

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8756 OF 2018

1. Santu Sukhdeo Jaibhave,]
2. Balu Sukhdeo Jaibhave,]
3. Pundlik Sukhdeo Jaibhave,]
4. Ramdas Sukhdeo Jaibhave,]
5. Tanaji Sukhdeo Jaibhave,]
6. Dnyaneshwar Sukhdeo Jaibhave,]
7. Samadhan Sukhdeo Jaibhave,]
8. Smt. Laxmibai Sukhdeo Jaibhave,]
 No.5 for himself and as Power of]
 Attorney Holder for all the petitioners.]
 All are R/o. S. No.898/1, Pathardi]
 Phata, Nashik, Dist. Nashik]
] ... Petitioners

Versus

1. Nashik Municipal Corporation,]
 A Statutory Corporation under the]
 Provisions of The Maharashtra]
 Municipal Corporation Act having its]
 office at: Rajiv Gandhi Bhavan,]
 Sharnapur Road, Nashik]
2. The Commissioner,]
 Nashik Municipal Corporation, having]
 its office at: Rajiv Gandhi Bhavan,]
 Sharnapur Road, Nashik.]

3. The Assistant Director, Town Planning]
Department Nashik Municipal]
Corporation having its office at Rajiv]
Gandhi Bhavan, Sharnapur Road,]
Nashik.]
4. The Collector, Nashik.]
5. The State of Maharashtra.] ...Respondents

ALONG WITH

WRIT PETITION NO.8757 OF 2018

Dagu Punja Gaikwad]
Age: 67 Years, Occ : Agriculturist,]
Through his Power of Attorney Holder]
Ramesh Dagu Gaikwad]
Age: 41 Years, Occ: Agri & Business]
R/o. Gaikwad Bungalow, Gaikwad]
Mala, Artillery Centre Road, Nashik Rd.]
]]
] ... Petitioner

Versus

1. Nashik Municipal Corporation,]
A Statutory Corporation under the]
Provisions of The Maharashtra]
Municipal Corporation Act having its]
office at: Rajiv Gandhi Bhavan,]
Sharnapur Road, Nashik]
2. The Commissioner,]
Nashik Municipal Corporation, having]
its office at: Rajiv Gandhi Bhavan,]
Sharnapur Road, Nashik.]
3. Assistant Director, Town Planning]

Department Nashik Municipal]
 Corporation having its office at Rajiv]
 Gandhi Bhavan, Sharnapur Road,]
 Nashik.]

4. The State of Maharashtra Through the]
 Collector, Nashik.] .. Respondents

ALONG WITH

WRIT PETITION NO.8758 OF 2018

1. Tukaram Bhau Jaibhave,]
 2. Dattu Tukaram Jaibhave,]
 3. Rajendra Tukaram Jaibhave,]
 No.3 for himself and as Power of]
 Attorney Holder for all the petitioners.]
 All are R/o. S. No.898/3, Pathardi]
 Phata, Nashik, Dist. Nashik]
] ... Petitioners

Versus

1. Nashik Municipal Corporation,]
 A Statutory Corporation under the]
 Provisions of The Maharashtra]
 Municipal Corporation Act having its]
 office at: Rajiv Gandhi Bhavan,]
 Sharnapur Road, Nashik]
 2. The Commissioner,]
 Nashik Municipal Corporation, having]
 its office at: Rajiv Gandhi Bhavan,]
 Sharnapur Road, Nashik.]
 3. The Assistant Director, Town Planning]
 Department Nashik Municipal]

Corporation having its office at Rajiv]
 Gandhi Bhavan, Sharnapur Road,]
 Nashik.]

4. The Collector, Nashik.]

5. The State of Maharashtra.] .. Respondents

ALONG WITH

WRIT PETITION NO.9000 OF 2018

1. Smt. Devubai Sakharam Jaibhave,]

2. Dagu Sakharam Jaibhave,]

3. Ashok Sakharam Jaibhave,]

4. Bhima Sakharam jaibhave,]

5. Mrs. Sitabai Ramchandra Sanap,]

6. Smt. Shantabai Bhivaji Dhakne,]

7. Smt. Muktabai Baban Landge,]

8. Smt. Leelabai Baburao Sonawane]

No.4 for himself and as Power of]

Attorney Holder for all the petitioners.]

