

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7584 OF 2021

1. Padama W/o Shivchandra Mundada,
Age: 81 years, Occ - Household,
R/o : "Saket", Dudhsagar Road,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.

2. Subodh S/o Shivchandra Mundada,
Age: 57 years, Occ - Business,
R/o : "Saket", Dudhsagar Road,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.

3. Girish S/o Shivchandra Mundada,
Age: 55 years, Occ - Business,
R/o : "Saket", Dudhsagar Road,
Chalisgaon, Tq. Chalisgaon,
District Jalgaon.

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.

2. The Director of Town Planning,
Maharashtra State, Pune.

3. The Deputy Director of Town
Planning, Nashik Division,
Nashik.

4. The Chief Officer,
Municipal Council, Chalisgaon,
Tq. Chalisgaon, District Jalgaon.

.. RESPONDENTS

Mr. Dhananjay Mane, Advocate holding for Mr. D.M. Pingale, Advocate
for petitioner.

Mr. S. B. Yawalkar, Additional G. P. for respondents no.1 to 3.

Mr. R. S. Shinde, Advocate holding for Mr. D. B. Thoke, Advocate for
respondent no.4.

**CORAM : DIPANKAR DATTA, CJ.
AND
SMT. VIBHA KANKANWADI, J.**

**RESERVED ON : NOVEMBER 17, 2022
PRONOUNCED ON : NOVEMBER 18, 2022**

JUDGMENT (Per Dipankar Datta, CJ.)

- 1.** The first petitioner is the mother of the second and the third petitioners. They claim to be owners of land bearing Survey No. 362/2B1, admeasuring 1 H 44 R, situated at Chalisgaon, Tq. Chalisgaon, District Jalgaon.
- 2.** The development plan for Chalisgaon sanctioned in the year 1989 provided reservation for a “play-ground” to the extent of 1813.43 square meters of Survey No. 362/2B1.
- 3.** Despite lapse of two decades after sanction of the said development plan, no proceedings were initiated by the respondents to acquire the part of Survey No. 362/2B1 which was reserved for a “play-ground”. On 19th July, 2013, the petitioners invoked the provisions of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereafter “**MRTP Act**” for short) by service of notice upon the planning authority, i.e., Chief Officer, Municipal Council, Chalisgaon, District Jalgaon, respondent no.4. He was called upon to initiate proceedings under section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894.
- 4.** Since no action was initiated by the respondent no.4 despite due receipt of the aforesaid notice on 19th July, 2013, the petitioners instituted a writ petition before this Court (WP No. 9897/2014), seeking an order on the respondents to de-reserve 1813.43 square meters of Survey No. 362/2B1 (Part) situated at Chalisgaon, District Jalgaon and for that purpose, issue necessary orders. It was also prayed that reservation of part of Survey No. 362/2B1 from the development plan be deleted.

5. Such writ petition along with a companion writ petition instituted by separate land owners seeking similar de-reservation of their lands, which were reserved in the final development plan prepared by the Council, came up for consideration before a coordinate Bench of this Court on 4th February, 2015. It was noted by the Bench that the petitioners had issued due notice as contemplated under section 127 of the MRTP Act, calling upon the planning authority either to acquire the property under reservation within the time stipulated in the relevant section or to release the same. The Bench, for the reasons recorded while disposing of another writ petition (WP No. 9896/2014) allowed WP No. 9897 of 2014. The order that followed reads as under:

“3. Reservation, allotment or designation specified in the development plan in respect of land belonging to the petitioners shall be deemed to have come to an end and the land shall be deemed to have come to an end and the land shall be deemed to have become available to the owner for the purpose of development or otherwise permissible in law of adjacent land under relevant plan.

4. The Respondents are directed to issue notification as contemplated by Section 127 (2) of the M. R. T. P. Act, as expeditiously as possible, preferably within a period of six months from today.”

6. In compliance with the order dated 4th February, 2015, the Government of Maharashtra in the Urban Development Department issued an order dated 26th July, 2016, in exercise of powers conferred by section 127 of the MRTP Act and all other powers enabling it in that behalf. It was notified that reservation of part of Survey No. 362/2B1 to the extent of 1813.43 square meters, referable to “site no.99 ‘play ground’ (partly)”, had since lapsed from the sanctioned development plan of Chalisgaon Municipal Council (Revised) and the said land shall be available to the land owner for the purpose of development as otherwise permissible in the case of adjacent land under the said development plan.

