

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

WRIT PETITION NO. 7649 OF 2018

Jijau Vividh Karmachari Graha
Nirman Sahakari Sanstha Ltd.,
Selu through its Secretary
Sopan Gopalgaonkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Mrigesh D. Narwadkar, Advocate for the Petitioner.
Shri S. P. Tiwari, A.G.P. for Respondent Nos. 1, 2 and 4.
Shri Swapnil S. Rathi, Advocate for the respondent No. 3

**CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.**

DATE : 14TH FEBRUARY, 2022.

FINAL ORDER :

. The development plan was sanctioned for the Municipal Council, Selu on or about 18.06.2001. In the said development plan the land of the petitioner bearing gut No. 8/2 admeasuring 1H 5.76R was reserved for Panchayat Samiti. The development plan was revised and sanctioned on 14.07.2005. Under the said development plan the land of the petitioner was reserved as site No. 27 for Government offices and staff quarters. No steps for acquisition were initiated. The petitioner on or about 04th April, 2016 served notice U/Sec. 127 of the Maharashtra Regional and Town Planning Act (for short "Said Act") to the planning authority, even upon the Municipal Council, Selu. Thereafter, the petitioner on or about 04th April, 2016 issued notice U/Sec.

127 of the said Act to the Collector, Parbhani. The petitioner has filed the acknowledgment of service confirmed by the post office. It states that, the notice is served upon the respondent on 11th April, 2016. No steps are taken for acquisition thereafter for the period of two years.

2. The learned Assistant Government Pleader for respondents/State submits that, the notice U/Sec. 127 of the said Act provides service upon the District Collector in the valid manner inspite of informing the petitioner of the same by the Assistant Director of Town Planning Parbhani, the notice is not validly served.

3. The factual matrix about the land of the petitioner bearing gut No. 8/2 to the extent of 1H 5.76R is reserved for Government offices and staff quarters in the year 2005 is not disputed. The service of notice U/Sec. 127 of the said Act to the planning authority is not also disputed. The Government in the affidavit has disputed service of notice upon the Collector, Parbhani.

4. The petitioner has placed on record letters issued by the Superintendent of Post Office, Parbhani, wherein it is clearly stated that the notice issued by the petitioner to the Collector is delivered on 11.04.2016. The information to that effect is placed on record. In the light of that the notice is also served upon the appropriate authority as well as the planning authority.

5. From 11.04.2016 for a period of two years no steps for

acquisition are initiated by the planning authority and/or the State Government.

6. Section 127 of the M. R. T. P. Act is fetter on the powers of eminent domain. The same operates to remove clog on the right of ownership of an individual. The right to property though is not fundamental right, still continues to be constitutional right now a days, it has been brought within the contours of the human right. As no steps are initiated for acquisition of land within a period of two years from the date of service of notice U/Sec. 127 of the said Act, the reservation stands lapsed. Reference can be had to the judgment of the Apex Court in a case of *Girnar Traders Vs. State of Maharashtra and others* reported in (2011) 3 S.C.C. 01.

7. In the light of the above, we pass following order.

8. The reservation as site No. 27 on the land of the petitioner bearing gut No. 8/2 admeasuring 1H 5.76R situated at Selu stands lapsed. The said land stands released from reservation. The Government shall issue notification U/Sec. 127(2) of the M. R. T. P. Act expeditiously and preferably within a period of six (06) months from today.

9. The writ petition accordingly is disposed of. No costs.

[S. G. DIGE, J.]
bsb/Feb.22

[S. V. GANGAPURWALA, J.]