

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.671 OF 2020

1. Sau. Alka Dillip Dabhade
Age 50 years,
Occupation – Business and Agriculturist,
R/o. Paranjpe Collony, Camp,
Amravati – 444602
2. Dyaneswar Shankarrao Hiwswe
Age 44 years,
Occupation – Business,
R/o Budhwara, Amravati - 444601

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai
2. The Municipal Corporation
of City of Amravati,
Through its Commissioner,
Amravati Municipal Corporation,
Rajkamal Chowk,
Amravati
3. Assistant Director of Town Planning,
Municipal Corporation,
Amravati Off: Municipal Corporation,
Rajkamal Chowk,
Amravati

...RESPONDENTS

Shri G.K. Mundhada, Advocate for the petitioners.
Shri D.P. Thakre, Additional Government Pleader for
respondent No.1/State.
Shri Tushar Darda, Advocate for the respondent No.2.

CORAM : A.S. CHANDURKAR AND
SMT. URMILA S. JOSHI-PHALKE, JJ.
DATED : JUNE 15, 2022.

JUDGMENT (Per Smt. Urmila S. Joshi-Phalke, J.)

RULE. Rule is made returnable forthwith.

2. Heard finally with the consent of both the parties.
3. The petitioners in this petition restricted their claim to the extent of seeking declaration that the reservation over the property owned by the petitioners has lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the M.R.T.P. Act' for short).
4. The petitioners are also seeking direction to declare that they are free to develop the land.

5. The brief facts which are relevant for deciding the issue are as follows:

A] The petitioners are the joint owners of the land bearing Survey No.23 Sub-Division 1-C ad-measuring 0.32 R of Mouza-Mhasla, Tq. and District Amravati (hereinafter referred to as the 'said land' for short). The said land is situated in the corporation limits of Municipal Corporation, Amravati. As per the contention of the petitioners the State Government has sanctioned first revised Development Plan in the year 1993 which came into force with effect from 25/02/1993. As per the first revised Development Plan, the said land owned and possessed by the petitioners was reserved for primary school vide Reservation bearing No.130, by the respondents. After the first sanction revised Development Plan declared the reservation of the said land, petitioners have applied to respondent No.3 - Assistant Director of Town Planning, Municipal Corporation, Amravati for seeking permission of development i.e. for converting land into non-agriculture purpose by filing an application on 27/10/2016. Respondent No.3 has rejected the permission on 25/04/2017 under Section 45 of the M.R.T.P. Act on the ground that the said land is

reserved for primary school vide Reservation No.130. On 06/05/2017, the petitioners through their Counsel had served purchase notice under Section 49 and 127 of the M.R.T.P. Act through registered post in the office of respondent Nos.1 to 3. Said notice was accompanied with 7/12 extract, sanctioned demarcated layout map etc. Said notice was duly served to the respondents on 09/05/2017. Respondent No.2 has rejected the notice under Section 49 of the M.R.T.P. Act by assigning reason that notice under Section 49 and 127 of the M.R.T.P. Act are different in nature and will operate in different circumstances. Therefore, petitioners have again served notice under Section 49 of the M.R.T.P. Act on 24/11/2017.

B] On perusal of notice dated 04/04/2018, respondent No.1 issued directions to commence acquisition within a period of 12 months. Respondent No.3 vide communication dated 27/02/2018 requested petitioners to accept the compensation in the form of T.D.R. but the petitioners refused to accept the said offer and requested for monetary compensation by issuing letter to respondent No.3 on 05/03/2018. It is further contention of the petitioners that on 21/04/2018, respondent No.2 forwarded

incomplete proposal for acquisition to the Collector, Amravati. On 08/05/2019, statutory period of 24 months as per Section 127 of the M.R.T.P. Act has expired. After expiry of 24 months, right of petitioners was crystallized of lapsing of a reservation. In the meanwhile, on 06/12/2018 second draft revised plan for suggestion and objection under Section 26 of the M.R.T.P. Act was published by the respondents. By the second revised plan, land of the petitioners is re-reserved for play ground. The petitioners have raised their objections to the new revised plan.

C] It is the contention of the petitioners that after receipt of said purchase notice, no steps have been taken within 24 months by the respondents. In view of provisions under Section 127(1) of the M.R.T.P. Act and, therefore, the right of the petitioners were crystallized of lapsing of reservation. Hence, this petition.

