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

WRIT PETITION NO.3706 OF 2020

1. Deepak Harikisan Agrawal, age : 40 years,
Occupation : business, r/o Near Namuna Gali,
Amravati – 444 601.

2. Deepak Hanumanprasad Sharma, age : 44 years,
Occupation business, r/o Near Javahar Gate,
Javhar Road, Amravati – 444 601. **Petitioners.**

:: V E R S U S ::

1. The State of Maharashtra, through the
Secretary Urban Development Department,
Mantralaya, Mumbai-32.

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.**

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Shri G.K.Mundhada, Counsel for the Petitioners.
Shri J.B.Kasat, Counsel for Respondent Nos.2 and 3.
Shri D.P.Thakare, Additional Government Pleader for Respondent
No.1/State.

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CORAM : **A.S.CHANDURKAR & URMILA JOSHI-PHALKE, JJ.**

DATE : **05/08/2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri G.K.Mundhada for the
petitioners, learned counsel Shri J.B.Kasat for the respondent Nos.2
and 3 and learned Additional Government Pleader Shri D.P.Thakare
for the respondent No.1/State. **Rule.** Rule made returnable

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forthwith.

2. By this petition, the petitioners have claimed that Reservation in the First Revised Development Plan and Reservation at serial No.84 in the Second Draft Development Plan of Amravati City which are affecting the land owned by petitioner No.1 of sheet No.81D, plot No.7/2, area admeasuring 998 square feet (92.72 square meters) and the land owned by petitioner No.2 of sheet No.81D, plot No.7/1, area admeasuring 3066 square feet (285.08 square meters) total area admeasuring 4064 square feet (377.8 square meters) of Peth Amravati, Pragane Badnera taluka and district Amravati be declared as lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as, "the MRTP Act" for the sake of brevity) and be declared that the petitioners are free to develop the lands owned by them as per the development plan permissible to adjacent lands. The petitioners also prayed to issue directions to the respondents to notify and publish lapsing of reservation in the Official Gazette under Section 127 of the MRTP Act.

3. As per the contentions of the petitioners, petitioner No.1 owns land of sheet No.81D, plot No.7/2, area admeasuring 998 square feet (92.72 square meters) and petitioner No.2 owns land of sheet No.81D, plot No.7/1, area admeasuring 3066 square

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feet (285.08 square meters). They both are owners of total area admeasuring 4064 square feet (377.8 square meters) of Peth Amravati, Pragane Badnera taluka and district Amravati. The said lands are situated in the corporation limits of the Municipal Corporation of Amravati. Petitioner No.1 had purchased the said property by way of registered Sale Deed dated 29.12.2001 from one Shantabai Devakinandan Agrawal. Petitioner No.2 became owner of the property by way of three registered Sale Deeds dated 22.9.2017 from previous owner Shivchand Madanlal Agrawal who inherited the said property as legal heir of Ginnibai Vishvanath Agrawal, resident of Purna Nagar, Amravati for consideration of Rs.11,06,000/-. After execution of the Sale Deeds, names of the petitioners had been mutated in the revenue records as per Section 157 of the Maharashtra Land Revenue Code, 1966. It is further the contention of the petitioners that the First Revised Development Plan was sanctioned by the State Government w.e.f. 25.2.1993. In the said First Revised Development Plan, the lands owned and possessed by the petitioners were reserved for Library vide Reservation No.499 by the respondents. Though the said lands were reserved for Library, the respondents had not taken any steps for acquisition. The petitioner No.1 and previous owners Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal, who were owners of sheet No.81D, plot No.7/1, area admeasuring 3066 square feet

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(285.08 square meters), had personally served purchase notice under Section 127 of the MRTP Act on 29.6.2006 in the office of respondent Nos.2 and 3. As per the endorsement of office bearers of respondent Nos.2 and 3, the said notice was served and by the said notice the petitioners called the respondents to acquire the lands kept under reservation in the Development Plan within the statutory period of six months from the date of service of the said notice. The said notice was served along with Property Card, Nazul Map, Sale Deed and letter dated 27.6.2006. The said notice was duly served and noted in the inward register by the respondent Nos.2 and 3 on 1.7.2006.

