

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

WRIT PETITION NO.2739 OF 2020

1. Anil Narayanrao Patil
Age 72 years, Occupation - Retired,
2. Ashok Narayanrao Patil
Age 68 years, Occupation – Retired,
1 and 2 R/o. Shridhar Residency,
B-15, Besa, Nagpur
3. Ashok Damodhardas Lakhani
Age 46 years,
Occupation – Agriculture & Business
4. Sau. Komal Ashok Lakhani,
Age 46 years,
Occupation – Agriculture & Business

3 and 4 R/o. Shrikrishna Nagar,
Indiradevi Town, Nagpur

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
2. Director of Town Planning,
Administrative Office,
Central Building, Pune - 01.
3. Assistant Director of Town Planning,
Tatte Building, Behind Labor Court,
Amravati

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 petitioners have filed this petition for declaration that the land owned by them bearing Survey No.212 ad-measuring 0.84 HR of village Warud Part-2, Taluka Warud, District Amravati (hereinafter referred to as the 'said land' for short) be declared as 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). The petitioners be declared to free to develop their land in

the manner permissible to the adjacent land as per the Development Plan of Warud city. The petitioners have also prayed for direction to the respondents to notify and publish the notification in the official gazette regarding de-reservation of the said land.

4. The petitioner Nos.1 and 2 are the joint owners of the land bearing Survey No.212 ad-measuring 0.84 HR of village Warud Part-2 Taluka Warud, District Amravati. They had executed registered agreement to sell of above said property vide registration No.967/2018 with petitioner Nos. 3 and 4 dated 26/03/2018 in which they have agreed to purchase for consideration of Rs.4,00,00,000/- (Rs. Four crores). Petitioner Nos.1 and 2 are interested in the development of the said property. The State Government vide revised Notification No.TPS-2803/1896/CR-8(B)/2004/UD30 which came into force after sanction dated 01st September 2005 by which the said land was reserved for Garden vide Reservation No.1.

5. It is the contention of the petitioners that though the said land had been reserved for Garden vide Reservation No.1 but

the respondents have not taken any steps for acquisition of the said land for the purpose for which it was reserved. As all the petitioners were jointly interested in the development of the said land, they had sent purchase notice on 24/07/2018 through their Counsel by speed post with acknowledgment in the office of respondent No.4 under Section 127 of the M.R.T.P. Act. By the said notice, the petitioners called the respondents to acquire the said land within the statutory period of 24 months from the date of service of the said notice. They have also forwarded photocopy of 7/12 extract, 8A extract, copy of registered agreement to sell at serial No.Warud/967/2018, Part plan, reservation statement under Section 31 of the M.R.T.P. Act which is annexed by the petitioner. The said notice was duly served on the office bearers of respondent No.4 on 26/07/2018. After receipt of notice respondent No.4 had not taken any steps as stipulated period under Section 127 of the M.R.T.P. Act was over and, therefore, the petitioners claimed the lapse of the reservation, by this petition.

6. Respondent No.4 had admitted that the land of the petitioners bearing Survey No.212 ad-measuring 0.84 HR of village Warud Part-2, Taluka Warud, District Amravati was reserved for

Garden. It is submitted by the respondents that the area ad-measuring 0.4952 from Survey No.212 is notified as reserved area. The General body of the Municipal Council/Nagar Parishad vide Resolution No.136 on 20/12/2021 resolved that due to financial constraints they are unable to acquire the said land for the reserved purpose and, therefore they have not forwarded any proposal for acquisition of the said land. Respondent Nos.1 and 2 i.e. the Urban Development Department and Town Planning Department also submitted that as respondent No.4 is unable to incur the expenses for acquisition of land, appropriate order be passed.

7. 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.

8. It is an admitted position that petitioner Nos.1 and 2 are the joint owners of Survey No.212 ad-measuring 0.84 HR of village Warud Part-2, Taluka Warud, District Amravati. Respondent Nos.3 and 4 agreed to purchase the said land for consideration of

Rs.4,00,00,000/-(Rs. Four crore). All the petitioners are interested in the development of the said property as per the pleading. It is also an admitted position that the State Government has issued a notification No.TPS-2803/1896/CR-8(B)/2004/UD30 which came into force after sanction dated 01st September 2005 in the official gazette. As per the said Development Plan, said land was reserved for the Garden vide Reservation No.1. After 2004 within 10 years, no steps were taken by respondent No.4 for acquisition of the said land. Now more than 18 years have passed but no steps have been taken by respondent No.4 for acquisition of the said land. Respondent No.4 had taken a stand that due to financial constraint they are unable to acquire the said land and, therefore, they have not forwarded the said proposal to the Collector for acquisition of the said land. Accordingly, General Body of the Municipal Council, Warud passed Resolution No.136 dated 20/12/2021 and shown their inability to acquire the said land.

9. In view of Section 126 of the M.R.T.P Act, the statutory mandate states 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. Whereas Section 127 of the M.R.T.P Act speaks

about the consequences if 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 provisions under the M.R.T.P Act fixes timeline which have to be followed, failing which consequences stipulated follow.

10. In the present case, respondent No.4 had shown inability to forward the proposal for the acquisition, hence, the writ petition succeeds and deserves to be allowed.

11. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) It is declared that the reservation of land bearing Survey No.212 ad-measuring 0.4952 HR of village Warud Part-2, Taluka Warud, District Amravati for Garden as per the Reservation No.1 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 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.

12. 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*