6. In response to the notice, respondent No.2 filed reply. Respondent No.2 has taken stand that the petitioners cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. It is further submitted that after receipt of the notice on 09/05/2017, the hearing was held before respondent No.1 on

15/06/2017. Respondent No.1 in exercise of powers under Sub-Section (4) of Section 49 of the M.R.T.P. Act has rejected the said notice by observing that notice under Sections 49 and 127 of the M.R.T.P. Act are different in nature and they operate in different circumstances, hence the notice is null and void.

7. Respondent No.2 has denied that the petitioners fulfilled the conditions mentioned in Sections 49 and 127 of the M.R.T.P. Act joint notice can be served by the petitioners. The said land again re-reserved by the revised plan. Respondent No.2 had forwarded acquisition proposal on 21/04/2018 to the Collector, Amravati to commence the acquisition proceeding in respect of the said land. Therefore, it cannot be said that no steps are taken and hence petition is liable to be dismissed.

8. Heard Shri Mundhada, learned Counsel for the petitioners who submitted that long back in the year 1993, land of the petitioners is reserved for primary school vide Reservation No.130 dated 25/02/1993. Immediately, thereafter the petitioners filed an application for development which was rejected. The petitioners have issued joint notice under Sections 49 and 127 of

the M.R.T.P. Act. After receipt of the said notice on 09/05/2017, notice under Section 49 of the M.R.T.P. Act was rejected on 28/08/2017. Again another notice was served on the respondents under Section 49 of the M.R.T.P. Act on 24/11/2017. In view of notice dated 24/11/2017, respondent No.1 issued directions to commence acquisition by an order dated 04/04/2018. Within statutory period of 24 months, no effective steps are taken by the respondents. Statutory period of 24 months came to an end on 08/05/2019. Respondents have not issued any notification under Section 126(2) of the M.R.T.P. Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

9. In view of above facts and circumstances, petitioners are entitled for the relief claimed as per prayer clause (A). In support of this contention, learned counsel for the petitioners relied upon the decision of this Court in the case of **Sushant Sureshrao Charjan Vs. State of Maharashtra and ors. in Writ Petition No.7119 of 2016 decided on 17/03/2020** wherein relying upon the judgment of the Bombay High Court in the case of **Ashok Shriram Kulkarni Vs. State of Maharashtra and anr. (Writ Petition**

No.11597/2012, decided on 22/03/2017) (2017(4) Mh.L.J. 382)

wherein it is held that after expiry of statutory period, the petitioner is entitled to relief of lapsing of reservation.

10. On the other hand, Shri Thakre, learned Additional Government Pleader for respondent No.1 and Shri Darda, learned Counsel for respondent No.2 submitted that the petitioners cannot invoke the jurisdiction under Section 226 of the Constitution of India. It is further submitted that proposal for acquisition is already forwarded to the Collector, Amravati, therefore, it cannot be said that no steps are taken, hence, petition is liable to be dismissed.

11. It is an admitted fact that more than 17 years have passed after the said property was reserved for primary school. It is also not disputed that the petitioners duly served the notice under Section 127(1) of the M.R.T.P. Act to the respondents. After service of notice, no steps have been taken within 24 months for acquisition of property. Though respondent No.3 offered the petitioners to accept the compensation in the form of T.D.R. the petitioners refused the same. The record further shows that second

re-revised plan for suggestion and objection was published. Admittedly, no notification was issued under Section 127(2) of the M.R.T.P. Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. The entire controversy in this petition revolves around Sections 126 and 127 of the M.R.T.P. Act. The statutory mandate under Section 126 denotes that while acquiring the land for public purposes, the due procedure given under Section 126(2) of the M.R.T.P. Act is to be followed. Section 126 of the M.R.T.P. Act reproduced hereunder:

“126. Acquisition of land required for public purposes specified in 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 provided in section 113A] [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 in application to the State Government for acquiring such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement 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 sections [or under the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement 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 6 of the Right to Fair Compensation and Transparency in Land Acquisition, 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) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme:

***Provided that,** nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 :*

***Provided further that,** for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]*

[(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 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.]”