7. It is the pleaded case of the petitioners that with a *mala fide* intention, the respondent no.4 had in the meanwhile submitted a proposal for revised development plan and the same was sanctioned on 6th March, 2016. In such revised development plan, part of Survey No. 362/2B1 to the extent of 1813.43 square meters which was earlier reserved and reservation in respect whereof had lapsed, was again shown to be reserved for the purpose of housing people belonging to economically weaker section. A representation dated 16th January, 2018 was submitted by the petitioners before the Deputy Director of Town Planning, Nashik Division, Nashik, respondent no.3, pointing out the *mala fide* act of the respondent no.4 and a request was made to drop the reservation which was sanctioned in respect of the petitioners' land. Since 1813.43 square meters of land comprised in Survey No. 362/2B1 was not de-reserved in terms of the request so made, the petitioners instituted this writ petition on 2nd July, 2021 seeking *inter alia*, the following relief:

“B) Writ Petition may kindly be allowed and the land of the petitioners to the extent of 1813.43 Sq. Meters from land bearing Survey No. 362/2B1 situated at Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon in site no. 97 of the revised development plan of 2016 be directed to be released from the reservation and the said land shall not be treated as a reserved in the revised development plan brought into force on 07.05.2016.”

8. There are two affidavits-in-reply on record; one dated 13th December, 2021 sworn by the incumbent Assistant Director of Town Planning, Jalgaon District, Jalgaon on behalf of the respondents 1 to 3 and the other dated 13th December, 2021 on behalf of the respondent no.4 sworn by the incumbent Chief Officer of the Council.

9. The respondents 1 to 3 countered the allegations of *mala fide* levelled by the petitioners by pleading as follows:

“7. “I say and submit that, Chalisgaon Municipal Council had published the Notice under Section 26 of the said Act regarding preparation of 2nd revised draft Development Plan of Chalisgaon on dt. 13/04/2013 i.e. before filing the Petition No.9897/2014. The suggestions & objections were invited from the general Public on the said draft Development Plan, as per the provisions of said Act. Subsequently after following all legal formalities, Chief Officer, Chalisgaon Municipal Council vide its letter dated 11.09.2014 had submitted the 2nd revised draft Development Plan of Chalisgaon to Government for sanction under Section 30 of the said Act. The said 2nd revised draft Development Plan of Chalisgaon had been sanctioned under Section 31 of the said Act on 06/04/2016, after following all legal formalities. Hence Petitioner’s say regarding malafide intention of reserving the Petitioners land is hereby denied.”

In paragraph 8 of such affidavit, it has significantly been averred as follows:

“8. However, in the Second revised development Plan of Chalisgaon sanctioned by Government on dt. 06/04/2016 & came into force from 07/05/2016, the Petitioners land is mistakenly shown as reserved as Site No. 97 ‘Housing for EWS & Dishoused’. Hence requested to delete the said reservation Site No. 97 ‘Housing for EWS & Dishoused’ on the said land. I say and submit that, there is no mention of mala fide intention of respondent no.4, Municipal Council, Chalisgaon, in the said letter as contended by the petitioner.”

(emphasis supplied)

The aforesaid averments are followed by the below mentioned averments in paragraph 9:

“9. the legal proceedings regarding the Second revised development Plan Started way before the filing the Writ Petition No.9897/2014. Further suggestions & objections were invited by publication of notice regarding preparation of second revised draft development plan as prescribed in the said Act, wherein reservation bearing Site No. 97 ‘Housing for EWS & Dishoused’ was proposed. The Petitioners have not raised the objection on the proposed reservation. The Petitioners have brought this issue to the Notice of Respondent No.3 only after completion of all legal formalities and Sanction of second revised draft development plan of Chalisgaon by Government as per the provisions of the said Act. In view of above, Petitioners say that Planning Authority has included the reservation on the land, after the same has lapsed under provision of Section 127 is not correct.”

The affidavit concludes with a prayer that upon consideration of the aforesaid facts as well as the say of the respondent no.4, the Court may pass appropriate order as it deems fit and proper.

10. The respondent no.4, in his affidavit-in-reply, after referring to the previous round of litigation initiated by the petitioners and the order releasing Survey No. 362/2B1 from reservation, has averred as follows:

“3. Thereafter by issuing the necessary gazette by the Urban Development Department/Town Planning, the land was de-reserved. But while preparing the 2nd Revised Plan for the Chalisgaon city, it was again proposed to be kept under reservation for the Economically Weaker Section dishouse persons. It is pertinent to note here that the said procedure began way back in the year 2013 and the draft reservation plan was kept in the Municipal Council for inspection and to raise the objections by the people at large of the Chalisgaon City. Although the petitioner was having ample opportunity to raise objection to the said proposed draft revised plan he did not opt to do so. Thereafter, in the year 2016, the 2nd Revised Plan was sanctioned and came into effect.

4. In view of the above referred factual score, it is apparent that, the petitioner although having the sufficient opportunity to raise the objection at the earliest possible opportunity i.e. in the year 2013 itself he did not do so. Since the petitioner was slumber, now he cannot raise such grievance at this stage. Therefore in the peculiar facts and circumstances of the case, it would be in the larger interest of the justice whatever order this Hon’ble Court passes in this petition same would be complied meticulously at the end of Respondent Municipal Council.”

