

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.943 OF 2021

Sanjaykumar s/o Biharilal Bangad,
Age-60 years, Occu. Agril. & Business,
R/o. Main Road, Manwat,
Tq. Manwat, Dist. Parbhani.

...Petitioner

Versus

1. The State of Maharashtra
Through: The Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. The Municipal Council, Manwat,
Tq. Manwat, Dist. Parbhani,
Through its Chief Officer.

...Respondents

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Mr. Manish P. Tripathi h/f Mr. K.J. Ghute-Patil, Advocate for the
Petitioner.

Mr. P.K. Lakhotiya, AGP for the Respondent/State.

Mr. Raviraj R. Chandak, Advocate for Respondent No.2.

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**CORAM : A.S. GADKARI &
S.G. MEHARE, J.J.**

RESERVED ON : 27th JANUARY, 2022

PRONOUNCED ON : 01st FEBRUARY, 2022

JUDGMENT (PER S.G. MEHARE, J.) :-

1. Rule. Rule made returnable forthwith. By consent of the
parties, heard finally.

2. Petitioner has the ancestral field Gat No. 372 at village Manwat.

The land measuring 3 H 30 R out of the said field was reserved for

Civic Centre and Stadium under Maharashtra Regional and Town Planning Act 1966 ('MRTP Act' for short) by revised Development Plan dated 30.08.2002. In 2015, the petitioner had consented to acquire his field in favour of respondent no.2. The petitioner and respondent no.2 had executed a consent deed on 23.03.2015, however, no steps were taken by respondent no.2 to purchase the land and it has shown inability to purchase his land. The petitioner accordingly served a notice under section 127 of the Act dated 28.09.2018 which the Respondent no.2 received on the same day. The statutory period of 2 years to acquire the land after the notice under section 127 of the MRTP Act has also lapsed, but no steps to acquire the land as provided under the said section have been taken by respondent no.2. Hence, his land is liable to be released from the reservation. Hence this petition.

3. The contesting respondent no.2, through its Chief Officer, in its affidavit in reply has, admitted the material facts of reservation of the land and service of the purchase notice by the petitioner. Respondent no.2 had immediately forwarded the notice issued by the petitioner to the President of Municipal Council Manwat for necessary action. However, the President endorsed that as the financial position of the Council is not good, therefore same will be considered in future. He has fairly conceded that yet no steps have been taken to acquire the

petitioner's land.

4. Section 127 of the MRTP Act provides for lapsing of reservation of the land when the Planning Authority fails to acquire or to take steps to acquire the reserved land within twenty-four months from the date of service of the notice by the landowner or the person having an interest in the reserved land. Failing to acquire or take the steps as provided in the said section, the reservation, allotment, or designation shall be deemed to have been lapsed and thereupon, the land shall be deemed to be released from such reservation.

5. Frequently, the question that arises for consideration in such petitions is, when it is said to have taken steps to acquire the reserved land? Herein the case, whether the decision of the President of the Municipal Council, that the financial position of the Council is not good, therefore, same will be considered in future is a step to acquire the field of the petitioner is the question to be answered.

6. When would the step to acquire the land following the procedure laid in the Land Acquisition Act commence, the Hon'ble Apex Court in the case of *Girnar Traders (II) vs. State of Maharashtra & others, (2007) 7 SCC 555*, has answered that the steps towards the acquisition would really commence when the State Government take active steps for the acquisition of a particular piece of land which would lead to the publication of the declaration under section 6 of the

Land Acquisition Act 1894. Before the purchase notice, the petitioner had executed the consent deed on 23.03.2015 in favour of respondent no.2, even then, it has shown inability to purchase the land of the petitioner. Financial constraint is also not a ground to extend the statutory period to acquire the land or take steps to acquire the land after the notice is served under section 127 of the MRTP Act. As respondent no. 2 has failed to comply with the purchase notice as provided in section 127 of MRTP Act, hence by way of legal fiction as provided therein, the reservation of the petitioner's land in the Development Plan of Manwat Municipal Council has lapsed.

7. Given the discussion in the preceding paras, the petition deserves to be allowed.

In the result, the reservation of the field survey no.372 of Manwat for Civic Centre and Stadium reserved in the revised Development Plan at site no.22 vide Notification dated 30.08.2002 is declared lapsed and released from the reservation as mentioned above. The said land became available to the petitioner for the development as otherwise permissible in the case of adjacent land under the said plan.

8. The State Government is directed to notify by an Order publishing in the Official Gazette that the reservation of the above land has lapsed from the revised Development Plan notified on

30.08.2002 within two months from the date of the receipt of this order.

9. No order as to costs.

10. Rule is made absolute in the aforesaid terms.

(S.G. MEHARE. J.)

(A.S. GADKARI, J.)