13. Whereas Section 127 of the M.R.T.P. Act speaks about consequences if timeline is not followed by the Government by taking appropriate steps. It states that if no steps are taken by appropriate authority within 24 months from the date of service of such notice, the reservation, allotment or designation shall be

deemed to have lapsed. Thus the M.R.T.P. Act fixes timeline which have to be followed, failing which consequences of lapses to be followed.

14. The Hon'ble Apex Court in the case of **Chhabildas Vs. State of Maharashtra and ors.** (2018) 2 SCC 784 in paragraph No.7 observed thus :

“(7) If within one year from the date of confirmation of the notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

15. In another judgment of the Hon'ble Apex Court in the case of **Prafulla C. Dave and ors. vs. Municipal Commissioner and ors.** (2015) 11 SCC 90 held thus:

“21. Under Section 127 of the M.R.T.P. Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such

authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the M.R.T.P Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceeding for acquisition are not initiated within 10 years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to be lapsed within which time the authority can still initiate the necessary action. Section 127 of the M.R.T.P Act or any other provision of the M.R.T.P Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of 10 years. On the contrary, upon expiry of the said period of 10 years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127 of the M.R.T.P Act.....”

16. It appears that respondents again re-reserved the said land for play ground vide Reservation No.35. As far as re-reservation of public amenities after lapse of reservation is concerned said issue is dealt by this Court in the case of

Ashok Shriram Kulkarni Vs. State of Maharashtra (supra) in paragraph No.24 which reads thus:

“24. The contention of the respondents that the sanctioning of the revised development plan in 2012 has the effect of rendering purchase notice dated 09/09/1996 ineffective cannot be countenanced as action on the part of the petitioner in issuing the notice under section 127 of the said Act and the expiry of period of six months within which time steps are to be taken is anterior in point of time to the preparation of the revised plan.”

17. Thus, the principles underlying in Section 127 of the M.R.T.P. Act is either to utilize the land for the purpose for which it is reserved in the timeline given 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 said land within the prescribed period. Admittedly, in the present case, respondents have not taken any steps to issue notification after receipt of the notice.

18. In view of the catena of decisions referred above, the petitioners are entitled for relief of declaration as regards lapsing of reservation in respect of the property owned by them. Thus, the

provision under Sections 126(2) and 127 of the M.R.T.P. Act fixes timeline which have to be followed, failing which consequences of lapses to be followed. In the present case, admittedly said land of the petitioners is reserved for primary school initially in the year 1993. The said land is not acquired by an agreement within 10 years from the date of final development plan came into force and the declaration under Sub-Section (2) or Sub-Section (4) of Section 126 of the M.R.T.P. Act is also not published in the Official Gazette within the stipulated period of 10 years. The petitioners being the owners of the said land have issued the statutory notice on 06/05/2017. The said notice was received by the respondents on 09/05/2017. The respondents have failed to publish the declaration for acquisition of the said land within 24 months. Therefore, the land of the petitioners has to be released from the reservation, allotment or designation and is required to be available to the owner i.e. the petitioners for the purpose of development.

19. In the above circumstances and in the light of the decisions of the Hon'ble Apex Court as well as this Court, we find that the respondents have failed to acquire the land within the stipulated period as per the provisions of the M.R.T.P. Act. The

petition, therefore, succeeds and deserves to be allowed in terms of prayer clause (A).

20. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) It is hereby declared that the reservation of the land of the petitioners vide Reservation No.130 affecting the land owned by the petitioners vide Survey No.23 Sub-Division 1-C ad-measuring 0.32 R at Mouza-Mhasla, Tq. and District Amravati, has lapsed under Section 127 of the M.R.T.P. Act and the petitioners are free to develop the property in dispute in the manner permissible to adjacent land as per the development plan.

(c) The respondent No.1 is hereby directed to notify and publish in Official Gazette under Section 127(2) of the M.R.T.P. Act within a period of six weeks from the receipt of copy of this judgment, indicating the lapsing of reservation of primary school vide Reservation No.130 affecting the land owned by the

petitioners and re-reserving the land vide Reservation No.35 for play ground affecting the land owned by the petitioners having Survey No.23 Sub-Division 1-C ad-measuring 0.32 R at Mouza-Mhasla, Tq. and District Amravati.

21. Rule is made absolute in the aforesaid terms with no order as to costs.

(SMT. URMILA S. JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*