

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

WRIT PETITION NO. 8996 OF 2018

Natwarlal Dhanjibhai Vora,
Age 73 years, Occ. Agril,
R/o. B-204, Jamuna Darshan,
S.V. Road, Natakwa, Boriwali (W),
Boriwali, Mumbai.

.. Petitioner.

Versus

1] The State of Maharashtra
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2] The Director,
Town Planning Department,
Maharashtra State, Pune.

3] The Collector,
Dhule, Taluka & Dist. Dhule

4] Dondaicha Varwade Municipal Council,
Through its Chief Officer.

.. Respondents.

Mr. Amol S. Sawant, Advocate for the petitioner.
Mr. P.K. Lakhotiya, AGP for respondent Nos. 1 to 3
Mr. Manish V. Bhamre, Advocate for respondent No.4.

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

**RESERVED ON: 17th APRIL, 2023
PRONOUNCED ON : 3rd MAY, 2023.**

JUDGMENT : PER S.G. CHAPALGAONKAR, J :-

The petitioner approaches this Court under Article 226 of the Constitution of India seeking declaration that his land bearing Survey No. 105/1A+1B situated within the limits of Dondaicha-Varwade Municipal

Council is released from Development Plan reservation and available for his desired development.

2. It is the contention of the petitioner that he is owner of the land bearing Survey No. 105/1A + 1B situated within the limits of Dondaicha- Varwade Municipal Council (Planning Authority). The final development plan for Dondaicha- Varwade Municipal Council enforced w.e.f. 31.10.1981 as per Maharashtra Regional and Town Planning Act (hereinafter referred to as, "the MRTP Act"). The land of petitioner from survey No. 105/1A has been affected vide Site No. 10 reserved for Cottage Hospital. However, the planning authority/Municipal Council failed to take steps for acquisition of the land within statutory period of ten years. The petitioner was facing difficulties for beneficial use of the land, hence, he served purchase notice dated 8.3.2011 under Section 127 MRTP Act and requested planning Authority to acquire the land within a period of one year, else, issue declaration of lapsing of reservation.

3. It is further the contention of the petitioner that in pursuance of the purchase notice dated 8.3.2011, the Municipal Council passed resolution No.15, in general body meeting dated 5.7.2012 to release the land from reservation. Thereafter, petitioner requested respondent Municipal council to grant development permission vide his application dated 13.12.2012, however his application was not responded. According to petitioner since, the respondents failed to take steps for acquisition of the land within the statutory period of two years after service of the purchase notice, the reservation stood lapsed and respondent authorities are under obligation to issue a declaration to that effect.

3. The respondent No.4 - Municipal Council filed affidavit in reply contending that after service of the purchase notice dated

8.03.2011 by the petitioner, fresh Development Plan has been sanctioned including the land in question under reservation. It is further contended that the purchase notice is defective since documents of title of the petitioner were not attached. Further, the purchase notice placed on record before this Court is different than the notice that could be traced in the record of the municipal council. The resolution passed by the municipal council would be of no consequence in absence of valid purchase notice.

4. Mr. Amol S. Sawant, learned advocate for the petitioner would invite attention of this court to the notice dated 8.3.2011 (placed at Exh.B of the writ petition). He would point out that there is acknowledgement about service of notice with stamp of the municipal council dated 9.3.2011. He would, therefore, urge that an after-thought dispute is sought to be raised regarding service of purchase notice. He would further invite attention of this Court to the resolution dated 5.7.2012 passed by the Municipal Council which refers to the purchase notice dated 8.3.2011 served by the petitioner and further records to release the reservation. He would further urge that the reservation of the land from same Development Plan has been released under the orders of this court passed in ***W.P. No. 8978 of 2015 by Kesaranand Ginning and Pressing Factory Pvt. Ltd. Bramhane Vs. State of Maharashtra and others.***

5. Mr. M.V. Bhamre, learned counsel appearing for respondent No.4 Municipal Council urged that difference in the purchase notice that has been placed by the petitioner on record of this court and the one traced out in the record of the Municipal Council is clearly visible. He would submit that there is over-writing in the inward Register, therefore, there is serious doubt regarding the service of notice under Section 127 of the MRTP Act. He would further urge that after service of purchase notice by petitioner new Development Plan has been enforced depicting

reservation on the land in question. The petitioner has not issued fresh notice after enforcement of the new Development Plan. It is further urged that in fact, petitioner persuaded his remedy against rejection of development permission. He has not served purchase notice as contemplated under Section 49(2)(3) of the MRTP Act, though the Municipal Council had clearly resolved that they are not willing to acquire the land reserved. In that view of the matter, he urged to reject the petition.

