

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2574 OF 2021

Saurabh R. Shah

Age : 29 Years, Occu.: Business,
Residing at : 905/906, Yashwant
Heights Apt., above Union Bank,
Bhaji Galli, Opp. Vijay Vihar High School,
Virar (W), Dist. : Palghar - 401 303.

... Petitioner

Versus

1. The Urban Development and Town
Planning Department, Through the
Principal Secretary Having Office at
Mantralaya Mumbai - 400 032.

2. Vasai Virar Municipal Corportion
Having its office at Virar (East),
Tal. : Vasai, Dist. : Palghar.

3. Town Planning Department,
Vasai Virar Municipal Corporation,
Virar (East), Tal. : Vasai,
Dist. : Palghr.

... Respondents

Mr. S.M.Gorwadkar, Sr.Counsel i/b Mr.Sainand V. Chaugule for the
Petitioner.

Mrs.Swati Sagvekar for the Respondents No. 2 and 3.

Mr.Y.D.Patil, AGP for the Respondent State.

**CORAM : A. A. SAYED AND
ABHAY AHUJA, JJ.**

RESERVED ON : 2ND MARCH 2022

PRONOUNCED ON : 9TH MARCH 2022

JUDGMENT : (Per Abhay Ahuja, J.)

1. Rule. Rule returnable forthwith. By consent of Counsel for the parties heard finally.

2. By this Petition filed under Article 226 of the Constitution of India, Petitioners are seeking a declaration from this Court that the reservation made on the land owned by the Petitioner on Survey No.198, Hissa No.3/2, situate at village - Sandor, Bhabola Road, Taluka : Vasai, District : Palghar (the "said land") within the limits of Vasai Virar Sub-Region, reserved for water bodies/20 meter water channel and 20 & 30 meters D.P.Road has lapsed and therefore, the said land be released from the reservation in accordance with the provisions under Section 127 of the Maharashtra Regional & Town Planning Act, 1966 (the "MRTP Act").

3. It is the case of Petitioner that the development plan for Vasai Virar was sanctioned on 9th February 2007. The said land along with structure standing thereon was purchased by Petitioner vide a deed of conveyance dated 6th

September 2014. After the issuance of the Notification dated 9th February 2007, the Respondents No.1 to 3 had not taken any steps under the provisions of Sections 126 and 127 of the MRTP Act for acquisition of the said land. The Petitioner therefore vide purchase notice dated 18th April 2017 under Section 127 of the MRTP Act, requested the Respondents No.2 and 3 to acquire the said land by paying appropriate compensation within a period of 24 months failing which, the said reservation shall be deemed to have lapsed. The said period of twenty four months from the date of purchase notice ended on 17th April 2019. It is an admitted position that no proceedings have been taken by the Respondents for acquisition of the said land.

4. It is submitted on behalf of Petitioner that however, pursuant to notices dated 24th December 2019, 3rd March 2020 and 4th May 2020, by Respondent No.2 alleging that there was reservation of 20 meter water channel on the said land, on 5th June 2020, the Respondent No.1 demolished the compound wall of Petitioner and started digging work for the proposed water channel without acquiring the said land. It is submitted that after the digging work for the water channel was completed, the Respondent

No.1 left the site without constructing the compound wall and or covering the water channel with RCC cover / slab. It is apprehended that if the digging work still continues even without acquiring the said land, the Respondents will dispossess Petitioner from his own property without even acquiring the said land and without paying the compensation. It is, under these circumstances, that the Petitioner has filed this Petition essentially seeking the following reliefs :-

- “b. That this Hon’ble Court be pleased to issue a writ or any appropriate writ, order or direction in the nature of writ thereby declaring that the land bearing survey no 198, Hissa No 3/2, situated at Village Sandor, Bhabola Road, Tal : Vasai, District Palghar reserved for development of 20 Mtr Water Channel sanctioned through the notification dated 9th February, 2007 has been lapsed and released from the said reservation as per the provisions of the Section 127 of the MRTP Act.*
- c. That this Hon’ble Court be pleased to issue a writ of mandamus thereby directing the Respondents to forthwith notify the lapsing of the said reservation in respect of the said land by issuing appropriate notification in the official gazette.”*

