

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7956 OF 2021

Sunil Mallikarjun Patil
Age 58 years, occ. Farmer,
R/at : Shelgi, Gavthan Shelgi
Taluka : - Uttar Solapur,
District Solapur – 413 002.

..... Petitioner

VERSUS

1. State of Maharashtra
(Summons to be served on the learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4 of the code of Civil Procedure, 1908.)

2. The Director of Town Planning Pune
Region, Pune
(Summons to be served on the learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4 of the code of Civil Procedure, 1908.)

3. The Joint Director of Town Planning
Pune Region, Pune
212 Second Floor,
New Administrative Building,
Opp.Vidhan Bhavan,
Pune 411 001
(Email : jdtpdn_pune@rediffmail.com)
(Summons to be served on the learned
Government Pleader appearing for
State of Maharashtra under Order XXVII,
Rule 4 of the code of Civil Procedure, 1908.)

4. Solapur Municipal Corporation

**(Summons to be served on the Municipal
Government Pleader appearing for
Commissioner, Solapur Municipal
Corporation Solapur)**

..... Respondents

Mr. A.V.Anturkar, Senior Advocate, a/w. Mr.Shubham H. Misar for the
Petitioner.

Mrs.Ashwini A.Purav, A.G.P. for the State – Respondent no. 1.

Mr.Abhay Patki for the Respondent no.4.

**CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.
RESERVED ON : 14TH SEPTEMBER, 2022
PRONOUNCED ON : 29TH SEPTEMBER, 2022**

JUDGMENT (Per R.D.Dhanuka, J.):-

Rule. Learned A.G.P. waives service for respondent nos. 1 to 3.
Learned counsel waives service for the respondent no.4. Rule is made
returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of
India, the petitioner has prayed for a declaration that the reservation in
respect of the property viz. Reservation No. 12/33 (Mela Ground) of
the petitioner has lapsed under the provisions of section 127 of the
Maharashtra Regional And Town Planning Act, 1966 (for short the said
MRTP Act). The petitioner has also prayed for a writ of certiorari for

quashing and setting aside the letter dated 23rd February, 2018 addressed by the Joint In Charge Assistant, Joint Director of Town Planning Solapur, Municipal Corporation Solapur, letter dated 30th July, 2020 addressed by the Joint Director of Town Planning, Pune Region, Pune to the Director of Town Planning and letter dated 9th September, 2020 addressed to the petitioner by Assistant Director of Town Planning, Solapur Municipal Corporation, Solapur. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner is the owner of the land bearing survey no. **40/1/B** out of which the land admeasuring 0.52 hectares (approximately) from survey no. 40 (Part), Shelgi is reserved as Reservation site No. 12/33 'Mela Ground'. The respondent no.4 Corporation is an appropriate authority for the acquisition and the development of the said reserved site. The Development Plan of Solapur Municipal Corporation was finally sanctioned on 28th October, 2004 showing the said reservation of the said portion of the said land as Mela Ground.

4. On 9th February, 2018, one Jagdishchandra Mallikarjun Patil, the petitioner brother issued a notice under section 127 of the MRTP Act to

the respondents for acquiring the said property. On 23rd February, 2018, the Joint Director of Town Planning addressed a letter to Jagdishchandra Mallikarjun Patil the petitioner brother imposing four conditions.

5 On 13th March, 2019 and 25th April, 2019, the petitioner addressed letters to the Commissioner, Town Planning seeking clarification about the area under reservation. In or around July 2019, the Commissioner, Solapur Municipal Corporation addressed a letter to the Director, Town Planning whereby the Municipal Corporation accepted that the area under the Reservation No.12/33 is not the entire 1 hectare but was only 0.52 R.

6. On 7th August, 2019, the Commissioner, Solapur Municipal Corporation sought guidance from the Director of Town Planning, Maharashtra State, Pune in respect of the said area and the said reservation. The Director of Town Planning, Maharashtra State vide letter dated 3rd February, 2021 replied to the Commissioner, Solapur Municipal Corporation that the area of the said reservation was to be considered and was not required to be corrected under Drafting Error.