All are R/o. S. No.898/2, Pathardi]

Phata, Nashik, Dist. Nashik]

] ... Petitioners

Versus

1. Nashik Municipal Corporation,]

A Statutory Corporation under the]

Provisions of The Maharashtra]

Municipal Corporation Act having its]

office at: Rajiv Gandhi Bhavan,]

- Sharnapur Road, Nashik.]
2. The Commissioner,]
Nashik Municipal Corporation, having]
its office at: Rajiv Gandhi Bhavan,]
Sharnapur Road, Nashik.]
3. The Assistant Director, Town Planning]
Department Nashik Municipal]
Corporation having its office at Rajiv]
Gandhi Bhavan, Sharnapur Road,]
Nashik.]
4. The Collector, Nashik.]
5. The State of Maharashtra.] .. Respondents

...
Mr. Vivek Vijay Salunke a/w Mr. Ajinkya Jaibhave, Ms.
Anusha Pradhan, Mr. Shubham Budhvant i/b Mr.
Prakash J Ahuja, for the petitioners in all writ petitions.

Ms. Chaitrali A. Deshmukh, for respondent Nos.1 to 3 in
WP/8756/18, WP/8758/18 and WP/9000/18.

Mr. Murlidhar A. Patil, for respondent Nos.1 to 3 in
WP/8757/18.

Mr. A. A. Alaspurkar, A.G.P. for respondent No.4-State
and in WP/8756/18, WP/8758/18 and WP/9000/18 and
for respondent No.4-State in WP/8757/18.

...

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.**

RESERVED ON : 21st SEPTEMBER, 2022.

PRONOUNCED ON : 18TH NOVEMBER, 2022.

JUDGMENT: - [Per Kamal Khata, J.]

1. Rule. Rule made returnable forthwith. Learned counsel for respondents waive service.

2. The present four Writ Petitions are filed under Article 226 of the Constitution of India for a Writ of mandamus for a declaration that the reservation of (i) agricultural property being Survey No.898/1 admeasuring 02 Hectares, 48 Ares equivalent to 25100 sq.mtrs. (W.P. No.8756/2018) (ii) agricultural property being Survey No.898/2 admeasuring 02 Hectares, 20 Ares equivalent to 22,000 sq.mtrs. (W.P. No.9000/2018) (iii) agricultural property being Survey No.898/3 admeasuring 02 Hectares, 20 Ares equivalent to 22,000 sq.mtrs. (W.P. No.8758/2018) (iv) immovable non-agricultural property being Survey No.33/2+3 admeasuring 1500 sq.mtrs. stands lapsed, as no steps have been taken by the respondents within a period of 24 months from the date of Purchase Notice given to Respondent No. 1 under Section 127 of the Maharashtra Regional Town Planning Act (for short, “MRTP Act”) and, consequently, permit

them to develop their lands.

BRIEF FACTS :

3. Since the facts of W.P. No.8756/2018, W.P. No.9000/2018 and W.P. No.8758/2018 are similar, for convenience, the facts in the first petition have been adverted to. The petitioners are the owners of the agricultural property bearing Survey No. 898(1) admeasuring 02 H. 48 Ares equivalent to 25,100 sq. mtrs assessed at Rs.05.75paise situated in Nashik and within the limits of Nashik Municipal Corporation (for short "*the writ land*"). The development plan for Nashik city prepared under Section 26 of the MRTP Act was sanctioned as per Section 31 of MRTP Act on 20th June 1993 and came into effect on 16th November 1993. An area of 12,878.00 sq.mtrs. came to be reserved for "Housing for Dishoused" (HD) vide Reservation No.390, which was published in the Government Gazette on 30th September 1993. The writ land is under Reservation No.390 since 16th November 1993.

4. It is the case of the petitioners that they could not develop their land on account of the reservation for a period of 10 years i.e. upto 16th November 2003, within which period, the respondents were required to acquire. Since, even after the expiry of the statutory period, the respondents failed to acquire or even take steps towards it, the petitioners through their Advocates letter dated 14th July 2015 issued a Purchase Notice under Section 127 of the MRTP Act, duly received by the Respondent No.1 on 15th July 2015, calling upon the respondent No.1 to acquire the writ land within the statutory period, failing which the reservation would stand lapsed. However, by an Ordinance dated 29th August 2015, respondent No. 4 extended the Purchase Notice period from 12 months to 24 months by amending provision of sub-section (1) of Section 127 of the MRTP Act.

