

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

WRIT PETITION NO. 3265 OF 2021

1. Damodar s/o Dadarao Bokde (Patil)
Age 81 years, Occu: Agril.
2. Prayagbai w/o Damodar Bokde (Patil)
Age 75 years, Occu: Housewife
3. Vitthal s/o Damodar Bokde (Patil), ... **petitioners**
Age 50 years, Occu: Agril.

All R/o Vasangaon Tq. & Dist. Latur

VERSUS

1. The State of Maharashtra,
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai-32
2. The District Collector, Latur
3. The Town Planner ... **Respondents**
Town Planning Office,
Latur, Tq. & Dist. Latur
4. The Latur Municipal Corporation, latur
Through its Commissioner

Mr. K. P. Rodge h/for Mr. S. P. Urgunde, Advocate for the petitioners,
Mr. S. B. Yawalkar, AGP for respondent Nos. 1 and 2- State
Mr. A. V. Hon, Advocate for respondent Nos. 3 and 4-Corporation

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRAGADE, JJ.**
DATE : 13.12.2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. We have heard learned counsel for both sides.
2. Rule, made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.
3. By the present petition under Article 226 and 227 of the Constitution of India, the petitioners, who are owners of land which is reserved in the final development plan of Latur Municipal Corporation, pray for declaration regarding lapsing of reservation in view of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, 'the MRTP Act')
4. Mr. K.P. Rodge, learned Advocate for the petitioners submits that the petitioners are owner of land bearing Survey No.10/Gat No.9 admeasuring 13 Acre 10 Are situated at Vasangaon, within the limits of Latur Municipal Corporation. The Corporation prepared the revised draft development plan for the area within its jurisdiction and the respondent No.1 State sanctioned the development plan on 02.01.2002 under which land of the petitioners admeasuring 8 Acre 11 Are out of Gat No. 9 was reserved for playground, primary school, park and high school as Site Nos. 194 to 196, however, no steps have been initiated by the respondent-planning authority for acquisition of the said property for more than 10 years. Therefore, the petitioners issued a notice dated 08.02.2018 under section 127 of the MRTP Act. In spite of service of notice, no steps have

been taken by the respondent- Corporation for acquisition of the said land within a period of 24 months, as contemplated under section 126 of the MRTTP Act read with section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013, Therefore, he prays for de-reservation of land under Section 127 of the MRTTP Act.

5. The learned advocate for the respondent- Corporation would submit that the development was published on 02.01.2002 and it has been enforced with effect from 18.02.2002. In the development plan land of the petitioners admeasuring 8 Acre 11 Are out of Gat No. 9 has been reserved as Site Nos. 194 to 196 for playground, primary school, park and high school, in the interest of public at large, however, due to financial constraints, the acquisition proceedings could not be initiated in time. Though the petitioners have issued notice under section 127 of the MRTTP Act but they have not annexed the measurement plan to identify the reservation. The corporation intends to develop the reserved sites in the public interest and in the alternate, has taken up the proposal for grant of TDR to the petitioners and the Corporation is ready to compensate the petitioners in the form of TDR as per Rules, hence, he prayed for dismissal of the petition.

6. The learned AGP relied on the judgment of this Court in Writ Petition No. 6481/2015 dated 19.11.2015 and contending that since the

notice is not accompanied by requisite document, it cannot be considered as valid notice under section 127 of the MRTP Act, prayed for rejection of the petition.

7. We have given our thoughtful consideration to the rival submissions and perused the papers.

8. It seems that on 02.01.2002, the respondent No.1- State Government sanctioned the development plan for Latur City which came into force we.f. 18.02.2002 and the petitioners' land admeasuring 8 Acre 11 Are out of Gat No. 9 has been reserved as Site Nos. 194 to 196 for playground, primary school, park and high school, but the respondent Planning Authority has not taken any steps to acquire the said land within period of 10 years from the date of final development plan. Thereafter, on 08.02.2018, the petitioners issued notice under section 127 of the MRTP Act to the planning authority for release of his land from the reservation. The petitioners enclosed documents such as 7/12 extract, Development Plan (part) and plan of the land with the notice. The respondent- Planning Authority has not disputed about service of notice, but it has only contended that due to financial constraints acquisition proceedings could not be initiated and about offer of TDR. The respondents have not given any cogent and substantial reason for not acquiring the reserved land for the period of 10 years from notification so also, for the period of more

than two years from the date of service of notice under section 127 of the MRTTP Act.

9. Suffice for the purpose to refer to the decision in the matter of **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318**, wherein, it has been laid down that the steps in the direction of acquisition of land reserved under the provisions of the MRTTP Act would be nothing short of a declaration under Section 6 of the Land Acquisition Act 1894 (analogous to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) read with section 126 of the MRTTP Act. Admittedly, no such steps have been taken for whatever reason.

10. Though it is stated about offering of TDR in lieu of compensation, no such offer letter is produced on record. Be that as it may, the learned advocate for the petitioners, on instructions, stated that they are not ready to accept the TDR in lieu of compensation. Moreover, the right of property owners to insist for payment of monetary compensation by refusing TDR is also settled by the full bench decision of this court in the matter of **Vinayak Builders & Developers Vs. The State of Maharashtra and others (Writ Petition No. 2231 of 2019) dated 25.07.2022 (Nagpur Bench)**, wherein it has been laid down that it is the choice of the property owner either to accept the TDR or to insist for payment of compensation.

11. There is nothing on the record to demonstrate that respondent-Corporation which is the development authority had taken any effective step for acquisition of land except stating that the corporation intends to develop the sites in the public interest. Therefore, the consequences would follow as laid down in catena of judgments on lapsing of the reservation.

12. In view of the above discussion and considering the ratio laid down in the case of *Girnar Traders (supra)*, we are inclined to allow the writ petition and declare that the reservation on land of the petitioners admeasuring 8 Acre 11 Are out of Gat No. 9/Survey No.10 as Site Nos. 194 to 196 stands lapsed. The respondents shall take steps for issuance of notification under sub section 2 of section 127 of the MRTP Act as early as possible.

13. Rule is made absolute in above terms.

(Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)

JPChavan