

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

WRIT PETITION NO. 3275 OF 2021

Bashwesshwar s/o Mallikarjunappa Bidwe .. **Petitioner**
Age 67 years, Occu: Business,
R/o Lokhand Galli, Sonar Line,
Latur Tq. & Dist. Latur

VERSUS

1. The State of Maharashtra,
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai-32
2. The District Collector, Latur
3. The Town Planner ... **Respondents**
Town Planning Office,
Latur, Tq. & Dist. Latur
4. The Latur Municipal Corporation, latur
Through its Commissioner

Mr. K. P. Rodge h/for Mr. S. P. Urgunde, Advocate for the petitioner,
Mr. A. S. Shinde, AGP for respondent Nos. 1 and 2- State
Mr. A. V. Hon, Advocate for respondent Nos. 3 and 4-Corporation

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRAGADE, JJ.**
DATE : 13.12.2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. We have heard learned counsel for both sides.
2. Rule, made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. By the present petition under Article 226 and 227 of the Constitution of India, the petitioner, who is owner of land which is reserved in the final development plan of Latur Municipal Corporation, prays for declaration regarding lapsing of reservation in view of section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter, 'the MRTP Act')

4. Mr. K.P Rodge, the learned counsel for the petitioner submits that the petitioner is owner of land bearing Survey No.11 admeasuring 6 hectare 0.3 Are situated at Vasangaon, within the limits of Latur Municipal Corporation. The Corporation prepared the revised draft development plan for the area within its jurisdiction and the respondent No.1 State sanctioned the development plan on 02.01.2002 under which land of the petitioner admeasuring 5 Hectare 40 Are out of Survey No.11 was reserved for playground, primary school and high school as Site Nos. 191 to 196, however, no steps have been initiated by the respondent- planning authority for acquisition of the said property for more than 10 years. Therefore, the petitioner issued notice dated 29.12.2017 under section 127 of the MRTP Act along-with necessary documents. In spite of service of notice, no steps have been taken by the respondent- Corporation for acquisition as contemplated under section 126 of the MRTP Act read with section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 for more than two years. Therefore, as per

provisions of Section 127 of the MRTP Act, the reservation would lapse on expiry of notice period.

5. The learned AGP appearing for respondent Nos. 1 and 2 has not disputed averments made by the petitioner, however, it is submitted that the petitioner have not annexed the measurement plan his land Survey/Gat No.11 admeasuring 5.40 Hectare along-with the notice to identify the reservation. Total area of Gat No.11 is 8.10 Hectare, out of which the petitioner is claiming ownership on 6.03 hectare which is not ascertained from the 7/12 extract. The learned AGP relied on the judgment of this Court in Writ Petition No. 6481/2015 dated 19.11.2015 and contending that since the notice is not accompanied by requisite documents, it cannot be considered as valid notice under section 127 of the MRTP Act, prayed for rejection of the petition.

6. The learned advocate for the respondents- Corporation would submit that the development was published on 02.01.2002 and it has been enforced with effect from 18.02.2002. In the development plan land of the petitioner admeasuring 5 Hectare 40 Are out of Survey No.11 was reserved for playground, primary school and high school as Site Nos. 191 to 196, in the interest of public at large, however, due to financial constraints, the acquisition proceedings could not be initiated in time. The Corporation intends to develop the reserved sites in the public interest. The corporation has taken up the proposal for grant of TDR to

the petitioner in lieu of compensation and is ready to compensate the petitioner in the form of TDR as per Rules, hence, he prayed for dismissal of the petition.

7. We have given our thoughtful consideration to the rival submissions and perused the papers.

8. The record speaks that, on 02.01.2002, the respondent No.1- State Government sanctioned the development plan for Latur City which came into force we.f. 18.02.2002 and the petitioner's land admeasuring 5 Hectare 40 Are out of Survey No.11 was reserved for playground, primary school and high school as Site Nos. 191 to 196, but the respondent Planning Authority has not taken any steps to acquire the said land within period of 10 years from the date of final development plan. Thereafter, on 29.12.2017, the petitioner issued notice under section 127 of the MRTP Act to the planning authority for release of his land from the reservation. The petitioner enclosed documents such as 7/12 extract and registered sale deed with the notice. The petitioner is specifically claiming for lapsing of reservation of his land at Sr Nos. 191 to 196 admeasuring 5 Hectare and 40 Are. The respondent planning authority has not disputed the said reservation. Moreover, looking to the nature of documents which are stated to not produced with the notice, they can be said to be within knowledge and can very well be available with the Corporation.

9. The respondent- Planning Authority has not disputed about service of notice, but it has only contended that due to financial constraints acquisition proceedings could not be initiated and that TDR was offered. The respondents have not given any cogent and substantial reason for not acquiring the reserved land for the period of 10 years from notification so also, for the period of more than two years from the date of service of notice under section 127 of the MRTP Act.

10. Suffice for the purpose to refer to the decision in the matter of **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318**, wherein, it has been laid down that the steps in the direction of acquisition of land reserved under the provisions of the MRTP Act would be nothing short of a declaration under Section 6 of the Land Acquisition Act 1894 (analogous to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) read with section 126 of the MRTP Act. Admittedly, no such steps have been taken for whatever reason.

11. Though it is stated about offering of TDR in lieu of compensation, but no such offer letter is produced on record. Be that as it may, the petitioner's learned advocate, on instructions, stated that the petitioner is not ready to accept the TDR in lieu of compensation. Moreover, the right of property owners to insist for payment of monetary compensation by refusing TDR is also settled by the full bench decision of

this court in the matter of **Vinayak Builders & Developers Vs. The State of Maharashtra and others** (Writ Petition No. 2231 of 2019) dated **25.07.2022 (Nagpur Bench)**, wherein it has been down that it is the choice of the property owner either to accept the TDR or to insist for payment of compensation.

12. There is nothing on the record to demonstrate that respondent-Corporation which is the development authority had taken any effective step for acquisition of land except stating that the corporation intends to develop the sites in the public interest. Therefore, the consequences would follow as laid down in catena of judgments on lapsing of the reservation.

13. In view of the above discussion and considering the ratio laid down in the case of *Girnar Traders (supra)*, we are inclined to allow the writ petition and declare that the reservation on land of the petitioner admeasuring 5 Hectare 40 Are out of Survey No.11 for playground, primary school and high school as Site Nos. 191 to 196, stands lapsed. The respondents shall take steps for issuance of notification under sub section 2 of section 127 of the MRTP Act as early as possible.

14. Rule is made absolute in above terms.

(Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)

JPChavan