

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

WRIT PETITION NO. 1718 OF 2022

1. Pradip Prataprao Patil
Age: 52 years, Occu. Agril. & Business,
R/o Near Mahanubhau Ashram, Jashoda Nagar,
Kukdel, Tq. Shahada, Dist. Nandurbar
 2. Yogesh Madhukar Sangpal
Deceased through legal representatives
 - 2-A] Anita Yogesh Sangpal
Age: 47 years, Occu. Household
R/o Near Civil Court, Dharangaon Road,
Shahada, Tq. Shahada, Dist. Nandurbar
 - 2-B] Shon Yogesh Sangpal
Age: 27 years, Occu. Business,
R/o Near Civil Court, Dharangaon Road,
Shahada, Tq. Shahada, Dist. Nandurbar
 - 2-C] Mandira Yogesh Sangpal
Age: 21 years, Occu. Household
R/o Near Civil Court, Dharangaon Road,
Shahada, Tq. Shahada, Dist. Nandurbar
- ... Petitioners

VERSUS

1. The State of Maharashtra
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Director,
Town Planning Department,
Maharashtra State, Pune
3. The Collector,
Nandurbar, Taluka & District Nandurbar
4. The Sub Divisional Officer
Shahada Region, Shahada,
Dist. Nandurbar

5. Shahada Nagar Parishad, Shahada
Dist. Nandurbar,
Through its Chief Officer

... Respondents

Mr. Amol Sawant, Advocate for the petitioners,
Mr. A. R. Kale, AGP for respondent Nos. 1 and 2
Mr. J. R. Shah, Advocate for respondent No.5

CORAM : **MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

RESERVED ON : **22.11.2022**

PRONOUNCED ON : **06.12.2022**

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 Shahada Nagar Parashad, are seeking a declaration regarding lapsing of reservation in view of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, 'the MRTP Act')
4. Facts in brief are that, the petitioners are owners of land bearing survey No. 56/2 situated within limits of Shahada Nagar Parishad, Shahad District Nandurbar, which is reserved for Playground as Site No.40 in the final development plan of Shahada Nagar Parishad. The Nagar Parashad prepared the Final development plan and published in

Gazette by the Government on 25.07.2005 and it came into force with effect from 11.09.2006. No step has been taken for acquisition of the said property for more than 10 years, therefore, on 29.11.2016, the petitioners /owner of the property have issued notice under section 127 of the MRTTP Act within stipulated time on 29.11.2016. However, no step has been taken by the Nagar Parishad for acquisition of the said land for 24 months after even receipt of notice under Section 127 of the MRTTP Act. Hence this petition.

5. Mr. Amol Sawant, the learned counsel for the petitioners submits that the development plan prepared by the Nagar Parishad and final development came to be published in Government Gazette on 25.07.2005 and came into force with effect from 11.09.2006 in which Land of the petitioners situated within limits of Shahada Nagar Parishad, is shown reserved for Playground as Site No.40. Since no steps were being taken by the respondent No.5 Nagar Parishad to acquire land 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, the petitioners served notice under Section 127 of the MRTTP Act on 29.11.2016. Even after service of notice no step has been taken by the Nagar Parishad for more than two years for acquisition of the property. Thereafter, on 25.03.2019, the petitioners made representations with Special Land Acquisition officer for information in respect of proposal by

the Nagar Parishad for acquisition of the petitioners' property, pursuant to which the Deputy Collector issued a communication to the Chief Executive Officer, Nagar Parishad seeking relevant information and in turn, the Chief Executive Officer informed the petitioners that no step for acquisition has been taken nor such proposal is pending. The Sub Divisional Officer, Shahada also informed the petitioners that no proposal for acquisition of petitioners' property is pending. The petitioners have purchased the said property by registered sale deed and they are owners of the land. The learned counsel submits that no step is taken for more than 2 two years even after service of notice under section 127 of the MRTP Act and as such, as per provisions of Section 127 of the MRTP Act it would lapse on expiry of notice period. Hence, the learned counsel for the petitioners prayed for declaration that land of the petitioners is released from reservation.

