

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

958 WRIT PETITION NO.11998 OF 2021

Sulbha Vilas Patel

.. Petitioner

Versus

The State Of Maharashtra and Others

.. Respondents

...

Advocate for Petitioner : Mr. Sushilkumar H. Tripathi

AGP for Respondent / State : Mr. K.N. Lokhande

Advocate for Respondent No.4 : Mr. Jayant R. Shah

...

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

DATE : 06-09-2022

PER COURT :

. Heard both the sides finally with consent.

2. The petitioner's property was reserved for garden in a development plan which was published on 25.07.2006 and finalized on 11.09.2006. No steps were taken for its acquisition, notice under Section 127 of the Maharashtra Regional and Town Planning Act (hereinafter referred to as the 'MRTP Act') dated 22.09.2016 was issued by the petitioner. Since even thereafter for 24 months no steps were taken, Writ Petition No.682 of 2019 was filed. By the Judgment and order dated 09.01.2020, this Court had allowed the writ petition and declared that the reservation had lapsed. However one year time

was granted to the respondent - Municipal Council to take steps for acquisition.

3. The petitioner thereafter applied for development of the writ property, but by the communication under challenge dated 23.09.2021 the Municipal Council informed the petitioner that since no further notification was issued by the State Government, presumably under Sub-section 2 of Section 127 of the MRTP Act and since the matter was still under consideration even in respect of putting up a challenge to the order passed by this Court, her proposal was rejected.

4. Aggrieved by the communication, the petitioner is now seeking a mandamus directing the State Government to issue a notification under Section 127 (2) of the MRTP Act and also directing respondent no.4 - Municipal Council to consider her request for development.

5. Indeed, the petition is unprecedented. In spite of this Court having declared that the reservation had lapsed, the respondents do not seem to have taken steps for issuing a notification under Sub-section 2 of Section 127 of the MRTP Act, which is a

statutory duty. Even it would tantamount to contempt.

6. As a corollary, once this Court had declared about the reservation had lapsed, it was indeed unfortunate and unbecoming of respondent no.4 to refuse to consider the request of the petitioner for development on the ground that no notification under Sub-section 2 of Section 127 of the MRTP Act was issued.

7. The issue is no more *res integra*. The Division Bench of this Court in the matter of **Arun Motiram Nimkar Vs. Municipal Corporation of City of Amravati and others [2013 (4) Mh.L.J. 714]** has held that after the Court pronounces an order under Section 127 about the reservation having lapsed, it would come into force immediately and the land owner cannot be asked to wait for publication of a notification under Section 127 (2) to enable him to develop his land in accordance with law. Consequently, the stand of respondent no.4 to refuse to consider the request of the petitioner on this ground of want of compliance of Section 127 (2) is not legally tenable.

8. Again, we cannot permit the stand of respondent no.4 - Municipal Council that since it was considering putting up a

challenge to the order passed by this Court in Writ Petition No.682 of 2019, it was not obliged to consider the request of the petitioner. To our mind, taking such a stand right in the teeth of the earlier decision of this Court wherein the Municipal Council must have been a party is again contemptuous.

9. Be that as it may, we allow the Writ Petition by quashing and setting aside the impugned communication and direct respondent no.4 to take decision on the proposal submitted by the petitioner in accordance with law, but shall not refuse to consider it on the grounds mentioned in the impugned communication.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)