11. Having noted the pleadings of the parties, we now proceed to record the rival contentions.

12. Mr. Mane, learned advocate representing the petitioners, contends that once the subject property has been released from reservation by operation of section 127 of the MRTTP Act and there being absence of any provision in such enactment or any other enactment empowering the respondents to re-reserve the same property which has been released from reservation, the Court may proceed to grant relief claimed in the writ petition.

13. Mr. Mane has placed reliance on the decision of the Supreme Court in **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and others**, reported in **(2015) 11 SCC 554**, as well as coordinate Bench decisions of this Court in **Kishor s/o Siddheshwar Wadotkar (Dr.) Vs. Director of Town Planning and others**, reported in **2007 (3) Mh. L. J. 399**; **Kishor Gopalrao Bapat & others Vs. State of Maharashtra & another**, reported in **2005 (4) Mh. L. J. 468**; and **Motiwala Land Agencies Vs. The State of Maharashtra**, reported in **MANU/MH/1794/2014**. According to him, these decisions are authorities for the proposition that once a property (land) stands released from reservation by operation of section 127 of the MRTP Act, the planning authorities have no jurisdiction to re-reserve the same subsequently notwithstanding that such re-reservation could be required for a public purpose.

14. The writ petition has been resisted by Mr. Yawalkar, learned AGP for the respondents 1 to 3. He has placed before us a notification dated 6th April, 2016 issued by the Government of Maharashtra in the Urban Development Department in exercise of power conferred by section 31 (1) of the MRTP Act and contended that there has been no occasion for the respondents to act *mala fide* in seeking to reserve the subject property after the order dated 4th February, 2015 was passed by this Court in WP No.9897/2014, as alleged by the petitioners. Inviting our attention to the recitals of the notification dated 6th April, 2016, it is his contention that the process for preparation of the revised development plan had commenced as early as on 12th August, 2009, when the Council by its resolution no.918 had made a declaration of its intention to prepare a revised development plan for the entire Chalisgaon area under section 23 read with section 38 of the MRTP Act and notice of such declaration had been published in the official gazette on 11th March, 2010. It is in pursuance of the process that had commenced with the notification dated 11th March, 2010 that the final notification dated 6th April, 2016

was published whereby part of Survey No. 362/2B1 was shown as reserved for the purpose of providing housing to people belonging to the economically weaker section.

15. Mr. Yawalkar, however, was heard to lament that despite the process having been initiated as far back as in 2009, the same was not brought to the notice of the coordinate Bench while it had the occasion to decide WP No.9897 of 2014 by its order dated 4th February, 2015.

16. Mr. Yawalkar has placed reliance on the decision of the Supreme Court in **Prafulla C. Dave and others Vs. Municipal Commissioner and others**, reported in **(2015) 11 SCC 90**, to contend that even after the land is released from reservation under section 127 of the MRTP Act, a further reservation is indeed permissible in law.

17. Mr. Shinde, learned advocate holding for Mr. Thoke, learned advocate for the respondent no.4, adopted the submissions of Mr. Yawalkar.

18. We have heard learned advocates for the parties and perused the materials on record together with the decisions cited at the Bar.

19. Section 127 of the MRTP Act provides for lapsing of reservation. This provision, which has engaged the consideration of the Supreme Court as well as this Court on multiple occasions, reads as follows:

“127. Lapsing of reservations.—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 proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority, or as the case may be, appropriate authority to that effect; and if within six 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.”

20. The underlying principle envisaged in section 127 of the MRTTP Act is either to have the land utilized for the purpose it is reserved in the development plan within a given time or to allow the owner or person interested in the land to utilize the same for the purpose it is permissible under the town planning scheme, upon compliance with the provisions thereof. By the very terms of the section, the land under reservation may not be put to use for the purpose it has been reserved at least for a period of ten years. No right accrues in favour of the owner or the person interested in the land during this period of ten years to reclaim it. However, if steps are not taken for its acquisition despite the requisite notice issued by the land owner or the person interested in the land, the reservation shall lapse.

21. In this proceeding, our concern with section 127 of the MRTTP Act is minimal since that stage is already over. Each case has its distinctive features. The distinctive feature of this writ petition, which is missing in the proceedings on which the reported decisions were rendered, is the order dated 26th July, 2016 (by which reservation of the subject property stood lapsed and it stood released for its development by the petitioners) issued in pursuance of the order dated 4th May, 2015 in WP No.9897 of 2014, at a point of time when the notification dated 6th April, 2016 had seen the light of the day.

