

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 13668 OF 2019

1. Pravin Alim Sayyed, ... **Petitioners**
Age 40 years, Occu: Household

2. Alim Yusufsab Sayyed
Age 52 years, Occu: Agri.
Both r/o Sanskruti Nagar,
Opp. Rukmini Mangal Karyalaya,
Latur, Tq. & Dist. Latur

VERSUS

1. The State of Maharashtra,
Through the Secretary
Department of Urban Development,
Mantralaya, Mumbai

2. The Assistant Director of Town Planning,
Municipal Corporation Latur,
District Latur.

3. The Latur Municipal Corporation, Latur ... **Respondents**
Through its Commissioner

Mr. D.S. Mali, Advocate for the petitioners,
Mrs. V. N. Patil-Jadhav, AGP for respondent No. 1-State
Mr. H. V. Patil, Advocate for respondent No. 3-Corporation

**CORAM : MANGESH S. PATIL &
Y. G. KHOBRAGADE, 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 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. Facts in brief are that the petitioners are owners of land bearing survey No. 91 to the extent of 3 Hectare, situated at village Khadgaon Tq. and Dist. Latur, within the limits of Latur Municipal Corporation, Latur. The said land is ancestral property of the petitioners having mutation entry in the name of the petitioners in the revenue record. The development plan of the Corporation for Latur City was published on 02.01.2002. Under the development plan, out of Survey No.91, the land to the extent of 1 H 50 Are is reserved for high school & playground and 1 H 50 R Are for playground as site Nos. 203 and 204 respectively. Though land of the petitioners was reserved under the development plan published on 02.01.2002 which came into force with effect from 18.02.2002, but no steps have been initiated by the planning authority for acquisition of the said property for more than 10 years, therefore, the petitioners issued a notice dated 09.10.2017 under section 127 of the MRTP Act approximately after 16 years but in spite of service of notice, no effective steps have been taken by the Municipal Corporation for acquisition of the said land within a period of 24 months of service of the notice. However, the respondent No. 3-Corporation vide notice dated 18.12.2017 communicated the petitioners that certified copy of the draft development plan, measurement map are not submitted alongwith the notice and that it will take appropriate steps on receipt of the same. The petitioners replied the said notice on 20.12.2017, contending that certified copy of the draft development plan, measurement map are already in the office of respondent No.3, however, the respondent No.3 again insisted for the same

and failed to take any step for acquisition. Therefore, the petitioners pray for de-reservation of land under Section 127 of the MRTP Act. Hence this petition.

5. Mr. D.S. Mali, learned counsel for the petitioners submits that revised draft development plan of Latur City was prepared by the Corporation and the said development plan was published vide notification dated 02.01.2002, under which the ancestral land of the petitioners is reserved for high school & playground and playground as site Nos. 203 and 204 respectively. The development plan came into force with effect from 18.01.2002. Since no steps were being taken by the respondent No.3 Latur Municipal Corporation to acquire the reserve 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 petitioners served a notice under Section 127 of the MRTP Act on 09.10.2017 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 petitioners pray for declaration that the land of the petitioners is 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 the facts narrated by the petitioners. However, it is submitted that relevant documents showing title or interest in the said land such as, property card, development plan map, measurement map etc. were not accompanied with the notice under section 127 of the MRTP Act and, therefore, the notice is not valid for want of requisite documents in view

of judgment of this Court in Writ Petition No. 6481 of 2015 decided on 19.11.2015.

7. Mr. H. V. Patil, learned advocate for the respondent- Corporation would submit that the notice served by the petitioners under section 127 was not proper. Vide communication dated 18.12.2017, the Corporation had communicated the petitioners that though 7/12 extract was submitted but development map and measurement map regarding demarcation were not submitted and therefore, the Corporation could not proceed further and as the petitioners failed to produce necessary documents, vide communication dated 21.12.2017, the Corporation informed the petitioners about rejection of the proposal. The learned counsel for the Corporation further submitted that as the notice served by the petitioners under section 127 is not a valid notice for want of necessary documents including documents showing right or interest in the land, no further action is taken by the respondent- Corporation and prays 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 02.01.2002, the State Government sanctioned the development plan for Latur City which came into force with effect from 18.02.2002 and the petitioners' land bearing Survey No. 91 is reserved for high school & playground and playground as site Nos. 203 and 204 respectively, but the planning authority has not taken any step to acquire the said land within the period of 10 years from the date of final development plan. Thereafter, on 09.10.2017, the petitioners issued notice under section 127 of the MRTP Act to the planning authority for release of his land from the reservation. The respondent- planning authority has not disputed about service of notice, but the planning authority appears to have rejected the proposal and did not take steps for acquisition pursuant

to the notice for want of relevant documents. It is not disputed that the land under reservation is ancestral property of the petitioners and having mutation entry in the revenue record in the name of the petitioners. The petitioners enclosed documents 7/12 extract along-with notice. The respondent-Corporation has not disputed the reservation over the land of the petitioners. The land under reservation being ancestral property and revenue record to that effect is on record, there can be no dispute over the ownership of the property.

10. So far as the objection as regards non production of the documents, such as measurement map and development plan map with the notice, looking to the nature of these documents, they can be said to be within knowledge and can very well be available with the Corporation. Therefore, the respondents cannot refuse to act upon the notice for want of formal documents which are already with the planning authority, that too, after a lapse of 24 months, which was served approximately after 16 years from date of development plan. Failure on the part of the respondents while acquiring the reserved land for the period of more than 10 years from date of 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 is not supported by any cogent and substantial reason. Therefore, we do not see any defect in the notice issued by the petitioners.

11. 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.

12. There is nothing on the record to demonstrate that respondent-Corporation which is the development authority had taken any step except insisting for documents which were expected to be with them. 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 the land of the petitioners bearing survey No. 91 situated within the limits of the Latur Municipal Corporation for high school & playground and playground as site Nos. 203 and 204, respectively in the development plan, 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