5. In response to the Purchase Notice, respondent No.1 offered Transferable Development Rights (TDR) certificate instead of compensation, provided the petitioners were willing to handover possession of the writ

land. The petitioners refused to accept the proposal of respondent No. 1 in its letter dated 6th October 2015. Being aggrieved by the continuation of reservation on the writ land in spite of objections raised before the competent authority, they filed the present petition on 18th January 2018.

6. A reply is filed by one Chandrashekhar Bhaguji Aher on behalf of respondent No.3 on 20th November, 2021. It is the case of the respondents that in pursuance to the Purchase Notice dated 14th July 2015 under Section 127 of the MRTP Act a response was given by respondent Nos.1 to 3 by its letter dated 3rd July 2015 whereby the petitioners were asked for certain documents, which were required to prove their ownership in respect of the writ property. By the said letter, the Municipal Corporation had also offered Transferable Development Rights (TDR) as compensation for the writ property.

7. The petitioners in response to the letter dated 3rd July, 2015, refused to submit any further documents and

also refused to accept TDR as compensation for the writ property. It is the case of the respondents that the Municipal Corporation submitted its proposal dated 30th July, 2016 to the Collector, Nashik to initiate the acquisition proceedings in respect of the writ property which is pending with the Collector, Nashik. The Municipal Corporation had also submitted documents from time to time, as demanded by the Collector, Nashik for the acquisition proceedings on 11th October 2016.

8. A Draft Revised Development Plan for the city of Nashik was implemented by issuing Notification dated 9th January 2017 in respect of the writ land and was shown under reservation No.205 for the purpose of 'Public Housing'. It is the case of the respondents that they had rejected the petitioners' proposal for development submitted by them on 16th August 2017 on account of the land acquisition proposal No.16 of 2006 which was pending before the Collector, Nashik. It is the case of the respondents that the petitioners had filed an application for development after the second development plan came

into force and hence, the reservation of the land has not lapsed.

9. It is the express case of the respondents that in view of the judgment passed by this Court at Aurangabad Bench in Writ Petition No.5938 of 2020 whereby it was held that once compensation of TDR are offered to the land owner, the planning authority need not follow the procedure under sub-section 2 of Section 126 of the MRTP Act and by offering compensation of TDR within 24 months from the date of receipt of the Purchase Notice, the respondents would deemed to have commenced the acquisition of the reserved land.

10. It is the case of the respondents that in the present case, the Purchase Notice was issued by the petitioners on 14th July, 2015 and within two months thereof by letter dated 3rd September, 2015, the Municipal Corporation offered Transfer Development Rights (TDR) to the petitioners and, consequently, it would amount to the commencement of acquisition.

11. Mr. Salunkhe, on behalf of the petitioners submitted that the writ land was reserved by reservation No.390 from 16th November, 1993 and the said land is still under reservation, till date. He submitted that the respondents have failed to initiate steps towards acquisition of land for a period more than 10 years, since the land was brought under reservation. He submitted that inspite of the Purchase Notice dated 14th July, 2015 which was received by the respondent No.1 – Corporation on 15th July, 2015, respondent No.1 failed to take steps for acquisition of the said land in accordance with mandate of Section 127 of the MRTP Act.

12. It is submitted that although the period of 12 months was extended to 24 months vide Ordinance dated 29th August 2015, respondent No.1 – Corporation had failed and neglected to take steps towards acquisition of the land. He submitted that response of the Municipal Corporation dated 3rd September 2015 to the Purchase Notice dated 14th July 2015, whereby the Municipal Corporation offered to grant/allot/award the Transfer

Development Rights (TDR) would not by itself mean that respondent No.1 – Corporation had taken steps towards acquisition of the land. He further submitted that the communication between respondent No.1 – Corporation and the Commissioner on 30th April 2016 or Circular dated 21st March 2005 referring to the proposal for acquisition to the Standing Committee of the Corporation for its sanction within a period of 5 months from presenting proposal, would also not constitute the steps for the process of acquisition as contemplated under Section 127 of the MRTP Act.