22. As would be evident from the factual narrative, adverted to above, the process contemplated by section 127 worked itself out with the issuance of the order dated 26th July, 2016 and the subject property stood released from reservation not having been utilized for the purpose for which it was reserved, i.e., for a “play-ground”. The question which requires an answer is, what would be the effect of the notification dated 6th April, 2016? We are inclined to the view that once the order 26th July, 2016 under section 127 came to be issued, the petitioners acquired an indefeasible right to enjoy/use such property in any manner they like. The drastic power to restrict the

use of the land by the owners thereof is no doubt available to the planning authority. Once the power is exercised, reservation or designation of the land and/or its enjoyment/use results in severe abridgement of the right to property. It is settled law that although the legislature may impose reasonable restrictions upon the owner of an immovable property in respect of its enjoyment/user, a restriction on enjoyment/user thereof, except in the mode and manner laid down under the statute, cannot be presumed. The statutory interdict of enjoyment/use of the property has to be strictly construed. However, what is of importance is that Mr. Yawalkar has not shown us any provision in the MRTP Act or any other enactment authorizing a planning authority to reserve a land after reservation thereof has lapsed under section 127.

23. It is indeed true that in the present case steps were taken to include the subject property in the draft development plan (revised) even prior to the notice under section 127 of the MRTP Act having been issued by the petitioners; however, such fact was not brought to the notice of the coordinate Bench when it was considering WP No.9897 of 2014. We need not enter into the realm of conjecture as to what would have been the outcome of WP No.9897 of 2014, had there been no omission or neglect or failure of the parties to such proceedings to place full facts before the Court. After all, the order passed on 4th February, 2015 granting relief to the petitioners having been duly complied with by the respondents by issuing the order dated 26th July, 2016, the issue attained finality. The reservation of the subject property having lapsed and with issuance of the said order releasing the subject property from reservation, the petitioners' assertion that the subject property cannot form part of any revised development plan has to be accepted bearing in mind the law laid down in **Godrej and Boyce Manufacturing Company Limited** (supra), **Kishor s/o Siddheshwar Wadotkar (Dr.)** (supra), **Kishor Gopalrao Bapat** (supra), and **Motiwala Land Agencies** (supra) cited by Mr. Mane, notwithstanding the fact that the notification

dated 6th April, 2016 sanctioning the draft development plan (2nd revised) intervened in the meanwhile, thereby seeking, *inter alia*, to reserve the subject property.

24. Mr. Mane is right in his contention that in all the decisions cited by him the Courts have unambiguously held that after lapsing of reservation under section 127 of the MRTP Act the planning authority is not entitled to again reserve the same land in the revised development plan. Indeed, the right the land owner acquires after the subject property is released from reservation upon lapsing of the reservation in terms of section 127 cannot be defeated by reserving the property in the revised development plan for any public purpose in the absence of any statutory provision permitting such course of action. Article 300A could count as one of the articles in the Constitution with the fewest words but its commandment is significant: no person can be deprived of his property save by authority of law. Were the petitioners deprived of their property in accordance with law? The answer is an emphatic 'NO'.

25. We have considered the decision in **Prafulla C. Dave** (supra), relied upon by Mr. Yawalkar. Such decision does not lay down any proposition of law as advanced by him. The issue under consideration of the Supreme Court was entirely different. The Court, in that decision, in fact, returned a finding that continuation of reservation made for a public purpose in a final development plan beyond a period of ten years would get interdicted only after happening of events contemplated by section 127 of the MRTP Act, i.e., giving/service of notice by the land owner to the party to acquire the land and the failure of the authority to so act. It has also been held therein that if the land owner or the person interested himself remains inactive, the provisions of the MRTP Act dealing with the preparation of revised plan under section 38 would have full play. Although it is true that action on the part of such owner or the person interested as required under section 127 must be anterior in point of time to preparation of revised plan and that delayed action of the

land owner, after the revised plan has been finalized and published, will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan, the Court was not dealing with a case of the present nature where, upon the reservation lapsing, an order of de-reservation had been made under section 127 of the MRTP Act. It is in view of this factual distinction that we hold the ratio of the decision in **Prafulla C. Dave** (supra) not to be applicable in the present case.

26. On the basis of the judicial authorities that have been cited before us, we have no hesitation to accept the contention as advanced by Mr. Mane on behalf of the petitioners.

27. We need to add just one more paragraph before we proceed to grant relief to the petitioners. What strikes at the root of Mr. Yawalkar's contention is the pleadings in paragraph 8 of the reply affidavit, highlighted in the extract (supra). There is a clear admission that reservation of the subject property has been mistakenly shown and that some request has been made for deletion of the reservation. In view of such admission, nothing much survives for the respondents to argue.

28. For the reasons aforesaid, the writ petition succeeds. There shall be an order in terms of prayer clause (B). No costs.

[SMT. VIBHA KANKANWADI, J.]

[CHIEF JUSTICE]

arp/