7. On 30th July, 2020, the Joint Director of Town Planning submitted a report to the Director of Town Planning. After considering the said report of the Director of the Town Planning, Maharashtra State, Pune, the Commissioner issued a notification for acquiring the said land. Since no steps have been taken by the respondents to acquire the said land within a period of one year from the date of service of notice under section 127(1) served upon the respondents by the petitioner, the petitioner has filed this petition for various reliefs.

8. Mr.Anturkar, learned senior counsel for the petitioner invited our attention to various documents annexed to the petition and submitted that the petitioner had issued a notice under section 127(1) of the MRTP Act upon the respondents to acquire the said land. He submits that the so called steps taken by the respondents after expiry of the period of one year would not prevent the declaration of the reservation as lapsed.

9. By an order dated 24th November, 2021, the petitioner was granted liberty to file an additional affidavit. On 7th December, 2021,

the petitioner filed the additional affidavit placing on record that all the relevant documents were submitted by the petitioner to the Deputy Commissioner, Solapur Municipal Corporation.

10. Learned A.G.P. for the respondent nos. 1 to 3 relied upon averments made by the respondent nos. 1 to 3 in their affidavit in reply dated 9th February, 2022.

11. Mr.Patki, learned counsel for the respondent no.4 placed reliance on the averments made by the respondent no.4 in the affidavit in reply filed by the Assistant Engineer in the office of the Assistant Director of Town Planning, Solapur Municipal Corporation and submitted that the petitioner is governed by the MRPT Act, 1966 and Unified Development Control and Promotion Regulation (UDCPR) 2020. He submitted that there is an alternate provision in the said UDCPR for an alternate mode of acquisition of land either by entering into an agreement or on the basis of granting other rights including Accommodation Reservation and/or Reservation Credit Certificate. The owner in such cases can avail the benefits alternatively under these provisions in UDCPR, 2020.

12. It is submitted that the general body of the respondent no.4 had passed a resolution on 24th September, 2021 for the Revision of the Development Plan 1997-2017 of Solapur and respondent no.4 has already initiated the process of the said revision. He submitted that this Court may pass an appropriate order directing the petitioner to accept the TDR for the said reservation of the plot of the petitioner for 'Mela Ground' from the respondent no.4 instead of declaring the said reservation as lapsed.

13. Mr.Anturkar, learned senior counsel for the petitioners submitted that the respondents cannot compel the petitioner to accept TDR since the reservation in respect of the land of the petitioner has already lapsed or even otherwise.

REASONS AND CONCLUSIONS :-

14. There is no dispute that the land of the petitioner admeasuring 0.52 hectares (approximately) from survey no. 40 (Part), Shelgi was reserved as Reservation site No. 12/33 'Mela Ground' in the Development Plan of 1997-2017. The second revised development plan of Solapur Municipal Corporation has been partly sanctioned

under the provisions of section 31 of the MRTP Act by the Government of Urban Development Department dated 28th October, 2004 which has come into force w.e.f. 15th December, 2004.

15. On 9th February, 2018, the petitioner had issued a notice under section 127 of the MRTP Act to the respondent nos. 1 to 3 to acquire the said land. The respondents however did not acquire the said land within a period of one year from the date of the receipt of the said notice under Section 127(1) of the MRTP Act.

16. The Assistant Director of the Town Planning, Solapur Municipal Corporation has filed an affidavit notarized on 18th April, 2022. It is contended in the affidavit that the petitioner had addressed a letter to the Town Planning Department on 13th March, 2019 for corrections in the area on record while sanctioning in the Development Plan 1997-2017. The Town Planning Department accordingly recommended the same to the Director of the Town Planning, Pune for correcting the drafting error in the area on record while sanctioning in the Development Plan. The Town Planning Department thereafter took the corrective action and informed the petitioner on 7th September, 2020

that no matter was pending before the respondent no.4 for correction in the sanctioning Development Plan.