5. Mr. Gorwadkar, learned Senior Counsel submits on behalf of Petitioner that the aforesaid notices by Respondent No.2

are post the twenty four months period from the issuance of the purchase notice which ended on 17th April 2019. He submits that the Collector had neither taken any steps under Section 6 of the Land Acquisition Act nor under Section 19 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 nor any notification has been issued thereunder to acquire the said land. He draws the attention of this Court to Section 126 (2) and proviso and Section 126 (3) in support of his contention.

6. Learned Senior Counsel also refers to Section 127 of the MRTP Act to submit that Petitioner is well within his rights to issue the purchase notice as the clear language of the said Section refers to the owner or any person interested in the land. He submits that after purchasing the said land along with the structure vide Conveyance Deed dated 6th September 2014, Petitioner has become the owner of the land and therefore, would certainly be a person interested in the land who has accordingly served the purchase notice to the Respondent on 18th April 2017. He further submits that therefore, Petitioner is entitled to the reliefs as prayed for in accordance with the decision of the Supreme Court in the case of

Girnar Traders V/s. State of Maharashtra and Others [(2007) 7 Supreme Court Cases 555].

7. On the other hand, Mrs.Swati Sagvekar, Learned Counsel for the Respondents No.2 and 3 – Corporation refers to the Affidavit – in – Reply dated 19th August 2021 to submit that the Petition deserves to be dismissed. Learned Counsel essentially raises three objections to the Petition. She submits that firstly, Petitioner is not the original owner of the said land and the structure and therefore, he has no locus to issue the purchase notice dated 18th April 2017 as the development plan was sanctioned way back on 9th February 2007 whereas Petitioner has purchased the same only on 6th September, 2014. She relies upon the decision of Supreme Court in the case of **Mohandas and Others V/s. State of Maharashtra and Others [(2020) 12 Supreme Court Cases 215]** in support of her contention.

8. Secondly, she submits that the purchase notice has been served upon the ward officer of the Respondent Corporation and not on the Commissioner and therefore, the said notice is bad in law.

9. Learned Counsel for the Respondent Corporation also submits that the structure on the said land is illegal since the year 1999 and notices under Sections 52 to 55 of the MRTP Act have been issued for its demolition.

10. We have heard the Learned Senior Counsel for the Petitioner as well as Learned Counsel for the Respondent Corporation and with their able assistance, we have perused the papers and proceedings in the matter.

11. It is not in dispute that the development plan for Vasai Virar Sub Region reserving the said land for water bodies was sanctioned through a Notification dated 9th February 2007. The purchase notice has been issued on 18th April 2017 and it has been received on the same date by the Respondent Corporation. The date of 24 months from the service of the purchase notice has elapsed on 17th April 2019. Admittedly, no proceeding for acquisition of the said land has been taken by the Collector either under Section 6 of the Land Acquisition Act or under Section 19 of the Right to Fair Compensation Act during this period. Section 127 of the MRTP Act, stipulates that if any land reserved, allotted or designated for any

purpose specified in any plan under this Act is not acquired within ten years from the date on which a final Regional plan, or final Development plan comes into force or, if a declaration under subsection (2) or sub-section 4 of section 126 is not published in the *Official Gazette* within such period, the owner or any person interested in the land may serve notice along with the documents showing his title or interest in the said land on the Planning Authority, or the Development Authority and if within 24 months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and thereupon the land shall be deemed to be released from such reservation, allotment or designation. In our view, in the facts of this case clearly the reservation on the land of the Petitioner pursuant to the development plan sanctioned on 9th February 2007 has lapsed.