13. Learned counsel pointed out several *lacune* such as, no signatures were made on the attested copies, no seal of the Corporation was affixed upon the agreement, dates were not mentioned in all the places of the proposal, only one Standing Committee member's signature appeared on the Resolution of the Standing Committee of the respondent no.1-Corporation, found in the proposal submitted by respondent No.1 – Corporation, which led to the Collector, Nashik issuing a letter to respondent No.1 –

Corporation who were asked to comply the requisitions mentioned therein, at the earliest. It is submitted that by itself would not mean that they have taken steps towards acquisition as contemplated under Section 127 of the MRTP Act.

14. In support of his contentions, he referred to the following judgments :

- (1) *Ashok Karbhari Borade v. State of Maharashtra*¹
- (2) *Hasina Kudbuddin Shaikh & Ors. v. Karad Municipal Council & Ors.*²
- (3) *Uday Madhavrao Patwardhan & Ors. v. Sangli, Miraj & Kupwad Municipal Corporation & Ors.*³
- (4) *Amuksidha Shrikant Majge & Anr. v. The Commissioner, Sangli, Miraj & Kupwad Municipal Corporation, Sangli & Ors.*⁴
- (5) *Baburao Dhondiba Salokhe v. Kolhapur Municipal Corporation, Kolhapur & Anr.*⁵
- (6) *Hirabai w/o Shrikrishna Chiddarwar & Ors. v. State of Maharashtra & Anr.*⁶
- (7) *Vinodkumar & Ors. v. State of Maharashtra, Through*

1 2018 SCC Online Bom. 1402

2 2019(1) Mh.L.J.

3 2015 SCC OnLine Bom 659.

4 2018 SCC OnLine Bom 2844

5 2003(3) Mh.L.J. 2844

6 2016(4) MH.L.J. 820

Department of Urban Development & Ors.⁷

(8) Girnar Traders v. State of Maharashtra & Ors.⁸ and

(9) Godrej & Boyce Manufacturing Company Limited v.

State of Maharashtra & Ors.⁹

(10) Bhavnagar University v. Palitana Sugar Mills (P) Ltd. & Ors.¹⁰

15. Per contra, Ms. Chaitrali Deshmukh, on behalf of respondent Nos.1 to 3 submitted that the development plan for Nashik, came into force on 16th November, 1993 and in the said plan part of Survey No.898/1 admeasuring 12,878.00 sq.mtrs. the writ land was shown as reserved for the purposes of ‘Housing for Dishoused’ as Reservation No.390. She submitted that after the Purchase Notice dated 14th July, 2015 was issued by the petitioners under Section 127 of the MRTP Act, the respondent Nos.1 to 3 and the Corporation by their letter dated 3rd September 2015 had asked for certain documents, which were required to prove the ownership of the petitioners in respect of the said property.

7 2022 SCC OnLine Bom 1465

8 2007 SCC OnLine SC 1053

9 2015 SCC Online SC 554

10 2003 (2) SCC 111

16. It is submitted that the Corporation had also offered to compensate the petitioners by granting them TDR for their writ lands. She submitted that the petitioners had refused to give any further documents and also communicated their unwillingness to accept the TDR compensation for the writ property. She submitted that on 30th July, 2016 they had also submitted a proposal to the Collector, Nashik bearing Proposal No.16 of 2006 to initiate the acquisition proceedings in respect of the writ land, which is pending with the Collector, Nashik. The Municipal Corporation had also submitted the documents to the Collector, Nashik from time to time and, lastly, on 11th October, 2016.

17. It is submitted that on 9th January 2017, the Draft Revised Development Plan for the city of Nashik was implemented by issuing notification and the writ land was shown as Reservation No.205 for Survey No. 898/1 admeasuring 12,878.00 sq.mtrs. for the purpose of “Public Housing”. She further submitted that the proposal submitted by the petitioners with the layout plan dated

16th August 2017 was rejected by the Municipal Corporation on 16th August 2017 on the ground that Land Acquisition Proposal No.16 of 2006 was pending before the Collector, Nashik.

