

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1319 OF 2023**

1. Sayyed Salim Haji Sayyed Ismail
Age: 61 years, Occu: Agri./Business

2. Rehana Begum Sayyed Salim
Age: 50 years, Occu: Agri./Household

Both R/o Almgir Colony, Parbhani
Tq. & Dist. Parbhani

... Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai

2. The Planning Authority/Commissioner,
Parbhani City Municipal Corporation,
Parbhani

3. The Development Authority,
C/o Regional and Town Planning
Department, Central Building,
Pune

... Respondents

...

Mr. S. S. Gangakhedkar, Advocate for the Petitioners

Mr. S. B. Yawalkar, AGP for Respondent No.1

Mr. S. S. Sarda h/f Mr. S. S. Bora, Advocate for Respondent No.2

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**CORAM : NITIN W. SAMBRE &
S. G. CHAPALGAONKAR, JJ.**

Closed on : 30.03.2023

Pronounced on : 12.04.2023

FINAL ORDER : [PER S. G. CHAPALGAONKAR, J.]

1. The petitioners are approaching this Court under Article 226 of the Constitution of India seeking declaration that reservation to the extent of 60

R land from Survey No.610/1/E for 60 meter wide road at Parbhani, Taluka & District Parbhani as part of development plan published vide notification dated 30th September, 1999 and 24th August, 2001 is lapsed. The petitioners further seek direction against the respondents to publish notification under Section 127 (2) of the Maharashtra Regional Town Planning Act, 1966 [hereinafter referred to as 'MRTP Act' for short] regarding de-reservation of the land.

2. It is the contention of the petitioners that they are the owners of the land bearing Gat No.610/1/E admeasuring 60 R situated at Parbhani. The said land is affected by the development plan sanctioned vide notification dated 30th September, 1999 bearing No.TPAS-3199/130/CR-33/1999/UD-30. It is enforced with effect from 16th December, 1999. In pursuance of the said reservation, no steps for acquisition are taken by the respondents. Therefore, the petitioners served a notice in terms of Section 127 of MRTP Act dated 22nd November, 2016 calling upon the respondents to acquire the land. The notices were duly served upon the respondents on 22nd November, 2016 and 23rd November, 2016. However, further steps are not taken by the respondents. In response to the purchase notice, the respondents offered TDR in lieu of monetary compensation. However, the petitioners have specifically denied the offer vide its communication dated 8th March, 2017. The petitioners contend that the respondents have issued notification of de-reservation of the lands from Survey Nos.611, 612 & 613 on which the reservation for High School, Health Center and Shopping Centre were shown. However, the petitioners are given discriminatory treatment. According to the petitioners, on account of failure on the part of the respondents to take effective steps for acquisition of land in spite of service of purchase notice and expiry of statutory period, the reservation is deemed to have been lapsed.

3. Learned Advocate Mr. S. S. Gangakhedkar appearing for the petitioners would submit that it was incumbent upon part of the

respondents to initiate the proceedings for acquisition of the land following under reservation within the period of 10 years from the date of enforcement of final development plan i.e. 16th December, 1999. The development plan is approved vide Government Resolution dated 16th December, 2001. The petitioners served the notices under Section 127 of MRTP Act requesting the respondents to acquire the land. However, no effective steps are taken. The respondents' offer to accept the TDR in lieu of monetary compensation has been specifically rejected by the petitioners. In that view of the matter, in absence of issuance of notification in terms of Section 126 of MRTP Act read with Section 6 of the Land Acquisition Act, 1894, the reservation is deemed to be lapsed.

4. Learned Advocate Mr. S. S. Sarda holding for Mr. S. S. Bora appearing for respondent No.2 would urge that the reservation pertains to the road under the development plan. After receipt of purchase notice, the petitioners were offered TDR vide communication dated 4th March, 2017. However, the petitioners refused the offer vide its communication dated 8th March, 2017. He would submit that it is permissible to pay the compensation either by way of TDR, RCC or in given case monetary compensation. The petitioners failed to accept the offer. Hence, they have not entitled for relief as claimed.

5. We have heard the learned Advocates appearing for the respective parties. The land in the ownership of the petitioners is affected by the reservation for road under the development plan which has been enforced with effect from 16th December, 1999. It has been published in the government gazette on 16th December, 2001. No steps are taken for acquisition of the land in terms of Section 126 of MRTP Act read with Land Acquisition Act, 1894 or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. The petitioners served the purchase notices to the respondents dated 22nd November, 2016 requiring the respondents to acquire the land. The Municipal Corporation/Planning Authority vide communication dated 4th March, 2017 offered TDR in lieu of monetary compensation. However, the petitioners have specifically refused the offer and requested for acquiring the land in terms of the Land Acquisition Act.

7. Pertinently, Full Bench of this Court in Writ Petition No.2231/2019 [Shree Vinayak Builders & Developers Vs. The State of Maharashtra & Others] finally decided the issue observing as thus:

“43. In view of the above, we answer the reference as under:

Question (1) - *This Court holds that the acquisition under Section 126(1)(a) and (b) of the Maharashtra Regional & Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.*

Question (2) - *Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.*

Question (3) - *Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.”*

8. Apparently, within two years of service of the notice, effective steps for acquisition of the land are not taken. Notification in terms of Section 127 of MRTP Act has not been issued till the date. Therefore, merely offering the TDR in lieu of monetary compensation cannot be construed as the effective steps for acquisition of the land particularly when the petitioners have specifically refused to accept the said offer.

9. The petitioners cannot be compelled to accept the TDR or FSI in lieu of monetary compensation.

10. The Supreme Court of India in the matter of **Girnar Traders and another Vs. State of Maharashtra reported in (2007) 7 SCC 555**, observed in Paragraph No.57 of the judgment thus :

“57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leave it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.”

11. In view of the aforesaid observations, there is no room to accept the defense put-forth by the respondents. The reservation is, therefore, deemed to have been lapsed for want of requisite steps within two years from the date of service of purchase notice. The writ petition therefore succeeds. Hence, proceed to pass the following order:

ORDER

(I) The writ petition is allowed.

(II) We hold and declare that the reservation to the extent of 60 R land from Survey No.610/1/E for 60 meter wide road at Parbhani as part plan of development notified on 30.09.1999 and enforced vide notification dated 24.08.2001 stands lapsed.

(III) The respondent No.1 is hereby directed to publish notification under Section 127(2) of MRTP Act for deletion of the land to the extent of 60 R from Survey No.610/1/E affected by 60 meter wide road at Parbhani.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

Sameer