

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

WRIT PETITION NO. 2736 OF 2022

1. Shardul S/o Madhusudan Shroff,
Age : 73 Years, Occu. : Agril.,

2. Parimal S/o Madhusudan Shroff,
Age : 71 Years, Occu. : Agril.,

Both R/o Main Road, Taloda,
Tq. Taloda, Dist. Nandurbar.

.. Petitioners

Versus

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

2. The Additional Commissioner,
Nashik Division, Nashik.

3. The District Collector,
Nandurbar, Dist. Nandurbar,
Through : The Special Land
Acquisition Officer.

4. Taloda Municipal Council,
Taloda, Dist. Nandurbar,
Through its Chief Officer.

5. The Town Planning Officer,
Nandurbar.

.. Respondents

Shri C. K. Shinde, Advocate for Petitioners.

Shri S. P. Tiwari, A.G.P. for Respondent Nos. 1 to 3.

Shri G. D. Jain, Advocate for Respondent Nos. 4 and 5.

**CORAM : R. D. DHANUKA AND
S. G. MEHARE, JJ.
DATE : 24TH MARCH, 2022.**

ORAL JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. Rule. The learned Assistant Government Pleader waives service for respondent Nos. 1 to 3. Mr. Jain, the learned counsel waives service for respondent Nos. 4 and 5. Rule made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the steps for declaration that, land bearing Sy. No. 492/1 (New Sy. No. 74/1) to the extent of 0.77R situated in the limits of Municipal Council, Taloda, Dist. Nandurbar stands released from the reservation and it has become available to petitioners for the purpose of development.

3. The petitioners also seek writ of mandamus against the State of Maharashtra to notify the de-reservation of land Sy. No. 492/1 (New Sy. No. 74/1) to the extent of 0H 77R of village Taloda, Dist. Nandurbar as described in prayer clause B since the reservation of said land stood lapsed.

4. The petitioners are the owners of the said land. On 02nd December, 1965, the State Government sanctioned development plan for Taloda Municipal Council. The same came into effect from 01.04.1966. The property bearing Sy. No. 492/1 part to 492/6 had been reserved for construction of garden as Site No. 3.

On 27th December, 1979, the Municipal Council passed a resolution to acquire the said lands for public purpose. On 30th August, 1971, the State Government vide notification delegated its powers under Sub Sec. 2 and 4 of Section 126 of the Maharashtra Regional and Town Planning Act (for short “MRTP Act”) to the respondent No. 2. The respondent No. 2, thereafter directed the respondent No. 3 to initiate land acquisition proceedings. On 05th November, 1981 a notification U/Sec. 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act came to be published in Government Gazettee. The predecessor in title and other land owners whose lands were affected by the said reservation filed objection to the acquisition so also the feasibility of the public purpose.

5. On 18th July, 2012, the Municipal Council resolved that, it is not possible to make payment of compensation for acquisition of lands covered by site No. 3 and particularly area adm. 2873.75 sqm. Therefore, said portion be de-reserved and the land owner be permitted to develop the property. This Court accordingly disposed of earlier Writ Petition No. 4210 of 2009 filed by the land owners.

6. Sometime in the year 2019, the petitioner filed Writ Petition No. 3822 of 2019 inter alia praying for declaration that the land bearing Sy. No. 492/1 (New Sy. No. 74/1) to the extent of 0H 77R, which is subject matter of this petition stands released from reservation. By judgment dated 07th February, 2020,

Division Bench of this Court declared that that the acquisition pursuant to the declaration U/Sec. 6 read with Section 126 of the MRTP Act dated 05th October, 1981 stood lapsed. It was however, made clear that the respondents if desire to acquire land shall initiate fresh acquisition proceedings.

7. Pursuant to the said judgment delivered by this Court, the petitioners issued notice on 14.02.2020 to the Chief Officer, Taloda Municipal Council U/Sec. 127 of the MRTP Act. Though the said notice was received by the Municipal Council, Taloda on 14.02.202 itself, no steps are taken by the Municipal Council to acquire the said land within a period of two years from the date of receipt of said notice. The petitioners thus filed this petition.

8. The learned counsel for the petitioner invited our attention to various documents in support of his submission that, though the purchase notice was issued on 14.02.2020 and was received by the respondent No. 4 on the same day, no steps were taken in pursuance to the notice dated 14.02.2020 and thus the acquisition of the said land under reservation stands lapsed.

9. The learned counsel for the respondent No. 4 could not dispute this position that the land was not purchased within two years from the date of receipt of notice U/Sec. 127 of the MRTP Act.

10. Since the respondent No. 4 could not acquire the land

within a period of two years from the date of receipt of notice U/Sec. 127 of the MRTP Act, the reservation in the development plan for Municipal Council, Taloda stands lapsed.

11. The writ petition is allowed in terms of prayer clauses “B” and “C”. Rule is made absolute in above terms. No order as to costs.

[S. G. MEHARE, J.]

[R. D. DHANUKA, J.]

bsb/March 22