

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

WRIT PETITION NO. 13811 OF 2019

Chandrakant s/o Limbaji Dhaygude ... **Petitioner**
Age 63 years, Occu: Agri
R/o Ambajogai Road, Latur
Tq. and Dist. Latur

VERSUS

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

Mr. A. N. Irpatgire h/for Mr. V. P. Latange Advocate for the petitioner,
Mrs. V. N. Patil-Jadhav, AGP for respondent Nos. 1 and 2- State
Mr. H. V. Patil, Advocate for respondent Nos. 3 and 4-Corporation

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRADE, JJ.**

DATE : 29.11.2022

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. Facts in brief are that, the petitioner is owner of land bearing survey No. 262 admeasuring 1 H 88 Are situated 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 by notification dated 02.01.2002 under which land admeasuring 2916 square meter out of survey No. 262 admeasuring 1 H 88 Are reserved for playground as Site No.293, however, no steps have been initiated by the planning authority for acquisition of the said property for more than 10 years, therefore, the petitioner/owner of the property issued a notice dated 03.01.2017 under section 127 of the MRTP Act. In spite of service of notice, no steps have been taken by the Municipal Corporation for acquisition of the said land within a period of 24 months, therefore, the petitioner prays for de-reservation of land under Section 127 of the MRTP Act. Hence this petition.

5. Mr. A.N. Irpatgire, learned counsel for the petitioner submits that, revised draft development plan was prepared by the Corporation and

the respondent No.1-State by notification dated 02.01.2002, sanctioned the development plan and reserved the land of the petitioner admeasuring 2916 sq. meter out of survey No. 262 for play ground at site No.293. After due measurement, land survey No. 262 has been converted to non-agricultural land by the Sub Divsiional Officer and layout has been sanctioned by respondent No. 3 on 12.06.2009. The development plan came into force with effect from 02.01.2022. Since no steps were being taken by the respondent No.4 Latur Municipal Corporation to acquire 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, the petitioner served a notice under Section 127 of the MRTP Act on 03.01.2017 along-with necessary documents but even after service of notice, no steps have been taken by the Corporation for more than two years for acquisition of the property. Therefore, as per provisions of Section 127 of the MRTP Act, the reservation would lapse on expiry of notice period. Hence, the learned counsel for the petitioner submitted that the land of the petitioner be released from reservation and for issuance of consequential notification under sub section 2 of section 127 of the MRTP Act.

6. The learned AGP appearing for respondent Nos. 1 and 2 has not disputed averments made by the petitioner and submitted that it is the

respondent/planning authority who was required to take necessary steps within stipulated time.

7. The learned advocate for the respondent- Corporation would submit that proposal was forwarded to the respondent No.2 for taking effective steps for acquisition of the land bearing survey No.262 admeasuring 2916 sq. mtr., reserved for play ground at Site No. 293 in the development plan and the said proposal was also submitted before the Standing Committee, however, no effective decision has been taken on the same for want of document. The learned counsel for the Corporation further submitted that the Corporation is ready to compensate the petitioner in the form of TDR as per Rules but for that purpose the petitioner will have to get the land measured from the competent authority. The petitioner has issued notice under section 127 of the MRTP Act without necessary documents and measurement map, hence, he prayed for dismissal of the petition.

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

9. The record speaks that, on 02.01.2022, the respondent No.1- State Government sanctioned the development plan for Latur City and the petitioner's land bearing survey No. 262 was reserved for playground at Site no. 293, but the 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 03.01.2017, 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, measurement map, layout, non-agricultural order, Development Plan Map etc. with the notice. The respondent- Planning Authority has not disputed about service of notice, but it has been contended that, it is necessary to carry out measurement and the proposal was forwarded to respondent No.2 for taking effective steps for acquisition but the competent authority returned the said proposal due to deficiencies. However, 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 that an attempt was made to offer TDR in lieu of compensation, no such offer letter was produced on record, as such, there is no substance in the said contention. 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)**. It has been specifically laid down that it is the choice of the property owner either to accept the TDR or to insist for payment of compensation.

12. Merely by indulging in correspondence expecting the State to initiate proceedings for acquisition without effectively being ready to pay compensation appears to be a farce and there is no substance in the contention made by the respondents in this regard.

13. There is nothing on the record to demonstrate that respondent-Corporation which is the development authority had taken any step except forwarding the proposal to the Government and the standing committee. Therefore, the consequences would follow as laid down in catena of judgments on lapsing of the reservation.

14. 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 survey No. 262 within

the limits of Latur Municipal Corporation for playground at site No.293 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.

15. Rule is made absolute in above terms.

(Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)

JPChavan