

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

SHALIKRAM
PRALHADRAO
BOREY

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WRIT PETITION NO. 3024 OF 2021

Jawahar Hiralal Mehta through his) ... Petitioner.
Regd. Power of Attorney Holder /)
Development Agreement dt. 25.08.1997)
holder Mr. Majid A. Kadar Shaikh)
Age-76 years, Occu. Business,)
R/o. 62, Railway Lines, Solapur- 01.)

V/s.

1. The State of Maharashtra through)
the Principal Secretary, Urban)
Development Department,)
Government of Maharashtra,)
Mantralaya, Mumbai – 400032.)
)
2. The Solapur Municipal Corporation,)
Indrabhuvan, Solapur-413 001,)
through its Municipal Commissioner)... Respondents.

Mr. Ramdas P. Sabban, Advocate a/with Shrikanth Kompelli & Arundhati Sabban for the Petitioner.

Mrs. A. A. Purav, AGP for the State-Respondent No.1.

Mr. Anand Kulkarni, Advocate for Respondent No.2.

**CORAM : A.A.SAYED & S.G.DIGE, JJ.
DATE : 24 FEBRUARY 2022
(THROUGH V.C.)**

JUDGMENT : (Per S. G. DIGE, J.)

1 Rule, returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2 By this Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a declaration that the reservation of the Petitioner's land under the development Plant of Solapur for 1997-

2017 for the Elevated Service Reservoir (ESR) purposes under the reservation no. 16/6 - admeasuring 1543 sq.mtrs., situated at Survey No. 27/3 (part), Nehrunagar, Bijapur Road, Solapur, (for short "the said land") has lapsed. Petitioner also prays for direction to the Respondents to forthwith notify the lapsing of reservation of lands in the Official Gazette as required under section 127(2) of the Maharashtra Regional & Town Planning Act, 1966 (for short, the "MRTP Act") with further direction to the Respondent No.2-Municipal Corporation to grant the necessary development permission to the Petitioner, being the owner of the land, for the purpose of development as otherwise, permissible in the case of adjacent land under the Plan.

3 The Government of Maharashtra (Respondent No.1) vide its Notification dated 28th October, 2004 (Exhibit "A" to the Petition) sanctioned Development Plan for Solapur for 1997-2017 which was brought into effect from 15th December, 2004. The Development Plan was submitted to the Government for its approval by the Solapur Municipal Corporation (Respondent No.2, which is the Planning Authority) on 5-03-2002. Under the above Development Plan, the said land of the Petitioner was reserved for Elevated Service Reservoir (ESR) purpose.

4 According to the Petitioner, he initially gave purchase Notice dated 29th August, 2002 under sections 49 of the MRTP Act to the Respondents which was confirmed by the Government vide order dated 05th March, 2003, however, the land was not acquired within 18 months as provided under Section 49 of the Act. Thereafter, again a purchase notice dated 16th July, 2018 was given under section 127 of

the MRTP Act to Respondents. The petitioner had filed Writ Petition No. 12448 of 2018 for land acquisition. The said Petition was disposed of on the ground that the Petition was premature as the section 127 purchase notice was dated 16th July, 2018 and the said Petition was filed within 2 years.

5 Petitioner's land was reserved on 15th December, 2004. After a period of 10 years of reservation, on 16th July, 2018 the Petitioner gave the purchase notice under Section 127 of the MRTP Act to the Respondents, which was received by the Respondent No.2 Corporation on 21st July, 2018. Vide letter 8th August, 2018, the Municipal Corporation asked the Petitioner to submit more documents and accept TDR to which the Petitioner replied by letter dated 18th August, 2018 and also submitted the property card extract, municipal lay out plan, 7/12 extracts, copy of reservation zone certificate, coloured part plan, approved copy of plan, measurement etc. and stated that he is not interested in TDR and steps may be taken to acquire the property under the Act of 2013. After receipt of said purchase notice, no steps have been taken within 24 months by the Respondents, as contemplated under sub-section (1) of Section 127 of the MRTP Act.

