

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

WRIT PETITION NO. 2276 OF 2022

- 1) Dr. Abbas Fakruddin Merchant,
Age 71 years, Occ. Business,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 2) Arif Fakruddin Baquari,
Age 60 years, Occ. Business,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 3) Tasneem Anees Baquari,
Age 53 years, Occ. Household,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 4) Taha Anees Baquari,
Age 30 years, Occ. Business,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 5) Mustaffa Anees Baquari,
Age 29 years, Occ. Service,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 6) Husena Bai Noman Bai,
Age 91 years, Occ. Housewife,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 7) Salma Bai Abbas Bhai,
Age 86 years, Occ. Housewife
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.
- 8) Nafisa Bai Abdulla Bhai,
Age 79 years, Occ. Housewife
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.

- 9) Kaniz Banu Abdulla Bhai,
Age 77 years, Occ. Housewife,
R/o. Shop No. 9, Samay Shopee,
Aurangapura, Signal Corner,
Aurangapura, Aurangabad.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through The Secretary,
Department of Urban Development
Mantralaya, Mumbai -32.

- 2) The Director of Town Planning
Department, Maharashtra State,
Pune.

- 3) Aurangabad Municipal Corporation,
Through its Administrator @
Municipal Commissioner, Aurangabad.

- 4) Deputy Director of Town Planning,
Municipal Corporation, Aurangabad
Aurangabad.

- 5) The District Collector, Aurangabad.

... **Respondents.**

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Advocate for the Petitioners : Mr. D.P. Palodkar
AG.P for Respondent Nos. 1, 2 & 5 : Mr. A.S. Shinde
Advocate for Respondent Nos. 3 & 4 : Mr. A.P. Bhandari

CORAM : **MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : **13.01.2023**

PER COURT :

The petitioners are claiming dereservation under section 127 of the Maharashtra Regional and Town Planning Act (hereinafter 'the M.R.T.P Act').

2. The petitioners' properties bearing City Survey Nos. 18136 and 18137 (writ properties) were reserved for garden and 40 meter and 9 meter wide development roads in a revised development plan of Aurangabad Municipal Corporation which came into effect with effect from 17.08.2002. Since no steps were taken within the statutory time, the petitioners issued a notice to the respondent No. 3-Municipal Corporation under Section 127 of the M.R.T.P Act, on 30.12.2019. The respondent No. 4 who is a Deputy Director of Town Planning of the respondent No. 3 - Municipal Corporation directed the petitioners to submit documents, measurement maps and search report. The petitioners responded by a communication dated 12.08.2020 and forwarded copies of the P.R. cards, death certificate of their predecessor Fakruddin Baquari. In spite of such compliance, once again the respondent No. 3- Municipal Corporation demanded some documents and the petitioners were offered transfer of development rights (TDR). The petitioners once again insisted for action pursuant to their notice issued under Section 127 of the M.R.T.P Act. However, on 11.11.2021, the respondent No. 4 by a communication rejected the notice raising a dispute regarding title. Hence, this petition.

3. Learned advocate Mr. Palodkar for the petitioners would vehemently submit that all the documents demanded by the respondents were forwarded and only because of the objection raised by a co-owner that the notice under Section 127 of the M.R.T.P act was rejected on the ground that the couple of persons had filed a writ petition and were objecting to any decision on a notice under Section 127.

4. Mr. Bhandari who appears for the respondent No. 3-Municipal Corporation would submit that the petitioners claim to have inherited the writ properties from their ancestor but their names have not been recorded to the properties in the government record. Since a dispute was being raised by couple of individuals, so long as the dispute was not resolved, the petitioners would not get any right and the petition is premature.

5. He would submit that the petitioners cannot be said to be the persons having interest which is a prerequisite for enabling a person to issue a notice under Section 127. The notice is a composite notice in respect of two different properties claimed by different petitioners. One petition for two properties is not maintainable. The petitioners are not impugning the communication dated 11.11.2021 whereby their notice under Section 127 has been specifically rejected. A further communication made by the petitioners on 22.12.2021 mentions that the period of two years is to be reckoned from 30.12.2019. But the petition has been filed on 09.02.2022 within two years. Mr. Bhandari would further submit that the petitioners' properties are required for public purpose of garden and roads. The petitioners should accept TDR, at least to the extent of the property affected by reservation for roads.