18. It is submitted that the action on the part of the land owner under Section 127 of the MRTP Act must be anterior in point of time to the publication of the revised plan, and delayed action on the part of the land owner i.e., after the revised plan has been finalized and published, will not invalidate the reservation allotment or designation of land continued in the revised plan. She accordingly submitted that the reservation of the writ land had not lapsed. In support of her contention, she relied upon the judgment of this Court in the case of *Prafulla C. Dave & Ors. v. Municipal Commissioner, Pune & Ors.*¹¹ and the judgment of the Supreme Court in the case of *Prafulla C. Dave & Ors. v. Municipal Commissioner & Ors.*¹²

¹¹ 2008(3) Mh.L.J.

¹² (2015) 11 SCC 90.

19. Mr. M. A. Patil, on behalf of respondent Nos.1 to 3 in Writ Petition No.8757 of 2018 reiterated the submissions made by Ms. Deshmukh, advocate for respondent Nos.1 to 3 in Writ Petition No.8756 of 2018, Writ Petition No.8758 of 2018 and Writ Petition No.9000 of 2018. In addition to the judgments cited by Ms. Deshmukh, he relied upon the judgment in the case of *Chhabildas v. State of Maharashtra & Ors.*¹³ in support of the contention raised by Ms. Deshmukh.

20. Mr. Patil submitted that in the present case, the Purchase Notice was issued on 14th July, 2015 whereas, the Revised Draft Development Plan was prepared on 21st May, 2015 and published in the Government Gazette on 4th June, 2015 which are prior to the Purchase Notice. He submitted that on 9th January, 2017 the Draft Revised Development Plan was sanctioned by the Government.

21. It is submitted that in view of the fact that the Purchase Notice was issued after the date of publication of the Revised Draft Development Plan but before it was

13 (2018) 2 SCC 784

sanctioned by the Government as the New Development Plan, the Purchase Notice would not be a valid notice and cannot be considered. It is, therefore, submitted that the lapsing has not been taken place. He submitted that the present case was accordingly different from the facts of *Trilok Singh Pahlajsingh Rajpal v. Municipal Corporation for Greater Mumbai & Ors.*¹⁴ which this Court had considered recently.

REASONS AND CONCLUSIONS

22. Question that arises for consideration of this Court is whether the purchase notice issued by the petitioners subsequent to the date of the Draft Revised Development Plan for the city of Nashik would be a valid notice or not or the petitioners were required to again wait for expiry of 10 years from the date of the Draft Revised Development Plan for the city of Nashik and then issue a fresh notice and then if no steps would be taken by the respondents within the time prescribed, the reservation in respect of the writ land would lapse at that stage or not.

¹⁴ Judgment dated 16/09/2022 in Writ Petition No.2450 of 2016

23. It is not in dispute that the writ land was shown for a public purpose in the development plan for Nashik prepared under Section 26 of the MRTP Act which came into effect on 16th November 1993 and came to be reserved for “Housing for Dishoused.” The respondents did not take any steps to acquire the said plot for a period more than 10 years as contemplated under the provisions of the MRTP Act. The petitioners had admittedly issued a purchase notice on 14th July 2015. It is also not in dispute that in the Revised Draft Development Plan published in the Government Gazette on 4th June, 2015, the writ land once again is shown for public purpose. The purchase notice was issued however, on 14th July 2015.

24. It is not in dispute that the said Draft Revised Development Plan was implemented by issuing Notification dated 9th January 2017 in respect of the writ land and was shown under the reservation No. 205 for the purpose of ‘Public Housing’.

25. The respondents have not disputed that the purchase notice was issued by the respondents on 14th July 2015 i.e. prior to the notification issued on 9th January, 2017 whereby the Draft Revised Development Plan was implemented. We are not inclined to accept the submission made by the learned counsel for the respondents that a purchase notice under Section 127 of the MRTP Act could not have been issued after the Draft Revised Development Plan was published though admittedly not sanctioned. In our view, the Draft Revised Development Plan cannot be elevated to the status of a final sanctioned plan under Section 31 of the MRTP Act.

26. Under Section 26 of the MRTP Act, a procedure is prescribed for preparation and publication of notice of Draft Development Plan. Under Section 28 of the MRTP Act, any person is entitled to raise objections and suggestions relating to Draft Development Plan within the time prescribed to the Planning Authority. Such objections or suggestions that are forwarded to the

Planning Authority for consideration may cause modification or change of plan. A procedure is prescribed under Section 31 of the MRTP Act for sanctioning the Draft Development Plan. Under Section 31(6) of the MRTP Act, a Development plan which has come into operation shall be called the “final Development Plan” and shall, subject to the provisions of the said Act, be binding on the Planning Authority.

27. Under Section 38 of the MRTP Act, the Planning Authority is empowered to revise the Development Plan at least once in 25 years from the date on which a Development Plan has come into operation, and where a Development Plan is sanctioned in parts, a Planning Authority may revise the Development Plan, either wholly, or the parts separately, after carrying out, if necessary, a fresh survey and preparing an existing land-use map of the area within its jurisdiction. The provisions of Sections 22 to 28, 30 and 31 shall, so far as they can be made applicable, apply in respect of such revision of the Development Plan.

28. It is thus clear that even in respect of such revised development plan, a draft thereof has to be published followed by the objections and suggestions, as may be, filed by the person concerned, and after consideration of those objections and suggestions, final revised development plan is sanctioned. In our view, till such time, the draft Revised Development Plan is sanctioned finally and comes into effect in accordance with the provisions prescribed in the MRTP Act, the Draft Revised Development Plan has no legal sanctity and cannot be considered as final.

29. It is obvious that if any objections and suggestions opposing the Draft Revised Development Plan are accepted by the Planning Authority, such Draft Revised Development Plan would not be final in its original form. Admittedly the purchase notice issued by the petitioner under Section 127 was not issued after the sanction of Draft Revised Development Plan under Section 31 of the MRTP Act. The respondents thus cannot be allowed to

urge that the notice issued by the petitioners under Section 127 of the MRTP Act after publication of the Draft Revised Development Plan would not be a valid purchase notice. There is no substance in the submission made by the learned counsel for the respondents that the time to take steps by the respondents to acquire writ land would not commence from the date of receipt of purchase notice in view of the respondents already having published a Draft Revised Development Plan or that the petitioners would have to issue a fresh notice under Section 127 of the MRTP Act after expiry of 10 years from the date of sanction of Draft Revised Development Plan. The submission advanced by the learned counsel for the respondents are ex facie contrary to the provisions prescribed in Chapter III of the MRTP Act.

30. In so far as the judgment of the Supreme Court in case of *Chhabildas v. State of Maharashtra & Ors. (supra)* is concerned, the Supreme Court in the said judgment has held that if 10 years have passed from the date of

publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. It is further held that even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7) of the MRTP Act.

31. In paragraph 30 in case of ***Chhabildas v. State of Maharashtra & Ors. (supra)***, the Supreme Court made it clear that it had taken such a view in order to do complete justice in the facts of that case under Article 142 of the Constitution of India. It was clarified that in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed, i.e. that after 10 years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of

Section 127, in order that lapsing can take place under the said section. The said judgment does not apply with retrospective effect. The petitioners were not bound to issue a second purchase notice even otherwise on the ground that after following the procedure of Section 49, the drill of Section 127 must be followed. Learned counsel for the respondents could not distinguish paragraph 30 of the judgment of the Supreme Court in case of *Chhabildas v. State of Maharashtra & Ors. (supra)*.

32. In so far as the judgment of this Court in case of *Prafulla C. Dave & Ors. (supra)* relied upon by Ms.Deshmukh, learned counsel for the Municipal Corporation is concerned, the land had been kept under reservation for the public purpose of a garden in the development plan of Pune notified on 8th July, 1966. The said reservation for garden purpose was continued as per new revised Development Plan dated 5th January, 1987, draft plan of which was published in 1982. The petitioners had purchased the land from the original owners Wakde

and others in the year 1989. Writ petition was filed in the year 1989 for deletion and/or de-reservation of the said land from the designated public purpose. Purchase notice was issued on 5th October 1989 after filing of the petition under legal advice.

33. Question of law that fell for consideration before this Court in the said judgment was “whether, the plan first prepared and notified under Section 21 of the M.R.T.P. Act, is the final development plan and the plan prepared under Section 38 is only a revision of the final development plan proposed under Section 21 of the M.R.T.P. Act and as such, the notice contemplated under Section 127(2) of the M.R.T.P. Act and the period prescribed is from the publication of the development plan first notified under Section 21 and not the revised development plan under Section 38.”

