

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

WRIT PETITION NO.3210 OF 2021

1. Harshad Virendrakumar Chavan
Age 58 years,
Occupation - Business,

2. Anita Satish Mehakare,
Age 42 years,
Occupation – Household,

1 and 2 R/o Civil Line, Paratwada,
Tq. Achalpur, District 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. The Municipal Council, Achalpur,
through it's Chief Officer,
Achalpur, Tq. Achalpur,
District Amravati

4. The Collector, Amravati acting as
Special Land Acquisition Officer,
Amravati,
Collector Office, Camp,
Amravati - 444601

...RESPONDENTS

Shri G.K. Mundhada, Advocate for the petitioners.
Shri N.R. Patil, A.G.P for respondent Nos.1, 2 and 4/State.
Shri M.D. Lakhey, Advocate for respondent No.3.

CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.
DATED : JULY 04, 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 are 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) and hence they are free to develop the land.
4. The brief facts which are relevant for deciding the issue are as under :

A] The petitioners are the joint owners of the land bearing Survey No.8/2F area admeasuring 1 H 20 R of village Khel-bari Taluka Achalpur, District Amravati (hereinafter referred to as the 'said land' for short). The said land is situated within the limits of Municipal Council, Achalpur, Taluka Achalpur, District Amravati.

B] As per the contention of the petitioners, on 01/03/2003, the State Government has sanctioned First Revised Development Plan of Achalpur city under Section 38 read with Section 23 of the M.R.T.P. Act. The First Revised Development Plan for the area of Achalpur was published in the Government Gazette vide, Order No.TPS-2899-7639-CR-123(A)-99-UD-30 dated 15/01/2003 and it came into force with effect from 01/03/2003. As per the First Revised Development Plan respondent No.3-Municipal Council had reserved the above said property for the purpose of primary school vide Reservation No.48 and play ground vide Reservation No.49.

C] On 07/07/2014, the petitioners had personally sent purchase notice in the office of respondent No.3-Municipal Council and by the said notice they called upon respondent No.3-Municipal

Council to acquire the land within the statutory period of 12 months from the date of service of the said notice. Said notice was accompanied by 7/12 extract and measurement sheet. On 06/12/2018, respondent No.3-Municipal Council had forwarded proposal for acquisition of land to respondent No.4-the Collector for commencing the acquisition.

D] On 19/12/2018, respondent No.4-the Collector after scrutiny of said proposal had rejected the proposal for acquisition given by respondent No.3-Municipal Council on the ground that the proposal for acquisition was forwarded after four and half years after receipt of said notice under Section 127 of the M.R.T.P. Act. The provision to deposit 100% compensation amount to be paid to the petitioners for acquisition of said land and for the issuance of notification 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) was not deposited. Further the reason assigned by the Collector, Amravati for rejection of the said proposal was that budgetary provision was not made and proposal was not presented along with the copy of the resolution of standing committee. It was

specifically mentioned by the petitioners that the notification under Section 19 of the Act of 2013 has not been published till 19/12/2018.

E] On 02/01/2019, the petitioners had issued second purchase notice under Section 127 of the M.R.T.P Act to respondent No.3-Municipal Council calling them to give all the information about the acquisition proposal submitted to respondent No.4-the Collector on 06/12/2018. In the said notice, the petitioners again made a request to respondent No.3-Municipal Council to initiate appropriate action under Section 126 and 127 of the M.R.T.P Act within the time limit prescribed by the statute and to give compensation of the land to the petitioners which has been kept in reservation or alternate request was made to release the said land and grant permission to develop the said land as per the adjacent land in use.

F] On 01/08/2019, respondent No.3-Municipal Council vide letter bearing Outward No.4316/2019 had informed to the petitioners that purchase notice issued by the petitioners on 07/07/2014 was premature as the Final Development Plan of

Achalpur city was published in the official gazette on 17/07/2004 and it came into force on 01/09/2004, therefore, the said notice was invalid. Copy of the said proposal which was forwarded to respondent No.4-the Collector was supplied to the petitioners. Said purchase notice dated 02/01/2019 had been served on the respondents. The statutory period of 24 months has thus expired on 01/01/2021. Thereafter no declaration under Section 19 of the Act of 2013 read with Section 126(2) of the M.R.T.P Act has been issued or published. Thus no steps for acquisition of the land owned by the petitioners have been taken within the statutory period of 24 months. Thus the reservation has lapsed, therefore, the petitioners are entitled for declaration as prayed. Hence, this petition.

5. In response to the notice, respondent No.3-Municipal Council has filed reply. Respondent No.3-Municipal Council admitted that the land of the petitioners is reserved for primary school as well as playground. As per the contention of respondent No.3-Municipal Council excluded part of Final Development Plan of Achalpur city was published in the official gazette dated 17/07/2004 which came into force on 01/09/2004. The above

said property was reserved for the purpose of Primary School vide Reservation No.48 and for Playground vide Reservation No.49. Said Development Plan for the area of Achalpur was published in the Government Gazette on 15/01/2003 and it came into force with effect from 01/03/2003. Respondent No.3-Municipal Council admitted notice under Section 127 of the M.R.T.P. Act received by them along with 7/12 extract and measurement sheet. The stand taken by the respondents is that due to weak financial position of Municipal Council it could not arrange the amount required for issuance of notification under Section 6 of Land Acquisition Act or under Section 19 of the Act of 2013. As per the stand of the respondents, petitioners have an alternate remedy, hence writ petition is not maintainable.

6. Heard Shri G.K. Mundhada, learned Counsel for the petitioners. He submitted that long back in the year 2003, the land of the petitioners was reserved for the primary school vide Reservation No.48 and for playground vide Reservation No.49. On 07/07/2014, the petitioners sent purchase notice in the office of respondent No.3-Municipal Council under Section 127 of the M.R.T.P. Act.

