

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

944 WRIT PETITION NO.6124 OF 2015

**SURESH VENTKATRAO GOJAMGUNDE AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners : Mr. Rodge Pratap G.
AGP for Respondent Nos. 1 & 2 : Mr. S.B. Yawalkar
Advocate for Respondent No. 4 : Mr. A.V. Hon

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

DATE : 08.02.2023

PER COURT :

Heard.

2. This is a petition under Section 226 of the Constitution of India whereby the petitioners are seeking a relief regarding dereservation as is contemplated under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

3. The petitioners' land was reserved under a development plan of respondent No.4-Municipal Corporation which came into effect from 02.01.2002. Since no steps were taken towards acquisition as is contemplated in law within ten years, the petitioners issued a notice under Section 127 of the Act on 04.07.2012 that is after ten years of publication of the development plan and after waiting for a further period the writ petition has been filed on 18.04.2015.

4. The respondent No. 4-Municipal Corporation has tried to defend the cause on the ground that the initial notice received by it under Section 127 was promptly responded to calling upon the petitioners to furnish the documents *inter alia* substantiating their ownership.

5. Even according to the communication annexed to the reply of the Municipal Corporation itself, the petitioners had responded by saying that they had already completed the shortcomings since all the documents demanded were annexed with the notice under Section 127 of the Act, vide their communication dated 19.01.2015. This fact has not been controverted.

6. Besides, even according to the respondent No. 4-Municipal Corporation a decision to offer the petitioners transfer of development rights (TDR) was taken and was communicated to them by its correspondence dated 28.10.2014. The very fact that the Corporation served the petitioners with such communication demonstrates that the earlier response regarding title was hollow. Even the respondent No. 4-Corporation admitted the right of the petitioners to seek dereservatgion and that is why perhaps in all probability the TDR was offered.

7. Be that as it may, admittedly, no steps towards acquisition as is contemplated under Section 126 of the MRTP 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 have ever been taken which is imperative in view of the decision in the

matter of **Girnar Traders and Another Vs. State of Maharashtra and others;**
2007 AIR (SC) 3180.

8. The consequences are inevitable. The Writ Petition is allowed. It is declared that the reservation on the petitioners land being Survey No. 126 admeasuring 04 Hectare 02 Are situated at Latur being reservation site No. 44 and 45 situated at Latur Tq. & Dist. Latur stands lapsed.

9. The respondents shall take prompt steps for issuance of notification under sub Section 2 of Section 127 of the M.R.T.P. Act.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-