

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1173 OF 2018

Najirkhan Jabarkhan Pathan .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri R. R. Chandak, Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 and 2.

Shri H. V. Patil, Advocate for Respondent Nos. 3 and 4.

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 21ST JUNE, 2023.

PER COURT :

1. The Petitioner has put forth prayer Clauses A, B and C as under :

A) By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, it may kindly be hold and declared that, the reservation provided in Development Plan dated 02.1.2002 through notification No. TPS-3700/471/CR-153/2000/UD/30 in relation to land bearing Survey No. 107 site no 94 and 95 admeasuring 1210 and 3023 sq. meter, at Latur Tq. and Dist. Latur, shall be deemed to have been lapsed and the land is released from reservation.

B) The respondent Nos. 1 to 4 may kindly be directed to notify the lapsing of reservation of present petitioners land bearing Survey No. 107 site no. 94 and 95 admeasuring 1210 and 3023 sq.meter, at Latur, Tq. and Dist. Latur in the official gazette in accordance with sub section 2o of Sec. 127 of the Maharashtra Regional Town Planning Act, 1966 within period

of 2 months from the date of receipt of order.

C) Pending hearing and final disposal of this writ petition, the respondents may kindly be restrained from taking any further steps and making further development in land Survey No. 107 site no. 94 and 95 admeasuring 1210 and 3023 sq.meter, at Latur under the Development Plan dated 02.01.2002.

2. We have considered submissions of the learned advocates for the respective sides. The Respondent Nos. 3 and 4 submit that there is no dispute that the Petitioner is an owner of the writ property.

3. The reservation in the writ property of the Petitioner's land Sy. No. 107/A-2 at site Nos. 94 and 95, admeasuring 1210 and 3023 square meters, was published on 02.01.2002. The Petitioner issued the purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 on 03.08.2015, which was received by the Corporation on the same day. The Respondent/acquiring body did not initiate steps thereafter and it is undisputed that, until today, no steps have been taken.

4. However, the learned advocate representing the Corporation vehemently opposes this petition stating therein that the exact map and dimensions of the property were not accompanying the purchase notice. He, therefore, submits that the notice is bad in law. He points out the affidavit in reply tendered before us. In the alternative, he submits that the

Corporation is willing to offer TDR to the Petitioner.

5. The learned advocate for the Petitioner submits that the issue as regards tendering of the map, is no longer a valid ground in the light of the judgment delivered by this Court dated **16.12.2014** in **Writ Petition No. 4823 of 2014, Dattatraya Shamacharya Dharmadhikari and others Vs. The State of Maharashtra and others**. In so far as the alternate submission is concerned, he informs that the Petitioner is not willing to accept TDR.

6. We find that the Petitioner cannot be compelled to accept the TDR in the light of the Full Bench judgment of this Court delivered in **Shri Vinayak Builders & Developers Vs. The State of Maharashtra and others** reported in **2022(4) Mh.L.J. 739**.

7. In view of the above, **this petition is allowed** in terms of prayer clauses A and B. We direct respondent No. 4 to forward the proposal to respondent No. 1 within 30 (Thirty) days from today. After receipt of the said proposal, respondent No. 1 would issue the notification under Section 127(2) of the M. R. T. P. Act, within a period of 45 (Forty Five) days.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

bsb/June 23