

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.12523 OF 2021

Shrikrushna Educational and Cultural Mandal,
Jalgaon, Through it's President,
Gulabrao Baburao Devkar,
Age 64 yrs., Occ. Agri.,
R/o Madhuban, Plot No.56, 57, Ramdas Colony,
Near Sagar Park, Jalgaon,
Tq. & Dist. Jalgaon.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra,
Through it's Secretary,
Urban Development Department,
Mantralaya, Mumbai.
- 2 The Director of Town Planning,
Maharashtra State, Pune.
- 3 The Collector, Jalgaon.
- 4 The Municipal Commissioner,
Jalgaon Municipal Corporation,
Jalgaon.
- 5 The Assistant Director of Town Planning,
B.J. Market, Jalgaon.

... Respondents

...

Mr. A.B. Kale, Advocate for petitioner

Mr. A.S. Shinde, AGP for respondent Nos.1 to 3

Mr. V.D. Gunale, Advocate for respondent No.4

...

**CORAM : SMT. VIBHA KANKANWADI AND
Y.G. KHOBRAGADE, JJ.**

DATE : 19th OCTOBER, 2022

JUDGMENT : [PER : SMT. VIBHA KANKANWADI, J.]

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner-institute, by invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, seeks direction to the respondents to de-reserve the land of the petitioner admeasuring 2300 sq.mtrs. from land bearing Gat No.764/2 situated at Avhane, Tq. & Dist. Jalgaon, which is reserved for the purpose of Hospital and Sutika Gruha. Further direction has been sought against the respondents to delete the reservation of the land of the said area from the development plan as per Section 50 of the Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred to as "M.R.T.P Act").

3 The brief facts leading to the petition are that the petitioner-institution was established in the year 1992 to carry out educational and social work in the society. The petitioner-institution owns and possesses land

bearing Gat No.764/2 to the extent of 36 R situated at Avhane, Tq. & Dist. Jalgaon. The said land was purchased by the petitioner by the registered sale deed on 28.01.2011. Out of the said land, land admeasuring 2300 sq.mtrs. is reserved for public purpose i.e. Hospital and Sutika Gruha by the respondents. Before the establishment of Municipal Corporation at Jalgaon, there was Municipal Council, which was responsible for the development and planning of the city. The draft development plan of Jalgaon (additional area) was published by Municipal Corporation as well as Government of Maharashtra on 11.02.2002, thereby reserving the petitioner's land. After the finalization of the development it was incumbent on the planning authority to acquire the said property by negotiation or by following due procedure in respect of M.R.T.P Act or even under Land Acquisition Act within a period of 10 years. However, the respondent authorities had not taken any steps in that respect. No compensation has been provided to the petitioner. Therefore, the petitioner issued legal notice under Section 127 of the M.R.T.P Act on 28.03.2018 to the appropriate authority. The said notice was served on the appropriate authority on 31.03.2018. In spite of the same no steps have been taken. Till date no declaration under Section 6 of the Land Acquisition Act has been issued nor steps have been taken as contemplated under Section 126 and 127 of the M.R.T.P Act. Further, even after the service of notice no action has been taken for the period of two years and, therefore,

the notice is confirmed. The land is, therefore, available to the petitioner for development, in view of the provisions under Section 127 of M.R.T.P. Act. Hence, the petition.

4 Affidavit-in-reply has been filed on behalf of the respondent No.4 Dr. Vidya Umeshrao Gaikwad, the then Municipal Commissioner, Jalgaon Municipal Corporation, Jalgaon. The fact that the reservation has been made in the draft plan, which was later on finalized to the extent of 2300 sq.mtrs., is accepted. It is also not in dispute that no steps have been taken for acquisition. Dispute is raised in respect of service of notice under Section 127 of the M.R.T.P. Act dated 28.03.2018. It has been contended that though the inward number appears to have been signed by the inward Clerk; yet, upon the inquiry it was revealed that the person who had brought the notice on behalf of the petitioner, after the endorsement was made by the inward Clerk, took that notice with him and told that he would deliver it in the respective department. However, that person did not deliver it to the concerned department. The disciplinary action has been initiated against the said Clerk and the other employees. However, the fact remains that when a separate register has been maintained by the Corporation for receipt of notices under Section 127 of the M.R.T.P. Act in the concerned department and there is no entry about the same, it can be said that no such notice was

ever received by the Corporation. When the statutory notice itself has not been properly served, the petition is required to be dismissed.

5 Heard learned Advocate Mr. A.B. Kale for petitioner, learned AGP Mr. A.S. Shinde for respondent Nos.1 to 3 and learned Advocate Mr. V.D. Gunale for respondent No.4.

