

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

WRIT PETITION NO. 3280 OF 2021

1. Janardhan s/o Prabhu Moreover
Age 78 years, Occu: Agri.
2. Rajendra s/o Digambar Moreover
Age 53 years, Occu: Agri.
3. Gyandeo s/o Digambar More, ... **Petitioners**
Age 48 years, Occu: Agri.
4. Namdeo s/o Digambrarrao More,
Age 43 years, Occu: Agri.
All R/o Morenagar, Kanheri Chowk,
Lature, Tq . & Dist. Latur

VERSUS

1. The State of Maharashtra,
Through the Secretary
Urban Development Department,
Mantralaya, Mumbai-32
2. The Director of Town Planing,
Town Planning Office,
Central Building, Pune.
3. The Assistant Director of Town Planning, ... **Respondents**
Municipal Corporation, Latur
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 petitioners,
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 petitioners, who are owners of land which is reserved in the final development plan of Latur Municipal Corporation, pray 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. According to the petitioners, they are the owners of land bearing Survey No. 41 situated at Kanheri, 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 petitioners admeasuring 2 hectare 40 Are of Survey No.41 was reserved for playground as Site No. 168. Land admeasuring 1 acre 10 Gunthas from Survey No. 41 was sold by registered sale deed prior to reservation. As the site was not suitable for play ground, the petitioners preferred representation on 25.08.2004 seeking de-reservation of their land. The respondent Corporation took a resolution in the meeting dated 06.04.2006 for exempting the said reservation of play ground but no steps were taken nor any efforts were made for acquiring the land.

Thereafter, on 16.12.2014 the petitioners issued notice under section 127 MRTP Act but no steps were taken pursuant to the said notice for acquisition of the land for development of site No. 168. The respondents again issued legal notice to the corporation on 22.01.2015 to the respondent Corporation, however, again no steps have been initiated by the respondent- planning authority for acquisition of the said property. Therefore, the petitioners had approached this Court by filing Writ Petition No. 529/2017 which came to be withdrawn on 03.08.2017 with liberty to file a fresh petition so as to controvert the position in the affidavit in reply tendered by the corporation. Hence, the petitioners have filed the present writ petition.

5. Mr. K.P. Rodge, the learned advocate for the petitioners submits that the respondents have not taken any steps for acquisition of land reserved at Site No.168 for more than 10 years. Therefore, the petitioners issued notice dated 16.12.2014 under section 127 of the MRTP Act along-with necessary documents. In spite of service of notice under section 127 of the MRTP Act, no steps were being taken by the respondent No.4 Municipal Corporation to acquire the land 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. Therefore, as per provisions of Section 127 of the MRTP Act, the reservation would lapse on

expiry of notice period. Hence, he prays for issuance consequential notification under sub section 2 of section 127 of the MRTTP Act.

6. The learned AGP appearing for respondent Nos. 1 and 2 has not disputed averments made by the petitioners, however, it is submitted that the petitioners have not annexed the necessary documents along-with the notice to identify the reservation. 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 document, it cannot be considered as valid notice under section 127 of the MRTTP Act, prayed for rejection of the petition.

7. The learned advocate for the respondent- 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 measuring 2 hectare 40 Are of Survey No.41 was reserved for playground as site No. 168, 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 site in the public interest and in the alternate, has taken up the proposal for grant of TDR to the petitioners and the Corporation is ready to compensate the petitioners in the form of TDR as per Rules, hence, he prayed for dismissal of the petition.

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

9. It seems that the development plan for Latur City came into force w.e.f. 18.02.2002 and the petitioners' land admeasuring 2 hectare 40 Are out of Survey No.41 was reserved for playground as site No. 168, 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 16.12.2014, the petitioner issued notice under section 127 of the MRTP Act to the planning authority for release of his land from the reservation. The petitioners enclosed documents such as 7/12 extract, measurement map of the land, Development Plan map and resolution dated 06.04.2006 with the notice. 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 about offer of TDR. 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 petitioners' learned advocate, on instructions, stated that they are 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 laid 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 petitioners admeasuring 2 hectare 40 Are of Survey No.41 for playground as Site No. 168 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. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)

JPChavan