6 Learned Counsel for the Petitioner contended that the said land of the Petitioner is reserved for Elevated Service Reservoir (ESR) purpose for more than ten years, however, neither the said land has been acquired by agreement or by publication of a declaration as contemplated under the provisions of section 126 of the MRTP Act. The notice for purchase is given by the Petitioners to the Respondents as contemplated under section 127, however, no

steps are taken to acquire the said land within a period of 24 months from the date of service of such notice. Even after the purchase notice, the communication of the Respondent No.2-Corporation dated 08.08.2018 was replied to by the Petitioner vide letter dated 18.08.2018, informing that the Petitioner did not require FSI or TDR and that necessary steps may be taken as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In view of the aforesaid facts, learned Counsel submitted that the Petitioner is entitled to the reliefs sought for in the Writ Petition. Learned Counsel for the Petitioner has placed reliance on the following judgments:

- (i) Girnar Traders v/s. State of Maharashtra & Ors, (2007) 7 SCC 555.
- (ii) Siddharam Shivappa Patil vs. State of Maharashtra & Ors. [2016 (1) ABR-555] (Coram : A.S.Oka & K.R. Shriram, JJ.)
- (iii) Shrishail Parvati Sahakari Grihanirman Sanstha (Regd.), Solapur vs. State of Maharashtra & Ors. [2017 (3) Mh.L.J.-225] (Coram : Naresh H.Patil & M.S.Karnik, JJ.)
- (iv) Abdul Gani N. Wadwan vs. State of Maharashtra & Ors. [2018 (4) Mh.L.J.-454] (Coram : A.S.Oka & Riyaz I. Chagla, JJ.)
- (v) Dilip Yashwant Atre & Ors. vs. State of Maharashtra & Ors. [2019 (6) Mh.L.J.-68] (Coram : S.C. Dharmadhikari & B. P. Colabawalla, JJ.)

7 Learned Counsel for Respondent No. 2-Corporation and learned AGP for the State submitted that the said land is earmarked and reserved for the public purpose. Learned Counsel for the

Respondent No.2 Corporation submitted that the Respondent No.2 Corporation is very much interested in getting the said land acquired and put it for the purpose for which it is reserved. The purchase notice is confirmed and necessary requisition for making funds available is also made to the State Government and thus necessary steps are already taken by the Respondents and it cannot be said that the reservation has lapsed.

8 We have heard the learned Counsel for the parties and have perused the papers and proceedings in Writ Petition. Since the entire controversy in this Petition revolves around sections 126 and 127 of the MRTTP Act, we feel it appropriate to reproduce the said Sections which read thus :

“Section 126. Acquisition of land required for public purposes specified plans

(1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority may, except as otherwise provide in section 113 A acquire the land, ----

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,

Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, and the land (together with the amenity, if any so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this section or under the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government except in cases falling under section 49 and except as provided in section 113A itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition Act, Rehabilitation and Resettlement Act, 2013, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act ; and the provisions of that Act shall apply to the acquisition of the said land with the modification that the market value of the land shall be,—

(i)

(ii)

(iii) ...

...

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration is not made, within the period referred to in sub-section (2) or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning (Amendment) Act, 1993, the State Government may make a fresh declaration for acquiring the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.

Thus Section 126 speaks about the acquisition of the lands reserved in the development plan by the Planning Authority or any Appropriate Authority except as otherwise provided in Section 113A of the 1966 Act. It provides three modes of land acquisition, i.e. by way of the agreement by paying an amount agreed or granting TDR or FSI in

lieu of any such amount, or by following the procedure for the acquisition of land under the 2013 Act. It further provides that if the reserved land is to be acquired following the procedure prescribed in the 2013 Act, then the Planning Authority has to make an application to the State Government, then the Government on receipt of such application, if satisfied with the need of such land for the public purpose, may make a declaration to that effect in the Official Gazette in the manner provided under section 19 of the 2013 Act in respect of such land. The declaration so published shall be deemed to be a declaration duly made under the said section. It further provides that subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft regional plan, development plan, or any other plan, or scheme, as the case may be. On the publication of the declaration under section 19 of the 2013 Act, the Collector shall proceed to take order for the acquisition of the land under the said Act. The State Government is empowered under sub-section (4) of the 1966 Act to make a fresh declaration for the acquisition of such lands as per the procedure prescribed under the 2013 Act but, the date of the market value of such land shall be the date of declaration in the Official Gazette and not the date as provided in sub-section (3) of the 1966 Act.