6 The learned Advocate for the petitioner has relied on the decision in **Jawahar Hiralal Mehta through his Power of Attorney vs. The State of Maharashtra and another, Writ Petition No.3024 of 2021** decided on 24.02.2022. Herein also after considering the facts of the case it was held that the land of the petitioner was reserved and no steps were taken, then, after the stipulated period as per the provisions under the M.R.T.P. Act it will have to be concluded that the reservation stands automatically lapsed.

7 The facts are not much in dispute and, therefore, cursorily taken note of. Petitioner is the owner of 36 R land out of Gat No.764/2 situated at Avhane, Tq. & Dist. Jalgaon. Out of the said land, land admeasuring 2300 sq.mtrs. was reserved under the Draft Development Plan published and sanctioned on 11.02.2002. It was for Hospital as well as Sutika Gruha. Then, definitely, there ought to have been further steps by the development authority under M.R.T.P. Act for its acquisition and payment of compensation.

We will have to consider the provisions of Section 126 of M.R.T.P. Act, which provided for acquisition of land acquired for public purposes under specified plans or even in respect of procedure for acquisition of land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Section 127 of M.R.T.P. Act runs thus -

“[127 **Lapsing of reservations** : (1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development plan comes into force [or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

[(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.”]

Sections 126 and 127 of M.R.T.P. Act will have to be read conjointly and if the steps are not taken as contemplated, then, it would result in lapsing of reservations. In **Girnar Traders vs. State of Maharashtra and others, 2007 (7) SCC 555** Hon'ble Supreme Court has held -

“54 When we conjointly read sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under subsection (4) of section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards

commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation.

55 Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56 The underlying principle envisaged in Section 127 of the MRTTP Act is either to utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the Town Planning Scheme. The step taken under the Section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTTP Act by merely moving an application requesting the

Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57 It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under section 6 of the LA Act. Clause (c) of Section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act."

No doubt, since a different Land Acquisition Act came into effect in 2013; yet, the provisions would be still applicable and the period of limitation as prescribed under Section 127 of the M.R.T.P Act would be 10 years, in which the development authority will have to act. The purpose of such stringent provision, though giving much room to the development authority, is that to see that the reserved land is used for the purpose for

which it is reserved. But, at the same time, the original owner cannot be kept remedy-less and, therefore, the provision is made that if no steps are taken, then, the lapsing of the reservation would occur. Rather it is, in fact, an automatic lapsing.

8 In the present case there is dispute about service of notice under Section 127 of the M.R.T.P. Act. Definitely, serving of that notice is a mandatory provision and perusal of the copy of the notice would show that it was acknowledged by the respondent - Municipal Corporation. The petitioner was not concerned with the internal arrangements, nor it can be said that the petitioner will have had knowledge about the internal arrangement in the Municipal Corporation. When a desk is made available where people can leave the notices/complaints in respect of actions to be taken by the Municipal Corporation, then, the acknowledgment by the said desk is important. It would be then the work of the concerned person at the said desk to deliver such communication to the respective department. The notice appears to have been drafted on 28.03.2018 and it has delivered to the appropriate desk on 31.03.2018. From the documents those have been produced on behalf of respondent No.4 it can be seen that, that notice was received at the desk and the inward register speaks about it and even the remark column shows that it was the notice under Section 127 of M.R.T.P.

Act. However, further, in the remark column it is said that “By Hand”. However, there is no signature of the person to whom it was handed over for its further dispatch. Now, the affiant – Municipal Commissioner submits that the person who had brought the said notice on behalf of the petitioner had then offered it to be delivered to the concerned department. We may not like to go deep into that aspect but the simple question is, as to why the said person would believe and when it is his job only, how he can delegate or request his duty to be performed by any other person. Now, that show cause notice has been issued to the concerned department and he has given the said explanation. But the fact remains that it was not the job of the concerned Clerk to allow the said person from the petitioner to deliver the said notice to the concerned department. The affiant – Municipal Commissioner has not explained as to who controls the inward outward register and why the show cause notice was issued on 17.06.2022 (appears to be after the presentation of the petition). The superior had not found out that such notice was issued but it has not reached the proper department. For the mismanagement in the Corporation; the petitioner cannot be held responsible. It will have to be held that there was a proper service under Section 127 of the M.R.T.P. Act on the respondent No.4. When no action has been taken thereafter also by respondent No.4, further consequences would follow that of lapsing of the reservation. The petitioner is, therefore, entitled

to get the reliefs claimed. Hence, following order.

ORDER

1 The petition stands allowed.

2 The reservation of land to the extent of 2300 sq. mtrs. from Gat No.764/2 situated at Avhane, Tq. & Dist. Jalgaon as per Development Plan dated 11.02.2002 reserved for the purpose of Hospital and Sutika Gruha stands lapsed.

3 Respondent No.1 to notify the lapsing of the reservation of the said land in the official gazette in view of Section 127(2) of M.R.T.P. Act, within a period of four months from today.

4 Rule made absolute in above terms. No order as to costs.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)