

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

WRIT PETITION NO. 6786 OF 2019

Shankar Nagar Co-operative
Housing Society Ltd., Vaijapur
Tq. Vaijapur, Dist. Aurangabad
through its Chairman
Shri Maganrao Dagadu Gaikwad
Age : 65 Years, Occu. : Agril.,
R/o Panvi, Tq. Vaijapur,
Dist. Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra,
through Secretary
Urban Development Department
Mantralaya, Mumbai 400 032.
2. The Director,
Town planning Maharashtra
State Pune.
3. The Assistant Director of
Town Planning, Aurangabad.
4. The Collector,
Aurangabad, Dist. Aurangabad.
5. The Municipal Council,
Vaijapur, Dist. Aurangabad
Through its Chief Executive Officer. .. Respondents

Shri Kamlakar J. Suryawanshi, Advocate for the Petitioner.

Smt. Vaishali N. Patil Jadhav, A.G.P. for the Respondent Nos. 1
to 4.

Shri Narendra D. Sonawane, Advocate for the Respondent No. 5.

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

DATE : 20.09.2022.

JUDGMENT (*Per Sandeep V. Marne, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. By present petition, the petitioner seeks a declaration that the land bearing site No. 56, Sy. No. 280/6 adm. 1A 20G i. e. 5353 square meters situated at Vaijapur, Dist. Aurangabad stands de-reserved / released from reservation.

3. Undisputed facts are that the development plan was notified on 18.02.1985, in which the writ property was reserved for garden. Since steps were not taken for acquisition of reserved land purchase notice was issued on 02.04.2008. Thereafter, during the period of twenty four (24) months of issuance of purchase notice, no steps have been taken for acquisition of the property.

4. The only objection raised on behalf of the respondent No. 5 – Municipal Council is that revised plan has been published on 21.12.2012, in which again the writ property has been reserved.

5. In the light of the said defence of the Municipal Council, the issue that arises for consideration is by publication of revised plan, whether a reservation which has already lapsed by

operation of provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “M.R.T.P. Act”) would revive ?

6. The issue is *no longer res-integra* and is covered by the judgment of this Court in the case of **Kishor Siddheshwar Wadotkar Vs. Director of Town Planning and others** reported in **2007 (3) Mh. L. J. 399**, in which it is held that the right accrued to get the land released from reservation under Section 127 of the M.R.T.P. Act cannot be taken away merely because land in question is again shown to be reserved in the revised development plan. This position is reiterated in another decision of this Court in the case of **Dinkar Narsinhrao Patil-Pawar and others Vs. The State of Maharashtra and others in Writ Petition No. 5025 of 2012** decided on 10.10.2012.

7. Even in the judgment relied upon by Mr. Sonawane, learned advocate appearing for the respondent No. 5 in the case of **Prafulla C. Dave and others Vs. Municipal Commissioner and others** reported in **2015(11) SCC 90**, it is held that, if the land owner has taken action U/Sec. 127 of the M.R.T.P. Act at anterior point of time to preparation of revised plan, such revised plan will not have any effect on lapsing of reservation.

8. Thus, it is now trite that mere publication of revised development plan would not save lapsing of reservation U/Sec. 127 of the M.R.T.P. Act.

9. Consequently, the writ petition is allowed. The land in question shall be deemed to be released from reservation. The State Government is directed to publish notification under Sub Section 2 of Section 127 of the M.R.T.P. Act within a period of four (04) months from today. Rule is made absolute in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22