

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

WRIT PETITION NO. 7272 of 2022

Pankaj Narayan Patil, ... **Petitioner**
Age 40 years, Occu: Business & Agri.
R/o 8, Shivram Nagar, Opp. Collector
Bungalow, Jalgaon 425 001

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Ministry of Urban Development,
Mantralaya, Mumbai 400 032
2. The Director, ... **Respondents**
Town Planning Department, Pune
3. The Deputy Director,
Town Planning, Nashik Division, Nashik
4. Municipal Corporation, Jalgaon,
Through its Commissioner
5. Town Planer,
Municipal Corporation, Jalgaon.
6. Assistant Director,
Town Planning, Jalgaon Division, Jalgaon
7. The District Collector, Jalgaon

Shri A. P. Bhandari, Advocate for the petitioner
Shri S. B. Yawalkar, AGP for respondent-State
Shri V. D. Gunale, Advocate for respondent no.2

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

DATE : **13th June, 2023**

JUDGMENT (Per: Y. G. Khobragade, J.)

1. We have heard the learned counsel appearing for both sides at length.

2. Rule. Rule made returnable forth with. With the consent of the parties, the matter is heard finally at the stage of admission.

3. In the present petition, the petitioner has put forth prayer clauses (B) and (C) as under:

(B) The Honourable Court be pleased to issue writ of mandamus or any other appropriate writ directing the respondents to release land bearing Gut No. 1214/1, of Village Asoda Taluka and District Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 4000 sq. meters from Reservation No. 227 for "Truck Terminus".

(C) The Honourable Court be pleased to issue writ of Mandamus or any other appropriate writ, directing the respondent No.1 to issue a notification in terms of Section 127 (2) of Maharashtra Regional Town Planning Act, 1966, thereby notifying release of land bearing Gut No. 1214/1, of Village Asoda Taluka and District Jalgaon, situated within the Municipal Limits of Jalgaon to the extent of an area of 4000 sq. meters from Reservation No. 227 for "Truck Terminus".

4. The learned counsel for the petitioner submits that the petitioner is owner of land bearing Gut No. 1214/1 of Village Asoda Taluka and District Jalgaon within the Municipal Limits of Jalgaon. The

development plan for the city of Jalgaon was sanctioned in two parts, out of which, first part was sanctioned on 11.02.2022, which came into force with effect from 07.04.2022. Thereafter, on 10.08.2004, second part of the Development plan was sanctioned. In the development plan dated 07.04.2022, land of the petitioner admeasuring 4000 square meters is shown under reservation for "Truck Terminus" at Serial No. 227. However, even after lapse of the statutory period of 10 years, the respondent No.4-planning authority failed to take steps for acquisition of the petitioner's land. Therefore, on 25.07.2019, the petitioner issued a notice under section 127 of the MRTP Act alongwith 7/12 extract, copy of development plan, measurement sheet of the land etc., which was duly served upon the respondent-planning authority. But, inspite of the expiry of the two years period from service of notice, the respondent No.4 authority has not taken any steps for acquisition of the land. So also, no steps have been taken under section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore, the reservation in respect of the petitioner's land has lapsed.

5. Per contra, Shri Gunale, the learned Advocate appearing for respondent No.4-Corporation submitted that the land admeasuring 4000 square meter from Gat No.1214/1, belonging to the petitioner,

was reserved for a truck terminus bearing reservation No. 227. The General Body of respondent No.4 passed a resolution No. 986 on 18.04.2011 and decided to forward the proposal for acquisition to respondent No.7-Collector, Jalgaon on 23.06.2011 alongwith relevant documents. Thereafter, on 22.08.2011, respondent No.7, Collector, Jalgaon forwarded the said proposal to the Sub Divisional Officer for further action. On 17.09.2012, the Deputy Superintendent of Land Records directed respondent No.4 Corporation to deposit the joint measurement fees of Rs.20,000/- for measurement of Gat Nos. 1214, 1215, 1216, 1217, 1219, 1199/1A/1B. Accordingly respondent No.4 deposited the said amount on 13.02.2013, by cheque. However, when the concerned authorities visited the land of the petitioner for joint measurement, the petitioner did not permit to carry out the joint measurement.

6. The learned counsel appearing for respondent No.4 Corporation further canvassed that in pursuance of the order dated 20.02.2014 passed in Writ Petition No. 5128 of 2011, the General Body of Respondent No.4 Corporation passed a resolution on 29.08.2016 and decided to forward a fresh proposal for acquisition of the petitioner's land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and deposited

the measurement fees of Rs.36,000/- on 18.01. 2017. So also, respondent No.4 deposited Rs.8,155/- with the Superintendent of Police for providing police aid for measurement of land. Measurement of the land was scheduled on 25.05.2017. However, the petitioner opposed measurement on account of standing crops. Therefore, the measurement could not be carried out. Thereafter, a fresh proposal for acquisition of the land in question was submitted to the Collector on 19.08.2016 and the measurement of land was fixed on 23.05.2017. But no measurement was carried out due to the resistance by the owners of the land. Thereafter, on 02.08.2019, respondent No.4-planning authority was served with the notice under section 127 of the MRTP Act. After receipt of the said notice, on 01.11.2019, respondent No.4 issued a communication to the petitioner and informed about submitting proposal for acquisition of the petitioner's land with respondent No.7-Collector as per resolution dated 29.08.2016 and that the acquisition of the land is under process. Therefore, notice under section 127 of the MRTP Act is not applicable. Hence, prayed for dismissal of the petition.