12. The Respondent Corporation has raised an issue that Petitioner has no locus to issue the purchase notice as petitioner is not the original owner but purchaser of the said land pursuant to deed of conveyance dated 6th September 2014 which is after the

date of the sanction of the development plan. In our view, this contention on behalf of the Respondent Corporation does not hold water in as much as the language of Section 127 clearly indicates that if the land under reservation is not acquired within ten years of the date of the coming into effect of the final development plan or in the event a declaration under Section 126 is not published in the Official Gazette within such period, then the owner or any person interested in the land may serve notice of purchase. Petitioner admittedly having purchased the said land pursuant to a registered conveyance is certainly a person interested in the said land and therefore, squarely falls within the requirements of section 127 of the MRTP Act. Therefore, this contention on behalf of the Respondent Corporation deserves to be rejected.

13. In this regard, the decision of this Court dated April 19, 2012, in Writ Petition No. 9547 of 2011 lends support to our aforesaid view. Paragraph 8 of the said decision is relevant and is quoted as under :-

“8 With regard to the first objection of the respondents about the locus of the petitioner, we have no hesitation in rejecting the same. The expansive language of Section 127 of MRTP Act

not only enables the owner of the land but also the persons interested therein to give purchase notice. It is not the case of the respondents that the petitioner cannot qualify even the definition of persons interested referred to therein. As a matter of fact, the petitioner has purchased the land in question by registered Sale Deed on 24th May, 2010. On execution of the registered Sale Deed, the petitioner has become absolute owner in his own rights, in respect of the said land. As there is no legal provision which prohibits disposal of the property which is shown as reserved in the concerned development plan, we fail to understand as to how the petitioner can be non-suited because he has purchased the land in question after expiry of 10 years from the publication of revised development plan. Therefore, this argument will have to be rejected”.

14. The next contention of the Corporation that notice was not served on the Commissioner but only on the Ward Officer of the Respondent Corporation also deserves to be rejected as being of no substance as a bare look at a copy of the said purchase notice dated 18th April, 2017 annexed at Exhibit H to the Petition clearly indicates that the same has been addressed to the Commissioner and received by the Clerk of the Inward – Outward Department of the Respondent Corporation on 18th April 2017, which neither the

Respondent Corporation nor its Counsel have denied, nor have any allegations of fraud or forgery been made in this regard.

15. With respect to the submission that the structure on the said land in existence since the year 1999 being illegal pursuant to which notices under sections 52, 53, 54 and 55 of the MRTP Act were issued on 26 May 2016, we observe that this notice was challenged by way of suit and by order dated 2 May 2017, the same was held to be illegal and there was a restraint on the demolition of the structure. Learned Senior Counsel for Petitioner would submit that even otherwise for deciding whether the Reservation in respect of a land has lapsed or not it is irrelevant whether there is a structure on the land or not. We agree with him.

16. Section 127 of the MRTP Act as it stood when the purchase notice dated 18th April 2017 was issued by Petitioner is quoted as under :

Section 127: Lapsing of reservations:

"(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final

Development Plan comes into force or, if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty-four months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.”

17. A plain reading of the aforesaid provision makes it clear that when any land is reserved, allotted or designated for any public purpose specified in the Development Plan and if it is not acquired within ten years from the date on which the final regional plan or final development plan comes into force, or, if a declaration under Section 126 (2) or 126 (4) is not published in the Official Gazette

within such period, or if proceedings for acquisition of such land under the MRTP Act or under the Land Acquisition Act or the Fair Compensation and Land Acquisition Act are not commenced, the owner or any person interested in the land, may serve a notice to the Planning Authority calling upon the Planning Authority to acquire such land within a period of 24 months from the date of service of such notice and if the land is not acquired or no steps are commenced for its acquisition, the reservation or allotment or designation of such land shall be deemed to have lapsed and the land thereupon shall be deemed to be released from reservation and the land shall become available to the owner for the purpose of private use or development as otherwise permissible under the relevant plan. It is also well settled that the proceeding for acquiring the land for the purpose of Section 127 can be said to have commenced only when a Notification under Section 6 of the Land Acquisition Act or Section 19 of the Fair Compensation and Land Acquisition Act is issued, which admittedly is absent in the facts of this case.