4. It is further contention of the petitioners that the notice under Section 127 of the MRTP Act was issued by the previous owners who were persons interested in the development of the said lands. Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal were persons who were owners and had a right to issue the notice. The petitioner No.2, after purchase of the said land, stepped into the shoes of statutory rights of previous owners and as after lapse of six months no steps for acquisition were taken. The land stood lapsed and the benefit would be accrued to the persons in whose favour the said persons issued the notice had transferred the said land to the petitioner No.2. It is further the contention of the

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petitioners that their counsel enquired about the steps taken in pursuance of the purchase notice dated 1.7.2006. It was informed by respondent No.2 that a proposal was forwarded for acquisition to the Collector, Amravati vide outward No.3891/2006 dated 19.12.2006. As the financial position of respondent No.2 was weak and preliminary amount for issuance of notification had not been deposited with the Collector, Amravati, therefore, no notification under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 and under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been published, till date. As no statutory steps were taken by the respondent Nos.2 and 3, the reservation deserved to be lapsed. It is further the contention of the petitioners that the Second Draft Revised Development Plan under Section 26 of the MRTP Act was published in Official Gazette of the Government of Maharashtra dated 6.12.2018. In the Second Revised Development Plan, the said property owned by the petitioners again reserved for the purpose of Library vide Reservation No.84. The petitioners came to know that in the Second Draft Revised Development Plan the above said property owned by the petitioners are again re-reserved for Library vide Reservation No.84. They raised their objections to the said reservation on 17.12.2018, but the new reservation continued and

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their objections were not taken into consideration. It is the contention of the petitioners that in view of Section 127 of the MRTP Act, lapsing of reservation on the said property owned by the petitioners were accrued due to operation of deem fiction. The said right accrued to the petitioners due to lapsing of reservation on the said land cannot be taken by the respondents due to coming into force of the Second Revised Development Plan. It is contention of the petitioners that as no steps were taken to acquire the said lands within the stipulated period, the petitioners are entitled for the declaration of lapsing of the said reservation. Hence, this petition.

5. In response to the notice, the respondent Nos.2 and 3 have taken a stand that the aforesaid lands are reserved under the sanction development plan of City of Amravati dated 4.12.1992 for Library vide reservation No.499 as per notification dated 4.12.1992. The respondents submitted that the petitioners have no right to claim the declaration as purchase notice was issued by the previous owners. It is contention of the respondents that they received the purchase notice from the petitioners, after receipt thereof, by communication dated 29.12.2006 a proposal was forwarded to the Collector for acquisition of the said lands. It is further contention of the respondents that the purchase notice on the basis of which the petitioner No.2 is praying for lapsing of reservation was addressed

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by Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal. However, the said purchase notice is signed by only Shivchand Madanlal Agrawal for self and on behalf of Ginnibai Vishvanath Agrawal. The petitioner No.2 was not owner at that time. Filing of the instant joint petition is wholly misconceived. It is further the contention of the respondents that the process for the Second Revised Draft Development Plan of Amravati City is started and the lands of the petitioners were re-reserved during the Second Development Plan for Library. Therefore, the present petition filed by the petitioners is premature, contrary to the principles of justice and deserves to be dismissed.

6. Learned counsel Shri G.K.Mundhada for the petitioners submitted that initially the lands of the petitioners were reserved for the purpose of Library vide Reservation No.499. In a stipulated period, no steps were taken by the respondents, therefore, the notice was issued by the petitioners. He submitted that though the respondents challenged the said notice on the ground that the said notice was signed only by Shivchand Madanlal Agrawal and not Ginnibai Vishvanath Agrawal, the petitioner No.2 had not sent the said notice and, therefore, he cannot claim the de-reservation. He submitted that this issue is already decided by this Court in Writ Petition No.1107 of 2014 (*Vyankatesh Reality, Amravati vs. The*

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State of Maharashtra and ors) decided on 1.4.2015. He submitted that there is a compliance by the petitioners by issuing notice under Section 127 of the MRTTP Act. After receipt of the notice, no steps were taken by the respondents. By way of re-reservation, the stipulated period could not be extended. Hence, the petitioners are entitled for the relief claimed by them. In support of his contention, he relied upon the decision of the High Court of Gujarat in the case of Prabhaben Harshadray Desai vs. State Government reported at 2008 LawSuit (Guj) 1249. On the basis of the said submission, he submitted that as the statutory period is already over, the notice under Section 127 of the MRTTP Act is duly served on the respondents. Hence, the petitioners are entitled for the relief claimed.

