

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

WRIT PETITION NO. 5692 OF 2022

1. Nandkumar s/o Tukaram Helwade
Age 58 years, Occu; Agril.
2. Madhusudan s/o Tukaram Helwade,
Age 61 years, Occu: Agril.
3. Manohar s/o Tukaram Helwade ... **Petitioners**
Age 85 years, Occu: Agril.
4. Rushabh s/o Shamsundar Helwade,
Age 29 years, Occu: Agril.
5. Krishnakant s/o Sanjay Helwade,
Age 29 years, Occu: Agril.

VERSUS

1. The State of Maharashtra,
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai-32
2. The Municipal Council, Sailu ... **Respondents**
Tq. Sailur District Parbhani
Through its Chief Officer.

Mr. Manish R. Tripathi, Advocate for the petitioners,
Mrs. M. A. Deshpande, for respondent No. 1- State
Mr. Raviraj R. Chandak, Advocate for respondent No.2

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

DATE : 14.12.2022

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 Sailu Municipal Council, prays for declaration regarding lapsing of reservation in view of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, 'the MRTTP Act')
4. Mr. Manish Tripathi, the learned advocate for the petitioners submits that the petitioners are owners of land bearing Gat No. 148 situated at Sailu Town, within the limits of Sailu Municipal Council. The final development plan of respondent No.2- Municipal Council is sanctioned under notification dated 18.06.2001 which came into force with effect from 06.08.2001. Under the development plan, land of the petitioners admeasuring 51 Are out of Gat No. 148 was reserved for Civil Centre and Library as Site Nos. 47. The adjoining land Gat No. 148 developed as residential zone but the petitioners could not be able to develop their land due to the said reservation. The petitioners initially issued purchase notice under section 49 of the MRTTP Act, however, the Director of Town Planning M.S.Pune passed an order dated 16.03.2020

and has refused to act upon it on technical grounds. No steps have been initiated by the respondent No.2- planning authority for acquisition of the said property for more than 10 years. Therefore, the petitioners issued a notice dated 24.04.2020 under section 127 of the MRTP Act along-with necessary documents to the respondent No.2 Municipal council. In spite of service of notice, no steps have been taken by the respondent- municipal council for acquisition of the said land as contemplated under section 126 of the MRTP 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 for more than two years for acquisition of the property. Therefore, as per provisions of Section 127 of the MRTP Act, the reservation would lapse on expiry of notice period.

5. The learned AGP appearing for respondent-State has not disputed averments made by the petitioners. However, it is submitted that the respondent- Municipal council which is planning authority failed to act upon the notice under section 127 of the MRTP Act due to financial constraints.

6. The learned advocate for the respondent No.2 Municipal Council has not disputed the fact that the final development plan of respondent No.2- Municipal Council is sanctioned by notification dated 18.06.2001 which came into force with effect from 06.08.2001 under which land of

the petitioners admeasuring 51 Are out of Gat No. 148 was reserved for Civil Centre and Library as Site Nos. 47. However, the learned counsel submitted that due to financial constraints, the acquisition proceedings could not be initiated in time. It is further submitted that the petitioners have not annexed measurement map of his land and therefore the notice dated 24.02.2020 is incomplete. The reservation is for the benefit public at large interest and therefore it needs to be reserved, hence prayed for dismissal of the petition.

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

8. The record speaks that, final development plan of respondent No.2- Municipal Council is sanctioned by notification dated 18.06.2001 which came into force with effect from 06.08.2001 under which land of the petitioners admeasuring 51 Are out of Gat No. 148 was reserved for Civil Centre and Library as Site Nos. 47 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 24.02.2020, the petitioners issued notice under section 127 of the MRTP Act to the planning authority for release of his land from the reservation. The land under reservation is ancestral land of the petitioners and they enclosed documents such as 7/12 extract along with the notice. Though it is stated that the measurement plan was not enclosed with the notice, it can be said to be within knowledge and can very well be available with the

municipal council. 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. 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 MRTP 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 MRTP 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 MRTP Act. Admittedly, no such steps have been taken for whatever reason.

10. There is nothing on the record to demonstrate that respondent- Municipal Council which is the development authority had taken any effective step for acquisition of land except stating that the Municipal Council 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.

11. 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 51 Are out of Gat No. 148 for Civil Centre and Library as Site Nos. 47 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.

12. Rule is made absolute in above terms.

(Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)

JPChavan