the Corporation does not maintain records which are under the control of the Collector is completely fallacious and is not tenable. Section 127 contemplates a purchase notice to be served by the owner or any person interested in land. None of the Respondents have disputed that when the purchase notice was served, Petitioner was not the owner of the land or a person interested in the land. Admittedly, though measurement has also been

done, there was no declaration under Section 19 of the Fair Compensation and Land Acquisition Act. Even Respondents No.1 and 4 have not disputed the above dates and events in addition to stating that most of the contentions of Petitioner relate to Nashik Municipal Corporation. Even the Collector, Nashik has not disputed any of the dates and events and the fact that no Notification under Section 19 of the Fair Compensation and Land Acquisition Act has been issued and the joint measurement is pending.

23. Taking into consideration the above, we are of the view that there is no substance in the objections raised on behalf of the Respondents. The provisions of Section 127 of the MRTP Act clearly apply to the facts of this case.

24. Petitioners are justified in relying on the decision of the Supreme Court in the case of **Girnar Traders vs. State of Maharashtra (supra)**. The Hon'ble Supreme Court in considering the provisions of Sections 127 of the MRTP Act has held that "the steps for acquisition" as contemplated under Section 127 of the MRTP Act would be issuance of a declaration under Section 6 of the Land Acquisition Act (now Section 19 of the Fair Compensation and Land Acquisition Act). Paragraphs 54 to 57 are apt and are quoted as under :

"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 Sections 126 and 127 has been well explained in *Municipal Corpn. of Greater Bombay* case. If the acquisition is left for time immemorial in the hands of the authority concerned 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 is-sued 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 landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation 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 landowner for dereservation. 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 utilisation 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 therewith 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.*

56. *The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the government to acquire the land which Government*

may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. *It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under section 6 of the LA Act. Clause (c) of Section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act."*

25. In accordance with the aforesaid principles laid down by the Hon'ble Supreme Court, we are of the view that reservation of the said land in question had lapsed by operation of Section 127 of the MRTTP Act.

26. Petitioner has complied with the requirements as demanded by the Respondent. Respondent did not take any steps for acquisition of the said land. The development plan had been notified and come into effect from 29th June, 1995 and the tenure period has elapsed on 30th June, 2005. The notice under Section 37(1) of the MRTP Act was published on 2nd November, 1995. The public notice in local newspaper was published by Nashik Municipal Corporation under Section 37(1) of the MRTP Act on 7th June, 1996. The Taluka Officer addressed a letter dated 1st April, 2010 for measurement on 16th April, 2016. Since no steps were taken by Respondent No.2, Respondent No.3 for acquisition of the said land, the Petitioner's advocate issued the mandatory notice under Section 127 on 6th March, 2014 which was received on the same date. The Respondent No.5 requested for additional documents on 15th April, 2014 and all the documents were submitted by Petitioner on 11th July, 2014. The twelve months as contemplated under Section 127 of the MRTP Act elapsed on 6th March, 2015. Thereafter, letters dated 9th July, 2015, 31st August, 2015 and 1st September, 2015 were addressed to the Respondent authority informing them of the lapsing of the reservation. The Petition came to be filed on 25th February, 2016. These facts clearly indicate that

contention of the 1st Respondent that there is a delay on the part of Petitioner in approaching this Court is exfacie untenable.

27. In the light of the aforesaid observations, we hold that the reservation of Petitioner's said land has lapsed and the land has become available to Petitioner to be used as permissible in law.

28. Writ Petition is therefore allowed in terms of prayer clause (a). The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirements of Section 127(2) of the MRTP Act which shall be done as expeditiously as possible and preferably within a period of eight weeks from today.

29. Rule is made absolute in the above terms. Writ Petition accordingly stands allowed. No order as to costs.

(ABHAY AHUJA, J.)

(A.A. SAYED, J.)