

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2168 OF 2021

Satish Rajaram Khandre	...	Petitioner
Versus		
Government of Maharashtra & Ors.	...	Respondents

Mr. Abhishek R. Avachat a/w. Mr. Abhijeet S. Khandre,
Advocate for the Petitioner.

Mr. S. S. Panchpor, AGP for the Respondent Nos.1 and 3/State.

Ms. Chaitrali A. Deshmukh, Advocate for the Respondent
No.2.

**CORAM: S.V. GANGAPURWALA &
M. G. SEWLIKAR, JJ.**

DATED : APRIL 26, 2022

P.C.

1. The land of the petitioner was reserved in Development Plan as Reservation No. 201 for Garden. The petitioner had also served the notice under Section 127 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the “**MRTP Act**”) on the ground that reservation stands lapsed and thereafter filed a writ petition No. 1860/2012. The said writ petition came to be disposed of on the ground that the declaration under Section 6 read with Section 126 of the MRTP Act is already issued in the year 1998.

2. The present writ petition is filed on the premise that though the declaration under Section 6 of the Act read with Section 126 of the MRTP Act has been issued in the year 1998, no award has been passed as yet and as such the acquisition proceedings shall stand lapsed.

3. We have heard the learned Counsel for the petitioner. The learned Advocate for respondent No.2/Municipal Council submits that provision of Section 11A of the Land Acquisition Act, 1894 do not apply to the acquisition proceeding initiated under Section 126 of the MRTP Act. The learned Counsel to substantiate her contention relied on the Judgment of *M/s. Girnar Traders Versus State of Maharashtra & Ors.*¹.

4. We have heard learned AGP also.

5. The learned Advocate for respondent No.2, on instructions, submits that a fresh proposal has been forwarded to the Land Acquisition Officer on 05/12/2015 for proceeding with the acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as, “**the Act, 2013**”).

6. There cannot be any dispute with the proposition that acquisition proceeding initiated under Section 126 of the MRTP Act read with Section 6 of the Act, 1894 will not be required to comply with the provisions of Section 11A of the Act, 1894. However, the question would be for how long the proceedings ought to be kept pending. No award has been passed for 24 years after the declaration under Section 6 of the Act, 1894 read with Section 126 of the MRTP Act. The proceedings cannot be kept pending for unreasonable period. In fact, Section 127 of the MRTP Act is a fetter on power of eminent domain. The Division Bench of this Court

¹ 2007(7) SCC 555.

at Aurangabad to which one of us (S.V.Gangapurwala, J.) was party in case *Mukunwadi Co-operative Grih Nirman Society, Ltd. Versus The State of Maharashtra & Ors.*² has observed that period stipulated under Section 11A of the Act, 1894 cannot be applied with mathematical precision to the acquisition under the MRTP Act, however, the award has to be passed within reasonable time.

7. 24 years is a unreasonable period for keeping the acquisition proceeding pending. As the award has not been passed within a reasonable time and so also the Municipal Council has moved the Land Acquisition Officer for fresh proceedings of the acquisition under the Act, 2013, we pass the following order :

ORDER

- (i) The declaration under Section 6 of the Act, 1894 read with Section 126 of the MRTP Act issued in the year 1998 stands lapsed.
- (ii) The respondents are at liberty to take up acquisition proceedings afresh.
- (iii) The writ petition is accordingly disposed of. No costs.

(M. G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)

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2 Writ Petition No. 3782 of 1994 (Appellate Side)