“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, along with 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 will notify the same, by an order published in the Official Gazette.”

9 The underlying principle envisaged under section 127 of the MRTP Act is either to utilize land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose as permissible under the Town Planning Scheme. The reservation shall be deemed to have lapsed if no steps are taken for acquisition of the land within the prescribed time.

10 Sections 126 and 127 of the MRTP Act has been interpreted by the Hon’ble Supreme Court in the case of **Girnar Traders Vs. State of Maharashtra & Ors.**, reported in 2007 (7) SCC 555, wherein the Hon’ble Supreme Court has held:

“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 owner's 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 issued by the State Government by exercising suo motu power under subsection (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 utilize the land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the Town Planning Scheme. The step taken under the Section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not 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."

11 In the above decision, the Hon'ble Supreme Court has set out the spirit and purpose of sections 126 and 127 of the MRTP Act. Notwithstanding the amendments made to the said sections inter alia enhancing the time to twenty-four months and substitution of old Land Acquisition Act by the Act of 2013, the law declared by the Supreme Court in the said decision holds the field. The Supreme Court has, inter alia, observed that the salutary principles laid down in the said sections are to safeguard a citizen against arbitrary and irrational executive action which in fact, may not result in acquisition of the land for a longer period. If sections 126 and 127 of the MRTP Act are read conjointly, it is apparent that the legislative intent is to expeditiously acquire the land reserved and therefore, various periods have been prescribed for acquisition of the owner's property. It is in these circumstances, that section 127 permits inaction on the part of Acquiring Authority for a period of ten years for de-reservation of the land; and it further gives time to either acquire the said land or take steps for acquisition of the said land within a period of twenty four months from the date of service of notice by the land owner for purchase.

12 Admittedly, the said land of the Petitioner is reserved for Elevated Service Reservoir (ESR) purpose under the development plan which came into force from 15th December, 2004. The said land is not acquired by agreement within 10 years from the date of

final development plan came into force and the declaration under sub-section (2) or (4) of Section 126 of the Act is also not published in the Official Gazette within the stipulated period of 10 years. The Petitioner, being the owner of the land, issued the purchase notice dated 16th July, 2018 under section 127 of the MRTP Act to the Respondents by submitting the property card extract, municipal layout plan, city survey measurement plan, reservation zone certificate and coloured part plan. The Respondents have failed to publish the declaration for acquisition of the said land within 24 months. That being so, the land of the Petitioner has to be released from the reservation, allotment or designation and is required to be available to the owner-the Petitioner, for the purpose of development which would be only for the purpose which is permissible in the case of adjacent land under the Development Plan. The ratio of the judgments (cited supra) relied on by the Petitioner is squarely applicable to the case of the Petitioner.

13 In view of the above, we find that the Respondents have failed to acquire the land within the stipulated period as per the provisions of the MRTP Act. This being the case as per the provisions of section 127 (1) of the MRTP Act, the reservation clamped on the said land automatically lapses. In this factual scenario and considering that the reservation lapses, the State Government is duty bound under section 127 (2) to notify the same by an order published in the Official Gazette and therefore, the reliefs that are sought for in this Writ Petition ought to be granted.

14 The Petition, therefore, succeeds and the same is allowed in terms of prayer clauses (a) and (b) which read thus :

(a) This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order thereby holding & declaring that the petitioners' lands Petitioner's designated/ specified/reserved for the Elevated Service Reservoir (ESR) purposes under the reservation no. 16/6 - admeasuring 1543 sq.mtrs., situated at Survey No. 27/3 (part), Nehrunagar, Bijapur Road, Solapur, (for short "the said land") have lapsed as per the provisions u/S. 127 of the Maharashtra Regional & Town Planning Act, 1966, and further that the lands are released from said reservations, allotment or designation and have become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the Plan;

(b) This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction or order directing the respondent Government to forthwith notify the lapsing of reservation of said lands by an order published in the Official Gazette as required u/S. 127 (2) of the MRTP Act, 1966.

15 The State Government is directed to notify the lapsing of the reservation of the land by an order to be published in the Official Gazette as per the requirements of Section 127 (2) of the MRTP Act, as expeditiously as possible and preferably within a period of four months from today.

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

(S.G.DIGE, J.)

(A.A. SAYED, J.)