34. In paragraph 16 of the said judgment, this Court held that the expression ‘final development plan’ in Section 127 has to be read in that context. This Court

held that if the petitioners arguments were to be accepted, it would mean that once a land was reserved and a plan notified under Section 21, even if the owners took no steps under Section 127 or Section 49 and thereafter there is a revised plan notified under Section 38, either having the same reservation or a different reservation, for the purpose of Section 127, the period of serving the notice would commence not from the notification of the revised development plan, but from the issuance of the final notification under Section 29(6) of the M.R.T.P. Act of the first plan.

35. In our view, development plan includes revision of a development plan. The development plan or revised development plan becomes final only after requisite procedure prescribed in Chapter III is followed. The petitioners had admittedly issued notice after issuance of publication of Draft Revised Development Plan. The time to take any step as contemplated under the provisions of the MRTP Act had already commenced from the date of receipt of such purchase notice issued by the petitioners

and was not suspended during the period when the said Draft Revised Development Plan was pending for consideration of objections, suggestions and for sanction thereof as final revised development plan.

36. In so far as the issue raised by Ms.Deshmukh, learned counsel for the respondent nos.1 to 3 that the petitioners were already offered TDR for the writ land before expiry of the period prescribed in the notice under Section 127 of the MRTP Act is concerned, in our view, it is at the discretion of the party whose lands are reserved in the development plan and acquired to accept monetary compensation or TDR from the acquiring body and not at the discretion of the acquiring body. There is thus no substance in the submission made by the learned counsel for the Corporation. Be that as it may, no steps were taken by the Planning Authority to acquire the writ property within the time prescribed.

37. In our view, the reservation of the writ land has lapsed upon the expiry of the period from service of the

Purchase Notice under Section 127 of the MRTP Act. The proposal bearing land acquisition Proposal No.16 of 2006 pending before the Collector, Nashik and or the sanction of the Draft Revised Development Plan as the new plan by Notification of 9th January 2017 and consequently the writ land shown under Reservation No.205 for public housing cannot be construed as steps taken as contemplated by Section 127 of the MRTP Act. This Court in the case of *Trilok Singh (supra)* while adverting to the judgment of the Supreme Court in the case of *Shrirampur Municipal Council v. Satyabhambai Bhimaji Dawkher*¹⁵ and also to its earlier judgment in the case of *Girnar Traders (supra)* has held that the steps towards acquisition can only be said to have commenced when the State Government takes steps for acquisition of the particular piece of land, by the publication of declaration under Section 6 of the Land Acquisition Act, 1894.

38. In the present case, the notification under Section 6, admittedly, has not been issued. The statutory notice

15 (2013) 5 SCC 627

viz. the Purchase Notice under Section 127 of the MRTTP Act was issued on 14th July 2015 and it is evident that no steps as contemplated under Section 126(1)(c) read with Section 127 were taken before the expiry of the statutory period of 24 months. We are unable to agree with the submissions of Ms. Deshmukh on the application of the judgment of *Prafulla C. Dave (supra)* as it would deprive the petitioners of their statutory rights. In this regard, the Apex Court in the case of *Godrej And Boyce Manufacturing Company Limited (supra)* has held that the statutory right accrued to the owners cannot be taken away by an attempt to impose fresh reservation. We are also unable to agree with the contention of Mr. Patil that the publication of the Draft Revised Plan having been published prior to the issuance of the Purchase Notice and the same would have an effect of continuing the reservation on account of the same being sanctioned subsequently.

39. In our view, the arguments advanced by the counsel for respondents are contrary to the principles laid down in

the case of ***Girnar Traders (supra)*** as reiterated by this Court in the case of ***Trilok Singh (supra)***. Further, in this case the petitioners had taken steps during the period that was available to them. In our view, there is no merit in the submissions made by the learned counsel for the respondents.

40. We accordingly pass the following order:

: O R D E R :

- (a) The Writ Petitions deserve to be allowed and are, accordingly, allowed in terms of prayer clause (a).
- (b) The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127(2) of the MRTP Act, which shall be done as expeditiously as possible and preferably within a period of six months from today.
- (c) If fresh plans for building permission are submitted by the petitioners, then the same be considered expeditiously.

41. Rule is accordingly made absolute. No order as to costs.

42. The parties to act on the authenticated copy of this judgment.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]