

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 13636 OF 2019

Sow. Rukminbai Raosaheb Salunke, ... **Petitioner**
Age Major, Occu: Household,
R/o Raghvendra Colony, Near Siddhi
Vinayak Mandir, Old Ausa Road,
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 petitioner,
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 petitioner, who is owner of land which is reserved in the final development plan of Latur Municipal Corporation, has

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 Nos. 92, 89 and 86 situated at village Khadgaon Tq. and Dist. Latur, within the limits of Latur Municipal Corporation, Latur. The said lands are ancestral properties of the petitioner having mutation entry No. 10945 in the name of the petitioner 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.92, the land to the extent of 2 Hectare 25 Are is reserved for housing for dis-housed, out of Survey No. 89, land to the extent of 60 R is reserved for primary school & playground and 85 Are for playground and out of land survey No. 86, land to the extent of 1 Hectare 65 Are is reserved for playground and 65 Are for primary school & Playground as site Nos. 207, 208, 209, 213 and 214 respectively. Though lands of the petitioner were 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 petitioner 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 petitioner 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 petitioner 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 petitioner prays for de-reservation of land under Section 127 of the MRTP Act. Hence this petition.

5. Mr. D.S. Mali, learned counsel for the petitioner 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 lands of the petitioner are reserved for housing for dis-housed, primary school & playground, playground, playground and primary school & playground as Site No. 207, 208, 209, 213 and 214, 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 lands 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 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 petitioner prays for declaration that the lands of the petitioner are 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 petitioner. 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 petitioner under section 127 was not proper. Vide communication dated 18.12.2017, the Corporation had communicated the petitioner 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 petitioner failed to produce necessary documents, vide communication dated 21.12.2017, the Corporation informed the petitioner about rejection of the proposal. The learned counsel for the Corporation further submitted that as the notice served by the petitioner under section 127 is not a valid notice for want of necessary documents including documents showing right or interest in the lands, 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 petitioner's land bearing Survey Nos. 92, 89 and 86 are reserved for housing for dis-housed, primary school & playground, playground, playground, primary school & playground as Site No. 207, 208, 209, 213 and 214, respectively, but the planning authority has not taken any step to acquire the said lands within the period of 10 years from the date of final development plan. Thereafter, on 09.10.2017, the petitioner issued notice under section 127 of the MRTP Act to the planning authority for release of his lands 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 lands under reservation are ancestral properties of the petitioner and having mutation entry No. 10945 in the revenue record in the name of the petitioner. The petitioner enclosed documents 7/12 extract along-with notice. The respondent-Corporation has not disputed the reservation over the lands of the petitioner. The lands under reservation being ancestral properties 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 lands 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 petitioner.

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 lands of the petitioner bearing survey Nos. 92, 89 and 86 situated within the limits of the Latur Municipal Corporation, for housing for dis-housed, primary school & playground, playground, playground, primary school & playground as Site No. 207, 208, 209, 213 and 214, 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. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)

JPChavan