7. On the other hand, learned Additional Government Pleader Shri D.P.Thakare for the respondent No.1 and learned counsel Shri J.B.Kasat for the respondent Nos.2 and 3 submitted that there was no notice in view of Section 127 of the MRTTP Act. Earlier notice was not issued by the petitioner No.2. Now the lands are re-reserved. Hence, the petitioners are not entitled for any relief claimed.

8. It is an admitted fact that initially in the year 1992 the First Revised Development Plan of the City of Amravati was

sanctioned by the State Government which came into force w.e.f. 25.2.1993. In the First Revised Development Plan the said lands owned by the petitioners are reserved for Library vide Reservation No.499 by the respondents. It is also an admitted position that at the time of reservation of the said lands, the petitioner No.2 was not owner of sheet No.81D, plot No.7/1, area admeasuring 3066 square feet (285.08 square meters). At the relevant time, the said land was owned by Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal. It is also an admitted position that the petitioner No.1, Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal had personally served purchase notice under Section 127 of the MRTP Act on 29.6.2006 in the office of the respondent Nos.2 and 3. The respondent Nos.2 and 3 have also admitted that they had received the said notice. Only the contention of the respondents is that the said purchase notice is signed by only Shivchand Madanlal Agrawal for self and on behalf of Ginnibai Vishvanath Agrawal. It is the contention of the respondents that till 18.11.2011 Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal were only legal owners of the property. Whereas, it is submitted by learned counsel for the petitioners that this issue is already decided by this Court in Writ Petition No.1107 of 2014 (*Vyankatesh Reality, Amravati vs. The State of Maharashtra and ors*) cited *supra*. By placing reliance on a

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reported judgment of this court in the case of *Satish Soma Bhole vs. State of Maharashtra and others* reported at 2011(1) BCR 293, this Court had held that the notice issued by the predecessor-in-title would not disentitle the purchaser of the property to seek the benefit of the provisions of Section 127 of the MRTP Act. It is held in the judgment that once the notice is issued under Section 127 of the MRTP Act, the time would not stop running by the sale of the property by the owner. Thus, it is submitted by learned counsel for the petitioners that merely because the petitioner No.2 was not party to sending the notice is not sufficient to dismiss the petition. Admittedly, the property was declared as reserved w.e.f. 25.2.1993. The notice under Section 127 of the MRTP Act was issued on 29.6.2006 in the office of respondent Nos.2 and 3. The said notice was received by the respondents. It further appears that in pursuance of the purchase notice dated 1.7.2006, it was informed that respondent No.2 had forwarded a proposal for acquisition to the Collector, Amravati on 19.12.2006 that too after 1993 i.e. after 13 years. As the said land was reserved, the petitioners could not develop the said lands due to reservation of the said lands. Though the State Government forwarded the proposal for acquisition of lands on 19.12.2006, no notification under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 and under Section 19 of the Right to Fair Compensation and Transparency in

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Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been published, till date. It is also a matter of record that as no notification was issued for acquisition of the said lands, no further steps are taken by the respondents.

9. The entire controversy in this petition revolves around Sections 126 and 127 of the MRTP Act. The statutory mandate under Section 126 of the MRTP Act denotes that while acquiring the lands for public purposes, due procedure given under Section 126(2) of the MRTP Act is to be followed. Whereas, Section 127 of the MRTP Act speaks about consequences if the time line is not followed by the State Government by taking appropriate steps. As per Section 127 of the MRTP Act, if no steps are taken by the 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 provisions of Section 127 of the MRTP Act fixes the time line which have to be followed failing which consequences of lapse to be followed.

10. 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

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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."

11. 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

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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....."

12. It appears that for reservation of the sand lands for the purpose of Library and within 13 years no acquisition proceedings were initiated by the respondents. Only the respondent No.2 had forwarded a proposal for acquisition to the Collector on 19.12.2006. No notification for declaration under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 and under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been published, till date. Thus, the respondents have not taken any steps to acquire the said lands and not deposited compensation amount.

