

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 449 of 2020

Sarlabai Narayandasji Sikchi,
Age: 65 yrs, Occupation: Household,
R/o Balaji Plot, Amravati-444 602.

.... Petitioner

// VERSUS //

1. The State of Maharashtra,
through the Secretary Urban
Development Department,
Mantralaya, Mumbai.
2. The Municipal Corporation of City of
Amravati, through its Commissioner,
Amravati Municipal Corporation,
Rajkamal Chowk, Amravati.
3. Assistant Director of Town Planning,
Municipal Corporation, Amravati off:
Municipal Corporation, Rajkamal
Chowk, Amravati.

... Respondents

Shri G.K. Mundhada, Advocate for Petitioner
Shri A.A. Madiwale, AGP for Respondent No.1
Shri J.B. Kasat, Advocate for Respondent Nos.2 and 3

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 18 FEBRUARY 2021

ORAL JUDGMENT : (PER:- ANIL S. KILOR, J.)

By the Present Writ Petition, the Petitioner is praying for declaration that the land owned by her, stands lapsed from the reservation under Section 127 of *the Maharashtra Regional and Town Planning Act, 1966* (herein after in short 'the MRTP Act").

2. The brief facts which are necessary to decide the controversy involved in the present Petition, are as under:

The Petitioner is the owner of a land bearing Survey No.23, area admeasuring 1 Hectare 28 R, village Navsari, Taluka and District Amravati, which is situated in the limit of the Municipal Corporation of city of Amravati. The aforesaid land was shown to be reserved for 'Garden / Park' in the First Revised Development Plan of the City of Amravati, which came into force with effect from 25 February 1993.

3. However, no steps for acquisition have been taken for more than 10 years and therefore, the Petitioner served a purchase notice under Section 127 of the MRTP Act, on 24 May 2007 calling upon the Respondent No. 2, Planning authority to acquire or to take steps to acquire the land in question within a statutory period from the date of service of the purchase notice.

4. Though the purchase notice was served upon the Respondent No. 2, no steps have been taken by the Respondent Planning Authority to acquire the land in question within a statutory period. However, on the other hand, in the Second Revised Draft Development Plan the said land has again been shown as reserved for 'Garden', vide Reservation No.6. Hence, this Petition.

5. We have heard the learned Counsel for respective parties.

6. Shri G.K. Mundhada, learned Counsel for the Petitioner points out that despite the purchase notice under Section 127 of the MRTP Act, was served upon the Respondent No.2 – Planning Authority, on 24 May 2007, no steps have been taken by the Respondent No. 2 to acquire the land in question within statutory period and as such, in view of the well settled law, the Reservation is deemed to have lapsed.

7. He further argues that because the Respondent No. 2 failed to acquire the land of the Petitioner or to take steps for the said purpose within a statutory period, the right is crystallized in favour of the petitioner under section 127 of the MRTP Act and therefore, the said land cannot be again reserved for the same purpose in the Revised Development Plan. For this Purpose, he has placed reliance on a decision of Division Bench of this Court, in *Ashok Shriram Kulkarni Vs. State of Maharashtra and others*¹.

8. Per contra, Shri J.B. Kasat, the learned Counsel for the Respondent Nos.2 and 3 opposes the Petition and requests for dismissal of the Petition.

9. To consider the rival contentions of the parties, we have perused the record, thereupon it is revealed that the Respondent Nos.2 and 3 are not disputing the following facts:

9.1. The Petitioner is the owner of the land in question

¹ 2017(3) Bombay C.R. 777
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9.2. In the First Revised Development Plan, which came into force with effect from 25 February 1993, the land in question was shown as reserved for 'Garden / Park', by reservation No.4.

9.3. The Petitioner served a purchase notice upon the Respondent No.2, under Section 127 of the MRTP Act, on 24 May 2007.

9.4. No steps have been taken by the Respondent No.2 to acquire the land in question within a statutory period.

9.5. A second proposed Revised Draft Development Plan was published in the Official Gazette for receiving suggestions and objections on 6 December 2018 and in the same, the land in question was proposed to be reserved as 'Garden' and accordingly, in the final Second Revised Draft Development Plan the land in question has been shown as reserved for 'Garden', by reservation No. 6.

10. In the above backdrop, two questions, which fell for our consideration namely *i) Whether the land in question is deemed to have lapsed on failure of the Respondent Planning Authority to acquire or to take steps to acquire the land in question within a statutory period from the date of service of purchase notice under Section 127 of the MRTP Act? and ii) If the answer of the first question is in affirmative, and thereupon once the right of the Petitioner is crystallized under Section 127 of the MRTP Act, whether the land in question can again be shown as reserved in the Second Revised Development Plan?*, are no longer res integra.

11. The Division Bench of this Court in *Ashok Shriram Kulkarni (supra)*, upon taking into consideration the law laid down in the case of *Girnar Traders (3) Vs. State of Maharashtra*², has held that, in terms of Section 127 of the MRTP Act, if any land is reserved, allotted or designated for any purpose specified is not acquired by agreement within 10 years from the date on which final regional plan or final development plan comes into force or if a declaration under sub-section (2) or (4) of Section 126 of the MRTP Act is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice upon such authority to that effect and if within 12 months from the date of service of such notice, the land is not acquired or no steps, as aforesaid, are commenced for its acquisition, the reservation, allotment reserved or designation shall be deemed to have lapsed and the land would become available to the owner for the purposes of development.

12. The Division Bench has further held that, the legal position as regards the MRTP Act on the basis of observations made by the Apex Court in Bhavnagar University emerges that, by imposition of a statutory obligation under Section 38 on the part of the State or the appropriate authority to revise the development plan the rights of the owners accrued in terms of Section 127 are not taken away. Section 38 of the MRTP Act, does not and cannot be read to mean that substantial right conferred upon the owner of the land or the person interested under Section 127 is taken away. It is further observed that, in other words, Section 38 does not envisage that despite the fact that in terms of Section 127, the reservation lapsed, only because of a draft revised development plan or

² 2011 (3) SCC 1
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final revised development plan is made would not automatically result in revival of reservation that had lapsed.

13 In light of above referred well settled position of law and in view of the undisputed facts referred above, we have no hesitation to hold that, because the Respondent Planning Authority has failed to acquire the land or to take steps in that regard within a statutory period under Section 127 of the MRTP Act, the reservation shown as 'Garden / Park', vide Reservation No.4 in the First Revised Development Plan, which came into force with effect from 25 February 1993, is deemed to have lapsed.

14. Having held that the reservation in question is deemed to have lapsed, we are of the considered opinion that the necessary consequences must follow. Furthermore, the right conferred on the petitioner because of lapsing of reservation cannot be taken away by the respondent Planning Authority, by exercising power under Section 38 of the MRTP Act. Hence, the reservation shown in the second development plan of the city of Amravati, relating to land in question, as 'garden', is not permissible and sustainable in law. Accordingly, the present Petition deserves to be allowed. We, therefore, pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) It is hereby declared that the reservation relating to the land owned by the Petitioner, bearing Survey No.23, area admeasuring 1 Hectare 28 R, village Navsari, Taluka and District Amravati, as 'Garden/Park' by

Reservation No.4 in the First Revised Development Plan of Amravati city, is lapsed under Section 127 of the MRTP Act and the land would become available to the Petitioner for the purpose of the development as per the provisions of law.

iii) It is further declared that the reservation relating to said land, as 'Garden' shown in the Second Revised Development Plan of Amravati city, vide reservation No.6, is illegal and not sustainable in the eyes of law.

iv) 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 requirement of Section 127(2) of the MRTP Act, within a period of six months from today.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]