6. We have heard the learned counsel appearing for the respective parties. There is no dispute that the petitioner is owner of the land Survey No. 105/1A+1B situated within the limit of municipal council Dondaicha-Varwade. The land has been shown reserved under the development plan that was enforced w.e.f. 31.10.1981 under MRTP Act. No steps were taken for acquisition of the land shown under reservation Site No.10 for Cottage Hospital. The petitioner served purchase notice dated 8.3.2011 in terms of Section 127 of the MRTP. In response to said notice, the municipal Council passed resolution dated 9.3.2012 to not go for acquisition of land reserved. Subsequently, the revised Development Plan has been enforced w.e.f. 28.12.2012. The petitioner has not served fresh notice after revised Development Plan came into force. However, fact remains that the Municipal Council has not taken any step for acquisition of the land in terms of the purchase notice of the petitioner.

7. Mr. Manish Bhamre Learned counsel appearing for the respondent Municipal Council would submit that the notice served by the petitioner is different than the notice that has been placed on record of this Court. However, such contention appears to be fallacious and artificial. We observe that resolution dated 5.7.2012 clearly refers to the purchase notice served by the petitioner and consequential decision

arrived at in the general body meeting of the Municipal council to not to acquire land of petitioner. In that view of the matter, we have no hesitation to accept the contention of the petitioner that he has served purchase notice in terms of Section 127 of the MRTP Act to the respondent Municipal Council.

8. The contents of the resolution passed by the Municipal Council dated 5.7.2012 would show that there is no dispute regarding petitioner's ownership of the land bearing Survey No. 105/1A+1B situated at Dondaicha. The purchase notice dated 8.3.2011 depicts that the 7 x 12 extract was made part of the notice served upon the Municipal Council. In that view of the matter, there is sufficient compliance of Section 127 of the MRTP Act. The Municipal Council has passed resolution not to acquire the land in pursuance of the service of purchase notice. No steps for the acquisition of land in terms of Section 126 of the MRTP Act r/w Land Acquisition Act of 1894 Or 2013 have been initiated during statutory period of two years after service of purchase notice to the respondent Municipal Council. Therefore, we have no hesitation to hold that reservation is deemed to have been lapsed by operation of law.

9. The next contention of the respondent is that, revised Development Plan has been enforced w.e.f. 28.12.2012 before expiry of period of 2 years of service of purchase notice by the petitioner. The land in question is again notified as reserved under the revised Development Plan and the petitioner was required to wait for further period of ten years. Such contention cannot be accepted for the reason that the petitioner has served purchase notice in terms of Section 127 of the MRTP Act when Development Plan sanctioned on 31st October, 1981 was operational. The revised development plan came into effect after one and half years after service of purchase notice under Section 127 of the MRTP Act. The right of the petitioner has been crystallized. This Court

in the matter of **Kesaranand Ginning and Pressing Factory and another Vs. State of Maharashtra in (W.P. No. 8978 of 2015 decided on 25.2.2016)** has dealt with the same issue pertaining to same reservation and upheld the contention of the petitioners therein that the right has been accrued in their favor and reservation stood lapsed.

10. There is no reason to adopt some different view in the present matter. Resultantly, the writ petition succeeds. We proceed to pass the following order :-

:-O R D E R :-

- I] The writ petition is allowed.
- II] We hold and declare that the land bearing Survey No. 105/1A+1B situated within the limits of Dondaicha-Varwade Municipal Council, Dondaicha owned by the petitioner, is released from the development plan reservation and same is available to the petitioner for development.
- III] We direct the respondent No.1 to issue notification of lapsing of reservation in respect of aforesaid land in terms of Section 127(2) of the MRTP Act at the earliest and in any case within a period of six months from the date this order.

Writ petition stands disposed of in above terms.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-