6. Learned advocate Mr. Palodkar submits that the dispute as to title need not be gone into. It is suffice for the petitioners to demonstrate their interest. He would place reliance on the decision of this Court in the matter of **Abdul Gani N. Wadwan Vs. State of Maharashtra and others; 2018(4) Mh.L.J. 454.**

7. Mr. Palodkar, on instructions, further submits that the petitioners are ready to accept TDR to the extent of the portion covered by the public roads in the development plant offered to by the respondent No. 3- Municipal Corporation.

8. We have carefully considered the rival submissions and perused the papers. Though the respondent Nos. 3 and 4 have raised several grounds in their affidavit in reply, all these grounds in respect of the petitioners interest and the notice being premature do not find place in the communication dated 11.11.2021 whereby the respondent Nos. 3 and 4 have rejected the petitioners notice under Section 127. These objections seem to be clearly an after thought and nothing but supplementing the decision that was already

taken which would not be in tune with the ratio laid down by the Supreme Court in the matter of **Mohinder Singh Gill and anr. Vs. The Chief Election Commissioner, New Delhi and anr. (1978) 1 SCC 405**

9. By the communication dated 11.11.2021 the notice under Section 127 has been rejected on the sole ground that the petitioners' interest is not undisputed and couple of persons have raised an objection pointing that they have filed writ petition and have expressly stated that no decision under Section 127 should be taken.

10. Suffice for the purpose to observe that the petitioners properties have admittedly been reserved for garden and development plan roads. Their entitlement to issue a notice under Section 127 was not questioned earlier. Only because couple of persons seem to have raised objections that the notice under Section 127 has been rejected that too almost two years of its communication. There is apparently no dispute about the fact that the properties under reservation stood in the name of the petitioners' predecessor. Though it does appear that it is a composite notice in respect of two properties, the fact remains that there is no dispute *inter se* between the petitioners and the dispute being raised is by some strangers.

11. Besides, in view of the decision in the case of **Abdul Gani N. Wadwan (supra)** the respondents have not been disputing that the petitioners are the heirs of the original owner/s. It is only on the ground that someone else is raising a dispute that they are now taking a stand of their being a dispute as to the title.

12. In our considered view, though Section 127 of the M.R.T.P. Act mandates that the notice should be issued by the owner or a person having interest, the planning authority, unless it has independently any doubt as to the person being either the owner or is a person having interest, cannot dispel the notice only because someone is raising an objection.

13. Admittedly, no steps have been taken towards acquisition of the petitioners properties as is contemplated by resorting to Section 126(4) of the M.R.T.P. Act read with Section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, either within 10 years of the revised plan coming into effect or 24 months of service of notice under Section 127. As is laid down in the matter of **M/s. Girnar Traders Vs State Of Maharashtra & Ors; A.I.R. 2007 SC 3184**, the consequence is axiomatic.

14. Consequently, the reservation put on the petitioners' writ properties would stand lapsed. However, as has been submitted by learned advocates Mr. Bhandari and Mr. Palodkar, since a portion of the reservation is in respect of development plan roads, since the respondent No. 3-Municipal Corporation is offering transfer of development rights to the petitioners and petitioners are ready to have it, the petition can be allowed only partly.

15. The petition is partly allowed. The reservation on the petitioners' writ properties in respect of "garden" stands lapsed. The respondents shall take appropriate steps for issuance of notification under sub Section 2 of Section 127 of the M.R.T.P. Act to that extent immediately.

16. The petition to the extent praying for lapsing of reservation in respect of the development plan roads of 40 meter and 9 meter is disposed of and it is declared that they are entitled to claim transfer of development rights as is being offered by the respondent No. 3-Municipal Corporation.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-