

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

WRIT PETITION NO. 6672 OF 2019

- 1) Kulbhushan s/o Ramchand Agrawal,
Age 65 years, Occ. Business,
R/o. Survey No. 8/1 & 8/2,
Shahnoorwadi, Aurangabad, Tq. &
Dist. Aurangabad.
GPA for petitioners No. 2 to 8.
- 2) Subhash Ramchand Agrawal,
Age 63 years, Occ. Business,
R/o. Survey No. 8/1 & 8/2,
Shahnoorwadi, Aurangabad
- 3) Rajendra Ramchand Agrawal,
Age 60 years, Occ. Business,
R/o. Survey No. 8/1 & 8/2,
Shahanoorwadi, Aurangabad
- 4) Rajkumar Manakchand Agrawal,
Age 58 years, Occ. Business,
R/o. Survey No. 8/1 & 8/2,
Shahanoorwadi, Aurangabad
- 5) Tarabai Ramchand Agrawal,
Age 85 years, Occ. Household,
R/o. Survey No. 8/1 & 8/2,
Shahanoorwadi, Aurangabad
- 6) Mangala Kulbhushan Agrawal,
Age 60 years, Occ. Household,
R/o. Survey No. 8/1 & 8/2,
Shahanoorwadi, Aurangabad
- 7) Sheela Subhash Agrawal,
Age 55 years, Occ. Household,
R/o. Survey No. 8/1 & 8/2,
Shahanoorwadi, Aurangabad.
- 8) Dilip Rameshwar Agrawal,
Age 60 years, Occ. Business,
R/o. Survey No. 8/1 & 8/2,
Shahanoorwadi, Aurangabad

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai.
 - 2) The Aurangabad Municipal Corporation,
Aurangabad,
Through its Commissioner,
Aurangabad, Dist. Aurangabad.
 - 3) The Town Planning Officer,
The Aurangabad Municipal Corporation,
Aurangabad, Dist. Aurangabad.
- ... Respondents.

...

Advocate for the Petitioners : Mr. Anil S. Bajaj
A.G.P. for the Respondent No. 1 : Mr. A.S. Shinde
Advocate for the Respondent Nos 2 & 3 : Mr. S.S. Tope.

CORAM : **MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : **25.08.2022.**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

We have heard both the sides.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioners are seeking a declaration regarding lapsing of the reservation in view of the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter 'MRTP Act').

4. The petitioners claim to be the owners of part of land Survey Nos. 8/1 and 8/2 bearing City Survey Nos. 15846/1 and 15848/2, totally admeasuring 4 Acres, Shahanoorwadi, Aurangabad (hereinafter referred to as 'writ properties'). There is no dispute as far as the facts are concerned. The revised development plan of Aurangabad Municipal Corporation was

sanctioned on 17.08.2002. The writ properties were reserved for garden and play ground. On 22.06.2018 the petitioners issued notice to the respondent Nos. 2 and 3 under Section 127 of the MRTP Act. The latter called upon them to get the writ properties measured. They responded by informing that the expenditure which was required to carry out the measurement was huge. By a further communication dated 09.01.2019 the petitioners also pointed out that such measurement was not necessary in law and the petition was filed on 29.04.2019.

5. Learned advocate Mr. Bajaj for the petitioners submits that the law is settled. The consequence of lapsing of reservation is axiomatic. Section 127 merely requires documents indicating title or interest in the properties under the reservation to be accompanied with the notice. Measurement of the property is not a condition precedent or requirement of law. No step in the direction of acquisition was taken for more than 45 years. In support of his such submission he would cite the decision of this Court in the matter of **M/s. Jaika Vanijya Limited and another Vs. The State of Maharashtra and others in Writ Petition No. 5531/2012 (Nagpur Bench) dated 22.03.2013.**

6. Learned advocate Mr. Tope for the respondent Nos. 2 and 3 vehemently submits that it was incumbent for the petitioners to furnish all the documents including a measurement map so as to precisely indicate in respect of which properties they were seeking dereservation. The respondent Nos. 2 and 3 have every right to enquire into and make sure that the reservation would lapse only in respect of the property regarding which a notice is issued under Section 127. Even the petitioners had made an attempt to get their lands measured but later on backed off on the ground of expenses. Writ Petition No. 1339/2016 has already been filed for the same relief and, therefore, this writ petition is not maintainable. The whole purpose of reservation for public purposes would be lost. The petition be dismissed. He would place reliance on some of the observations of this Court in the matter of **C.V. Shah & A.V. Bhat Vs. State of Maharashtra and**

others; 2006 (3) Bom. C.R. 216 and **Mariyam Begum Abdul Jalil Khan Vs. State of Maharashtra (in Writ Petition No. 5312/2016)**; 2018 (6) ALL M.R. 828.

7. As is mentioned earlier, as far as facts are concerned there is not much of dispute. The writ properties were covered by reservation in a development plan, the revision of which was sanctioned in the year 2002. No steps were taken for its acquisition within 10 years from 2002. Notices were issued by the petitioners putting the respondent Nos. 2 and 3 to notice that they should take steps for its acquisition as contemplated under Section 127 and still no such steps were taken within 24 months.

8. The whole insistence of the respondent Nos. 2 and 3 and their learned advocate has been on the point that the writ properties ought to have been first got measured and the map should have been annexed with the notice under Section 127. However, the issue is no more *res integra*. In the matter of **M/s. Jaika Vanijya Limited (supra)**, this court has concluded that Section 127 only contemplates documents to be accompanied disclosing title. It does not mention about any measurement map to be annexed.

9. Besides, the respondent Nos. 2 and 3 in none of their communications addressed to the petitioners had ever disclosed the reasons why they were insisting for the measurement map. One cannot comprehend as to why and how they would require any such measurement map when they have been conscious about the fact that the writ properties have been reserved in the revised development plan about which the notice under Section 127 was received by them.

10. We have every reason to believe that the ground being put forth by insisting for such measurement map was nothing but a faint attempt to obviate lapsing of the reservation. We are afraid, it is trite that lapsing occurs as an inevitable consequence if no steps are taken for acquisition of the properties which are reserved in a development plan. In the matter of

Girnar Traders and another Vs. State of Maharashtra and others; 2007 AIR (SC) 3180 it has been emphatically concluded that nothing short of issuing a declaration under Section 6 of the Land Acquisition Act, 1894 (corresponding to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) read with Section 126 (2) of the MRTP Act would constitute a step in the direction of acquisition as contemplated under Section 127 of the MRTP Act. The affidavit in reply is conspicuously silent about any such steps towards acquisition having been taken by the respondent Nos. 2 and 3. The consequences are axiomatic and would set at naught any objection for opposing the declaration being claimed.

11. As far as the ground of filing of the earlier petition is concerned, admittedly, that petition (Writ Petition No. 1339/2016) has already been withdrawn and disposed of by the order dated 14.02.2022.

12. True it is that the notice under Section 127 has been issued on 22.06.2018. Whereas, the petition has been filed on 29.04.2019 that is even before the period of 24 months as mentioned therein has elapsed. But then, even till date, the respondent Nos. 2 and 3 have not taken any steps as is contemplated in law towards acquisition of the writ properties and consequently, since a period of 24 months has already lapsed with no further steps towards acquisition.

13. The writ petition is allowed and declare that the reservation has lapsed. Necessary notification under Section 127(2) of the MRTP Act be issued within four months.

14. The Rule is made absolute.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

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