7. We have given our thoughtful consideration to the rival submissions and perused the record. It is not in dispute that the development plan for the area of respondent No.4 Corporation was

sanctioned by the State government in two parts. The first part was sanctioned on 11.02.2002, which came into force with effect from 07.04.2002. The second part of the development plan was sanctioned on 10.08.2004. It is not in dispute that under the development plan dated 07.04.2002, land of the petitioner bearing Gat No. 1214/1 admeasuring 4000 square meters of village Asoda Taluka, and District Jalgaon, situated within the municipal limits of Jalgaon, was reserved for "Truck Terminus" at Serial No. 227. However, respondent No.4-planning authority has not taken any steps to acquire the said land within a period of 10 years from the date of the final development plan. Thereafter, on 25.07.2019, the petitioner issued a notice under section 127 of the MRTP Act to the respondent No.4-planning authority to release his land from the reservation, enclosing documents such as 7/12 extract, copy of part of the development plan showing reservation at Sr. No. 227, measurement sheet of the land, map showing 18 meter wide road passing through his land. Respondent No.4 has not disputed about the service of notice under section 127 of the MRTP Act on 02.08.2019. But it has only contended about deposit of measurement fees with the concerned authorities for joint measurement, but, said measurement could not be carried out due to resistance by the petitioner/owners of the land. So also, as per the order of this Court dated 20.02.2014, the General Body of respondent No.4 passed a

resolution dated 29.08.2016 and decided to submit a fresh proposal for acquisition of the petitioner's land under the provisions of the Act, 2013.

8. Section 127 of the MRTTP Act provides as under:

"127. Lapsing of reservations.-(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."

9. Suffice for the purpose to refer to the decision in the matter of **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318**, wherein, it has been laid down that the steps in the direction of acquisition of land reserved under the provisions of the MRTTP Act

would be nothing short of a declaration under Section 6 of the Land Acquisition Act 1894 (analogous to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) read with section 126 of the MRTP Act. Admittedly, no such steps have been taken for whatsoever reason.

10. In similar set of facts, in Writ Petition No. 13930 of 2019 (Satish Soma Bhole Vs. State of Maharashtra) and companion matters, decided by this Court, judgment in the case of **Girnar Traders (Supra)** was considered and it is held that the period contemplated being a statutory period, there is no question of any extension. The said judgment of the coordinate bench of this Court is affirmed by the Hon'ble Apex Court on 27.02.2023 in Special Leave Petition (Civil)Diary No. 39782/2022 (Municipal Corporation, Jalgaon Vs. Satish Soma Bhole).

11. The issue involved in the present petition is no more *res integra*. This Court has in several matters addressed the issue viz:

- (i) Choriya Builders and Associates Vs. State of Maharashtra, Writ Petition No. 11969 of 2021, Ashok Shriram Kulkarni Vs. State of Maharashtra;
- (ii) Ashok Shriram Kulkarni Vs. State of Maharashtra; Maharashtra Housing and Area Development Authority; Municipal Council; 2017 LawSuit(Bom) 390;
- (iii) Nirmala Hiranand Rajwani Vs. The Municipal Commissioner and others; (Judgment dated 7 April 2016 in Writ Petition no. 2351 of 2015)

iv) Shankar Nagar Co-operative Housing Society Ltd., Vaijapur Vs.The State of Maharashtra and others; (Judgment dated 20-09-2022 in Writ Petition no. 6786 of 2019)

12. In the case in hand, it substantially appears that though the land of the petitioner was reserved under the sanctioned development plan dated 07.04.2002, but the respondent-planning authority has not taken any concrete action for acquisition of the petitioner's land even after lapse of 10 years. Further, though respondent no.4 was served with the notice under section 127 of the MRTP Act on 02.08.2019, the respondent No.4 failed to acquire the land for the period of 24 months. Respondent No.4- planning authority has not given any cogent and substantial reason for not acquiring the reserved land for the period of 10 years from the notification of development plan and even after expiry of 24 months from the date of service of notice under section 127 of the MRTP Act.

13. Therefore, considering the ratio laid down in the case of **Girnar Traders (Supra)** and other cited case law, we are inclined to allow the present petition and declare that reservation on the land of the petitioner bearing Gut No. 1214/1 of Village Asoda Taluka, and District Jalgaon, situated within the municipal limits of Jalgaon admeasuring 4000 sq. meters for "Truck Terminus" at Serial No. 227, stands lapsed.

14. The respondents shall take appropriate steps for issuance of notification for release of the property under sub section 2 of section 127 of the MRTP Act within a period of four months. However, it is made clear that the respondent No.4 planning authority will be at liberty to acquire the petitioner's land under the Fair Compensation Act, 2013, if so desired, by following the due process of law contemplated therein.

15. Rule is made absolute in the above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan