

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

WRIT PETITION NO.2449 OF 2020

1. Manohar Namdevrao Malode
Age 64 years, Occupation - Retired,
2. Sudhakar Namdevrao Malode
Age 59 years,

1 and 2 R/o. Mahatma Phule
Nagar, Ring Road, Warud,
Dist. Amravati
3. Jagdish Gulabrao Malode
Age 44 years,
R/o. Main Road,
Warud, Dist. Amravati

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
2. The Director of Town Planning,
State of Maharashtra,
Central Building, Pune -1.
3. Assistant Director of Town Planning,
Tatte Building, Behind Labor Court,
Camp, Amravati 444 602
4. The Municipal Council (M.C.)/
Nagar Parishad Warud,
through its Chief Officer,
Warud, Tq. Warud, District Amravati

...RESPONDENTS

Shri G.K. Mundhada, Advocate for the petitioners.
Shri N.R. Patil, A.G.P for respondent Nos.1 to 3/State.
Shri N.R. Saboo, Advocate for respondent No.4

CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.
DATED : JULY 19, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

RULE. Rule is made returnable forthwith.

2. Heard finally with the consent of both the parties.

3. The petitioner Nos.1 and 2 are the joint owners of the land bearing Survey No.201 Sub-Division No.1B ad-measuring 0.59 HR of village Warud Part-2 Taluka Warud, District Amravati and petitioner No.3 is the owner of the land bearing Survey No.202 Sub-Division No.2 ad-measuring 0.60 HR of village Warud Part-2, Taluka Warud, District Amravati (hereinafter referred to as the 'said lands' for short)

4. The said lands are situated in the municipal limits of Nagar Parishad of the city of Warud. As per the contention of the

petitioners, the State Government had issued Notification No.TPS-2803/1896/CR-8(B)/2004/UD30 which came into force after 01st September 2005 by which the said lands are reserved for the Primary School and Play Ground vide Reservation Nos.4 and 5 respectively.

5. It is the contention of the petitioners that though the said lands had been reserved for the Primary School and Play Ground vide Reservation Nos.4 and 5 respectively but respondent Nos.2 to 4 have not taken any steps for their acquisition. As the petitioners were interested in the development of the said lands, they had sent purchase notice on 04/06/2018 by speed post with acknowledgment in the office of respondent No.4. By the said notice, petitioners called respondent No.4 to acquire the said land within statutory period of 24 months from the date of service of the said notice. They have also forwarded photocopy of 7/12 extract, reservation statement under Section 31 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'the M.R.T.P. Act' for short) which is annexed by the petitioners. The said notice was duly served on the office bearers of respondent No.4 on 05/06/2018. But after lapse of period of 24 months,

respondent No.4 had not taken any steps in pursuance of the said purchase notice. Respondent No.4 had not forwarded proposal for acquisition to the Collector, Amravati. As a result of inaction on the part of respondent No.4 no proceeding for acquisition have been submitted. No proposal was submitted by respondent No.4 for issuance of notification declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013' for short).

6. Respondent No.4 had not submitted the said proposal due to inadequate funds. Hence, the petitioners prayed that the reservation of Primary School vide Reservation No.4 in respect of Survey No.201 Sub-Division No.1B ad-measuring 0.5568 HR of village Warud Part-2, Taluka Warud, District Amravati be declared as lapsed under Section 127 of the M.R.T.P. Act. They also prayed that it be declared that the petitioners are free to develop the land owned by them in the manner permissible to adjacent land as per the development plan and respondent No.2 to issue notification indicating de-reservation of the aforesaid land.

7. It is submitted by respondent Nos.1 to 3 that as per partly sanctioned Revised Development Plan of the land bearing Survey No.201(Pt) and 203(Pt) ad-measuring 0.5568 HR is reserved for Primary School. It is further submitted that the excluded part of Revised Development Plan Warud has also been sanctioned by the Government vide Notification dated 06/06/2007 and came into force w.e.f. 16/07/2007. Accordingly said sanctioned Development Plan of excluded part of 'Play Ground' was deleted and land so released was included in residential zone as shown on plan as indicated by EP-7.

8. Respondent No.4 in response to the notice appeared and submitted that General body of Municipal Council, Warud vide Resolution No.136 dated 20/12/2021, resolved that in view of financial constraints of the Municipal Council, the land in question from Survey Nos.201, 202 and 203 for Reservation Nos.4 and 5 cannot be acquired and prayed for appropriate order.

9. Heard Shri G.K. Mundhada, learned Counsel for the petitioners, Shri N.R. Patil, learned Assistant Government Pleader

for respondent Nos.1 to 3/State and Shri N.R. Saboo, learned Counsel for respondent No.4.

10. It is an admitted position as per reply filed by respondent Nos.1 to 3 that vide revised Notification No.TPS-2803/1896/CR-8(B)/2004/UD30 dated 01st September, 2005, the land of the petitioners bearing Survey No.201, Sub-Division No.1B ad-measuring 0.59 HR was reserved for the Primary School vide Reservation Nos.4. The excluded part of Revised Development Plan, Warud is also sanctioned by the Government vide Notification dated 06/06/2007. According to the said sanctioned Development Plan of excluded part of Site No.5 i.e. "Play Ground" is deleted. Admittedly for 17 years no steps have been taken by respondent No.4 for acquisition of Survey No.201 for the purpose for which it was reserved. It is the part of record that the petitioners who were interested in the development of the said land had issued a purchase notice on 04/06/2018 under Section 127 of the M.R.T.P Act. Admittedly, said notice was received by the respondents. After receipt of notice also no steps have been taken within 24 months for the acquisition of the said land. No notification was issued by the respondents. The entire issue revolves around Sections 126 and

127 of the M.R.T.P. Act. The statutory mandate under Section 126 of the M.R.T.P. Act denotes that while acquiring the land for public purposes, the due procedure given under Section 126(2) of the M.R.T.P. Act has to be followed.

11. Whereas Section 127 of the M.R.T.P. Act speaks about the consequences if the timeline is not followed by the Government by taking appropriate steps. It states that 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 M.R.T.P. Act fixes timeline which have to be followed, failing which consequences of lapsing follows.

12. In the present case, it is specifically stated by the Municipal Council/Nagar Parishad that due to financial constraint they are unable to issue the proposal to the Collector for acquisition of the land. Accordingly General Body of Municipal Council, Warud passed Resolution No.136 on 20/12/2021.

13. In the above circumstances and in the light of legal provisions, we find that respondent No.4 has failed to acquire the

land within the stipulated period as per the provisions of M.R.T.P Act. The writ petition, therefore, succeeds and it deserves to be allowed.

14. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) It is declared that the reservation of land bearing Survey No.201, Sub-Division No.1B, ad-measuring 0.5568 HR of village Warud Part-2, Taluka Warud, District Amravati for Primary School as per Reservation No.4 in the Development Plan of the Municipal Council, Warud, District Amravati stands lapsed under Section 127 of the M.R.T.P Act.

(c) Respondent No.2-the Director of the Town Planning, State of Maharashtra shall issue Notification indicating de-reservation of the aforesaid land within a period of three months from the date of receipt of copy of the judgment.

(d) The petitioners are free to develop their land in accordance with the development as permitted for the adjoining land.

15. Rule is accordingly made absolute with aforesaid terms.
There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*