17. In the said affidavit, the Town Planning Department also made it clear that if the petitioner is ready to accept the said TDR for the said reservation, then the respondent no.4 is ready to negotiate and acquire the said reserved land by an agreement under section 127 of the MRTP Act. The deponent of the said affidavit also placed reliance on the Unified Development Control and Promotion Regulation (UDCPR) 2020 in support of the contention that the development of reservation by the owner on the conditions mentioned in the said Regulation is permitted under the said provision. It is further contended that the process of Revision of Development Plan 2024-2044 has already been started by the Solapur Municipal Corporation as per the provisions of the MRTP Act vide initiating the resolution to be passed by the Standing Committee on 24th September, 2021. The Town Planning Department would not act mechanically and unfairly in the matter. The Town Planning Department sought directions against the petitioner to accept the TDR for the impugned reservation from the respondent no.4 rather than allowing the reservation to lapse as the same was meant as a

public amenity for which the land was reserved for the inhabitants of Solapur District.

18. It is not in dispute that neither the notification under section 6 of the Land Acquisition Act was issued by the State Government nor the acquisition proceedings were completed within the period of one year from the date of notice dated 9th February, 2018 issued by the petitioner under section 127 of the MRTP Act.

19. This Court after adverting to various judgments of the Hon'ble Supreme Court including the judgment in case of ***Girnar Traders vs. State of Maharashtra, (2007) 7 SCC 555***, in case of ***Shrirampur Municipal Council, Shrirampur versus Satyabhamabai Bhimaji Dawkher and others, (2013) 5 SCC 627*** and several other judgments of this Court has held that the sanctioning of proposal by the improvement committee and the corporation, the application made to the collector with the documents to publish the notification under Section 6 of the Land Acquisition Act, the letter of the Additional Collector appointing the SLAO, paying of the amounts for joint measurements, depositing the acquisition cost or steps

taken before the issuance of notification under section 6 of the Land Acquisition Act cannot be construed as steps taken towards acquiring the land as contemplated for acquisition of the property under the MRTP Act.

20. A perusal of the affidavit in reply filed by the respondents indicates that the Commissioner, Solapur Municipal Corporation had sought guidance from the Director of the Town Planning, Maharashtra State, Pune on 7th August, 2019 in respect of the land which was the subject matter of the said notification under section 127 of the MRTP Act. In our view, various correspondence exchanged between the Director of Town Planning, Joint Director of Town Planning and the Corporation regarding correction of drafting errors is not a step as contemplated under the provisions of section 127 of the MRTP Act.

21. It is not disputed by the respondents that thus no notification under section 6 of the Land Acquisition Act had been issued on or before 9th February, 2018 i.e. on expiry of the period as prescribed in

section 127 of the MRTP Act. The impugned reservation had thus lapsed. The so called steps taken by the respondents not being the steps as contemplated under section 127 of the MRTP Act on or before 9th February, 2018 or thereafter and thus could not prevent the lapsing of the said reservation.

22. Insofar as the contention of the Municipal Corporation raised in the affidavit in reply that the petitioner shall be directed to accept the TDR in place of compensation is concerned, in our view, since the said reservation has lapsed in view of the respondents not having taken any steps within the time prescribed, the question of payment of any compensation by way of TDR or otherwise to the petitioner does not arise.

23. Be that as it may, it is a choice of the person whose land is to be acquired to accept the monetary compensation or any other compensation offered by the respondents in lieu of the monetary compensation including TDR or not. There cannot be a compulsion on the part of the owner against the acquiring body to demand TDR in lieu of compensation or on the part of the acquiring body to compel

the owner to accept TDR in lieu of monetary compensation.

24. We accordingly pass the following order :-

(a) It is declared that 0.52 hectares land reserved in Reservation site No.12/33 'Mela Ground' bearing survey no. **40/1/B** has lapsed under the provisions of section 127 of the MRTP Act.

(b) Writ petition is accordingly made absolute in terms of prayer Clauses (A) and (B). The State Government is directed to notify the lapsing of the reservation by publishing an order 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. Thereafter, if fresh plans for building permission are submitted by the petitioners, then the same should be considered expeditiously.

(c) Rule is accordingly made absolute. No order as to costs.

(d) The parties to act on the authenticated copy of this order.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]

This judgment is corrected and modified as per Speaking to the Minutes of the order dated 26th April, 2023.

**KANCHAN
VINOD
MAYEKAR**

Digitally signed
by KANCHAN
VINOD MAYEKAR
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