

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

WRIT PETITION NO. 9233 OF 2018

- 1) Nandkishor s/o Shrinivas Mantri,
Age 50 years, Occu. Business.
- 2) Deepak s/o Shrinivas Mantri,
Age 45 years, Occ. Business,
both R/o. Shrinivas Nagar,
Ring Road, Latur Tq. & Dist.
Latur. ... **Petitioner**

VERSUS

- 1) The State of Maharashtra,
Through The Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
- 2) The Director of Town Planning,
Town Planning Office,
Central Building Pune.
- 3) The Assistant Director of Town
Planning, Municipal Corporation,
Latur, Dist. Latur.
- 4) The Municipal Corporation,
Latur, Dist. Latur,
Through its Commissioner. ... **Respondents.**

...

Advocate for the Petitioners :Mr.T.M. Venjane h/f Mr.Nandedkar Devanand Y.
A.G.P for Respondent Nos. 1 and 2 : Mr. A.S. Shinde
Advocate for Respondent Nos. 3 and 4 : Mr. Amol Bhagat h/f Mr. Hanmant V
Patil

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

DATE : **16.02.2023**

PER COURT : (PER : MANGESH S. PATIL, J.)

This is a petition under Article 226 of the Constitution of India whereby the petitioners are seeking a declaration in respect of dereservation as contemplated under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (the MRTP Act).

2. The petitioners claim to be the owners of land Survey No. 32/B of village Kanheri Tq. & Dist. Latur to the extent of 90-Are. It falls in a development plan of the respondent No. 4-Corporation. The development plan of the respondent No. 4-Corporation came into effect in the year 2002. The writ property was reserved as site No. 164 for the purpose of play ground. Since no steps were being taken towards acquisition, the petitioners issued a notice dated 27.01.2015 under Section 127 of the MRTP Act to the respondent No. 4-Corporation and after waiting for the statutory period of 24 months have filed this petition on 12.06.2018.

3. The respondent No. 4-Corporation in its reply has not disputed the aforementioned facts including service of the notice. But it contends that the notice was not signed by the petitioners and was issued through their advocate. The purpose for placing reservation would be lost. Though it intends to acquire the land, the funds are required for initiation of acquisition proceedings and therefore it may not be dereserved.

4. Mr. Bhagat learned advocate for the respondent Nos. 3 and 4 would submit that the respondents are ready to offer to the petitioners transfer of development rights (TDR) and the petition be dismissed.

5. We have heard both the sides and perused the papers. The law relating to the matter in issue has been crystallized by passage of time. The steps towards acquisition as contemplated under Section 127 of the MRTP Act have been duly interpreted in the matter of **M/S. Girnar Traders vs State Of Maharashtra & Ors (2007) 7 SCC 555**, to mean that nothing short of issuing a notification under Section 126 coupled with the declaration under provision of Section 6 of the Land Acquisition Act, 1894 which is analogous to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is not the case of the respondents about such steps having been taken towards acquisition. It is a *fate accompli*.

6. The respondent Nos. 3 and 4 are admitting to have been served with a notice under Section 127 of the MRTP Act. It is not their case that it was duly responded to, may be, by raising some objections. Therefore, they cannot be heard to raise any objection regarding its legality or the factual aspects for the first time in the form of an affidavit in reply. The only defect that is being objected to by them is regarding the notice having been issued by the petitioners through their advocate and was not issued under their signatures. We are afraid, the provision of Section 127 does not contemplate or require that such notice should be issued under the signatures of the owners.

7. As far as the stand being taken by the respondent Nos. 3 and 4 of offering TDR to the petitioners, the learned advocate for the petitioners, on instructions, submits that the petitioners are not ready to accept the TDR. The full bench of this Court in the matter **Vinayak Builders & Developers Vs. The State of Maharashtra and others (Writ Petition No. 2231 of 2019) dated 25.07.2022 (Nagpur Bench)** has already held that TDR in lieu of monetary compensation cannot be foisted on the owners.

8. The Writ Petition is allowed. It is declared that the reservation on the petitioners' land Survey No. 32/B to the extent of 90 Are (Site No. 164), situated at Kanheri Tq. & Dist. Latur has lapsed.

9. The Respondents shall take prompt steps for issuance of notification under sub Section 2 of Section 127 of the MRTP Act.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-