6. In support of his submissions, the learned counsel for the petitioners relied on the following cases:

- i. Madhukar Prabhakar Koregaonkar Through LRs. Vs. State of Maharashtra and others, 2017 SCC Online Bom 8973.
- ii. Satish s/o Soma Bhole Vs. State of Maharashtra, 2010 SCC Online Bom 1194.

7. Mr. Kale, the learned AGP appearing for respondent Nos. 1 and 2 State submits that the petitioners have purchased the land under reservation i.e. Survey No.56/2 from the original owner by registered sale

deed dated 21.11.2016. The petitioners served notice under section 127 of the MRTP Act upon the planning authority i.e. respondent No.5 in respect of their land Survey No. 56/2 reserved for Playground as Site No. 40 and copy of the said notice was given to the respondent Nos. 1 and 2. However, the respondent- Nagar Parishad which is planning authority failed to act upon the notice under section 127 of the MRTP Act. The learned AGP has not disputed the timelines/averments made by the petitioners in this regard.

8. Mr. J. R. Shah, the learned counsel appearing for respondent No.5 Nagar Parishad has not disputed the facts described in the petition and narrated by the learned counsel for the petitioners, however, it is submitted that Land Survey No. 56/2 reserved for Playground as site No.40 and that the reservation of Playground is statutory reservation as contemplated under section 22 of the MRTP Act. The petitioners have not approached the Municipal council for development of their land and they are not desirous of development the land under reservation. The respondent Nagar Parishad is ready to acquire the reserved land and will shortly submit proposal to the Collector for its acquisition, hence, it is prayed for dismissal of the petition.

9. In support of his submission, the learned counsel for respondent No.5 relied decision of this Court (Nagpur Bench) in the case of **Jaika Vinijya Ltd. Nagpur & another Vs. the State of Maharashtra, 2013 (4) Mh.L.J. 161.**

10. It appears from the record that the final development plan of Shahada Nagar Parishad came into force on 11.09.2006 and the notice under section 127 of the MRTP Act was served on 29.11.2016 i.e. after lapse of statutory period of 10 years. Further, vide communication 08.04.2022, though it is stated to be informed to the Assistant Director of town Planning, Nandurbar that the Nagar Parishad, Shahada needs reservations of Site No. 40 in the public interest, which is again after lapse of statutory period and moreover no further step pursuant thereto is coming forward. It is trite that failure of authorities to take steps which result in actual commencement of action 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. The step taken within the stipulated time should be towards acquisition of the land.

11. We have given our thoughtful consideration to the rival submissions and perused the papers. The law in this regard has been crystallized over a period of time. 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** laying down as to what would constitute a step in the direction of acquisition as contemplated under Section 126 of the MRTP Act. It held that nothing short of a declaration under Section 6 of the Land Acquisition Act 1894 which is analogs to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation

and Resettlement Act, 2013 would constitute such a step in the direction of acquisition of the property reserved for public use. Admittedly, no such declaration has been made.

12. In view of the above state of affairs, the consequences would be inevitable. Going by the timeline described herein above, respondent No. 5 having failed to take steps in the direction of acquisition within 10 years of coming into force of the development plan and thereafter for 24 months after receipt of notice under Section 127 of the MRTP Act, the reservation would lapse.

13. In view of the above discussion and considering the ratio laid down in case of *Girnar Traders (supra)*, we are inclined to allow the writ petition and declare that the reservation on land survey No. 56/2, situated within the limits of Shahad Nagar Parishad, Shahad District Nandurbar stands lapsed. The respondents shall take immediate steps for issuance of notification under sub section 2 of section 127 of the MRTP Act.

14. Rule is made absolute in above terms.

(Y. G. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)

JPChavan