7. By the said notice, respondent No.3-Municipal Council was called upon to acquire the land within the statutory period of 12 months from the date of service of the said notice. They have also forwarded 7/12 extract and measurement sheet along with the notice in the office of respondent No.3-Municipal Council.

8. On 06/12/2018, respondent No.3-Municipal Council had forwarded proposal for acquisition of the said land to respondent No.4-the Collector for commencing the acquisition but on 19/12/2018, respondent No.4-the Collector rejected the proposal on the ground that the proposal was forwarded after four and half years after receipt of the notice under Section 127 of the M.R.T.P. Act. Moreover, respondent No.3-Municipal Council had not made any provision for compensation to be paid to the petitioners for acquisition of the said land under the provisions of the Act of 2013. The reason further assigned was that no budgetary provision was made by respondent No.3-Municipal Council and neither proposal was presented along with the copy of the resolution of Standing Committee. After rejection of the proposal by respondent No.4-the Collector, the petitioners on 02/01/2019 had again issued purchase notice under Section 127 of

the M.R.T.P. Act to respondent No.3-Municipal Council and called them to give all the information about the acquisition of the proposal submitted to respondent No.4-the Collector on 06/12/2018. After the receipt of the said purchase notice under Section 127 of the M.R.T.P. Act, the petitioners again made a request to respondent No.3-Municipal Council to initiate appropriate action under Section 126 and 127 of the M.R.T.P. Act within the time limit prescribed by the statute but respondent No.3-Municipal Council failed to take any action.

9. On the contrary, respondent No.3-Municipal Council took a stand that notice issued by the petitioners dated 07/07/2014 is premature. Therefore, the petitioners prayed that as no notification was issued though the purchase notice was served on 02/01/2019 on the respondents. The statutory period of 24 months has been expired on 01/01/2021. No declaration under Section 19 of the Act of 2013 read with Section 126(2) of the M.R.T.P. Act has been issued or published.

10. Heard Shri N.R. Patil, learned Assistant Government Pleader for respondent Nos.1, 2 and 4.

11. Shri M.D. Lakhey, learned Counsel appeared for respondent No.3-Municipal Council and relied upon the reply filed on record.

12. It is an admitted fact that more than 19 years have passed after the said property was reserved for primary school and playground. 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-Municipal Council has submitted that the notice was premature but the documents on record shows that the First Revised Development Plan of Achalpur city was sanctioned on 01/03/2003. It was notified vide Notification dated 15/01/2003 and it came into force with effect from 01/03/2003. By the First Revised Development Plan respondent No.3-Municipal Council had reserved the said property for the purpose of primary school vide Reservation No.48 and for playground vide Reservation No.49.

13. First notice was issued by the petitioners on 07/07/2014 by which respondent No.3-Municipal Council was

called to acquire the land within the statutory period of 12 months from the date of service of the said notice. The petitioners have also forwarded 7/12 extract and measurement sheet along with the said notice. After receipt of the said notice, respondent No.3-Municipal Council had forwarded the proposal for acquisition of the said land to respondent No.4-the Collector on 06/12/2018. Respondent No.4-the Collector had rejected the said proposal on the ground that it was forwarded belatedly i.e. after four and half years. No budgetary provision was made by the Municipal Council for the acquisition and no compensation was paid till date to the petitioners. Therefore, the petitioners issued second purchase notice under Section 127 of the M.R.T.P. Act to the respondent No.3-Municipal Council calling them to give all the information regarding the proposal forwarded to respondent No.4-the Collector. Respondent No.3-Municipal Council had forwarded the copy of the proposal to the petitioners.

14. It is specifically stated by the Municipal Council in the reply that due to the weak economical condition of Municipal Council, they could not issue a notification under Section 6 of the Land Acquisition Act, 1894 or under Section 19 of the Act of 2013.

Thus admitted position is that no steps were taken by the Municipal Council for the acquisition of land. The statutory mandate under Section 126 of the M.R.T.P. Act denotes that while acquiring the land for public purposes 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.]”

15. 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 stipulated follow.

16. 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.”

17. Thus, the principle 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 have taken for acquisition of the said land within the prescribed period. Admittedly, in the present case, respondent No.3-Municipal Council had not taken any steps to issue notification after receipt of the notice.

18. In the light of well settled legal positions, in view of a 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 time line which have to be followed, failing which consequence of deemed lapsing would follow.

19. In the present case, admittedly, the said land of the petitioners is reserved for primary school and playground. Said land is not acquired by an agreement within ten years from the date of Final Development Plan came into force nor is the declaration under Sub-Section (2) or Sub-Section (4) of Section 126 of the M.R.T.P. Act 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 initially on 07/07/2014 and thereafter on 02/01/2019. The said notices were received by the respondents. Respondent No.3-Municipal Council had 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 made available to the owners for the purpose of development.

20. In the above circumstances, we find that respondent No.3-Municipal Council 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.

21. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) It is declared that the Reservation No.48 for Primary School and Reservation No.49 for Playground affecting the land owned by the petitioners vide Survey

No.8/2F admeasuring 1 H 20 R of village Khel-bari, Taluka Achalpur, District Amravati is declared to have lapsed under Section 127 of the M.R.T.P Act, 1966.

(c) Respondent No.2-the Director of the Town Planning, State of Maharashtra shall issue notification indicating lapsing of reservation by notifying and publishing it in the official gazette within a period of six weeks from the receipt of the copy of this judgment.

(d) The petitioners are free to develop the land in question in accordance with the existing plan as permissible for adjoining lands.

22. 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*