13. Thus, the principle contained in Section 127 of the MRTP Act is either to utilize the lands for which it is reserved in the time line or let the owners utilize their lands as permissible under

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the MRTP Act. The only objections raised by the respondents is that the notice under Section 127 of the MRTP Act was issued by earlier owners i.e. Shivchand Madanlal Agrawal and Ginnibai Vishvanath Agrawal and not by the petitioner No.2. As to another objection raised that the petitioner No.2 could not claim de-reservation on the basis of the said notice for which he was not party, learned counsel for the petitioners has rightly relied on a reported judgment of this court in the case of *Satish Soma Bhole vs. State of Maharashtra and others* reported cited *supra*. This Court had held that the notice issued by the predecessor-in-title would not disentitle the purchaser of the property to seek the benefit of the provisions of Section 127 of the MRTP Act. It is held in the judgment that once the notice is issued under Section 127 of the MRTP Act, the time would not stop running by the sale of the property by the owner. In the decision of the High Court of Gujarat in the case of Prabhaben Harshadray Desai vs. State of Government cited *supra*, wherein the High Court of Gujarat has held that the notice dated 18.9.1995 under the provisions of Section 20(2) of the MRTP Act was not issued by the petitioners but by the co-owner of the lands in question. It is held that if the provisions of Sub section (2) of Section 20 are perused, it is evident from a plain meaning thereof that the legal fiction, culminating in the deemed lapse of reservation upon the land, shall operate upon the service of a notice on the concerned authority,

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requiring it to acquire the land within a period of six months from the issuance thereof and if the land is not acquired within six months and no effective steps are commenced for its acquisition, the reservation upon the land shall be deemed to have lapsed. The notice under the provisions of Sec. 20 (2) is to be given by the "owner" or "any person" interested in the land. It is held that just because the notice was issued by the co-owner, cannot deprive the petitioners of the legal consequences of the same, since the land in question is the same.

14. The respondents also raised the issue that by the Revised Development Plan the said lands were again re-reserved for the same purpose i.e. Library. The Honourable Hon'ble Apex Court in the case of Kolhapur Municipal Corporation and others. vs. Vasant Mahadev Patil (dead), through LRs & Others, reported at 2022 LawSuit (SC) 171, has held that when by operation of law reservation is deemed to have lapsed under Section 127(1) of the Act of 1966 the reservation lapses for all purposes and for all times to come. In the said decision, the Hon'ble Apex Court further observed that on the deemed lapse of such reservation under Section 127(1) of the said Act no writ of mandamus can be issued by the High Court to direct acquisition of that land and pay compensation to the land owners as on the lapse of such

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reservation the land becomes free and the land owners can use the land as if there was no reservation.

15. In the light of the principles underlined under Section 127 of the MRTP Act, the reservation shall be deemed to have lapsed if no steps are taken for acquisition of the said lands within the prescribed period. Admittedly, the present case the respondents have not taken any steps to issue notification after receipt of the notice.

16. In the light of the above discussion and well settled legal position, we find that the reservation for the lands in question has lapsed under Sub section (2) of Section 127 of the MRTP Act on expiry of 24 months from 29.6.2006. Hence, the petitioners are entitled for the relief of direction to permit them to develop the lands as prayed for by them which was subjected for reservation and notice issued under Section 127 of the MRTP Act.

17. In that view of the matter, we proceed to pass following order:

ORDER

(1) The writ petition is allowed.

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(2) It is declared that the reservation at Sr. No. 499 in the first development plan and reservation at Sr. No. 84 in the second draft development plan of Amravati City which is affecting the land owned by petitioner No.1 of Sheet No. 81D, Plot No. 7/2 area admeasuring 998 square feet (92.72 square meter) and petitioner No.2 of Sheet No. 81D, Plot No. 7/1 area admeasuring 3066 square feet (285.08 square meter) total area admeasuring 4064 square feet (377.8 square meter) of Peth Amravati, Pragane Badnera, Tq. & Dist. Amravati have lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

(3) Respondent No.1 shall within a period of six weeks of receipt of copy of the judgment issue notification indicating lapsing of the reservations.

(4) The petitioners are free to develop the land as is permissible for the adjoining land.

Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

!! BrWankhede !!

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