18. The facts in the present case clearly demonstrate that the said land in question was kept under reservation for the

purpose of water bodies and 20 & 30 meters D.P. Road from the commencement of the Development Plan for Vasai Virar Sub Region which was sanctioned on 9th February, 2007. Admittedly, for a period of ten years from the commencement of the Development Plan, the Respondents No.2 and 3 did not take any steps to acquire the said land for the purpose for which it was kept under reservation. That Petitioner had issued a purchase notice dated 18th April 2017 and the same was received by the Respondent on the said date. The Respondents within a period of twenty four months from the receipt of the purchase notice were required to acquire the land or take steps for commencement of the acquisition of the land in question. We observe that no such steps were taken to commence the acquisition proceedings within the prescribed time. The Respondents have not disputed the above dates and events. It is therefore, clear that by plain application of the provisions of Section 127 the reservation of Petitioners land is deemed to have lapsed and the land had become available to Petitioner.

19. Taking into consideration the above, we are of the view that there is no substance in the objections raised on behalf of the Respondents. The provisions of Section 127 of the MRTP Act clearly

apply to the facts of this case.

20. Learned Counsel for Petitioner has rightly placed reliance upon the decision of the Supreme Court in the case of **Girnar Traders vs. State of Maharashtra (supra)**. The Hon'ble Supreme Court considering the provisions of Sections 127 of the MRTP Act has held that "the steps for acquisition" as contemplated under Section 127 of the MRTP Act would be issuance of a declaration under Section 6 of the Land Acquisition Act (now Section 19 of the Fair Compensation and Land Acquisition Act). Paragraphs 54 to 57 are quoted as under :

"54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owners property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay case. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the

draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be is-sued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner

for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The steps taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not a step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the government to acquire the land which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the

declaration under section 6 of the LA Act. Clause (c) of Section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act."

21. Though we respectfully bow down to the ratio and the principles laid down by the Hon'ble Supreme Court in the case of **Mohandas (supra)**, we are afraid that in the facts and circumstances of this case, the reliance of the Counsel for the Corporation upon the said decision is misplaced in as much as in that case the notice of purchase issued by the original owners was sought to be relied upon by the petitioner who had purchased the property subjected to reservation whereas admittedly in the facts of this case the purchase notice has been issued by the petitioner who is an interested person in the said land pursuant to the Deed of

Conveyance dated 6th of September 2014.

22. In accordance with the aforesaid principles laid down by the Hon'ble Supreme Court in the case of **Girnar Traders vs. State of Maharashtra (supra)**, we are of the view that reservation of the said land in question had lapsed by operation of Section 127 of the MRTP Act and the land has become available to Petitioner to be used as permissible in law.

23. Once we have observed that the period of 24 months from the purchase notice expired on 17 April 2019 leading to the lapsing of the reservation in question, it would not matter what steps the Respondents are seeking to take post such lapsing pursuant to the notices dated 24 December 2019, 3 March 2020 or 4 May 2020 as all these dates are post the expiry of 24 months as contemplated in section 127 of the MRTP Act and we therefore do not consider it necessary to deal with the said notices or even going into the question whether the Respondent No.1 had started digging work or whether any digging is going on.

24. Writ Petition is therefore allowed in terms of prayer clause (a). The State Government is directed to notify the lapsing of the reservation by an appropriate notification to be published in the Official Gazette as expeditiously as possible and preferably within a period of eight weeks from today. Needless to say that it is open for the State Government to make a fresh declaration as provided under Section 126(4) of the MRTP Act.

25. Rule is made absolute in the above terms. Writ Petition accordingly stands allowed. No order as to costs.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)

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Signed by
YUGANDBHABA SHARAD
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