

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

WRIT PETITION NO. 10133 OF 2021

Nanded Education Society,
Through its Secretary,
Office of Nanded Education Society,
People's College, Nanded.

... Petitioner.

Versus

1. The State of Maharashtra
through Secretary,
Department of Urban Development
Mantralaya, Mumbai-32.
2. District Collector,
Nanded.
3. Nanded-Waghala City Municipal
Corporation through its Commissioner,
Near SGG'S Memorial Government Hospital
Mahatma Gandhi Road, Shivaji Nagar,
Kadakpura, Nanded – 431 601.

... Respondents.

Mr. S.V. Natu, Advocate for petitioner.
Mr. A.R. Kale, AGP for respondent Nos. 1 and 2,
Mr. R.K. Ingole, Advocate for respondent No.3

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

DATE : 11th APRIL 2023

JUDGMENT : PER S.G. CHAPALGAONKAR, J.

1. The petitioner/public trust has approached this Court under Article 226 of the Constitution of India, thereby seeking a declaration that Land CTS No. 7766 out of survey No. 20/1 situated at Nanded, owned by petitioner, admeasuring 0.34 H, 0.30 H, 0.40 H, 1.76 H affected by reservations No. A-22, A-23, A-24 and A-25, respectively, stands de-reserved/released from reservation from the development plan of Nanded-Waghala Municipal Corporation, Nanded.

2. The contention of the petitioner is that, development plan for Nanded City Sector-A has been partly sanctioned u/s 31 of the Maharashtra Regional and Town Planning Act, (hereinafter referred to as "the MRTP Act") by Government vide its notification No. TPS-3200/2013/C.R.64(b)/2000/UD-30 dated 31.1.2014. It is enforced w.e.f. 16.3.2014. Thereafter, excluded part of revised development plan for Sector A has been sanctioned by Government vide notification No. TPS-3206/488/C.R.104(B) 2006/UD-30 dated 30.8.2006 and same has been enforced w.e.f. 15.9.2006. The land of the petitioner bearing Survey No. 20/1 at Jangamwadi, Taluka and Dist Nanded has been designated vide reservation No.A-22, A-23, A-24 and A-25 for Fire Brigade, Maternity Home, Elevated Service Reservoir and Garden.

4. It is further contention of the petitioner that in pursuance to the aforesaid reservation, no steps for acquisition of the land are taken by the respondents for more than ten years. The petitioner is facing difficulties in using the lands. In that view of the matter, the petitioner served a purchase notice dated 09.07.2018 under Section 127 of the MRTP Act in respect of land CTS No. 7766 out of Survey No. 20/1. The said notice was duly served upon the respondents. The respondent No.3/

Municipal Corporation failed to take steps for acquisition of the land.

4. The Assistant Director of Town Planning, Nanded Waghala Municipal Corporation vide his reply dated 6.9.2018, offered TDR in lieu of the compensation in terms of Rule 40 of the Development Control Regulations. The petitioner replied the said communication on 19.9.2018 and informed that the petitioner is not ready or willing to accept TDR in lieu of monetary compensation. It was also informed that the copy of the City Survey Sheet has been provided.

5. On 26.6.2020, the respondent corporation addressed a communication to petitioner requiring it to produce the measurement map and documents relating to the ownership and also repeated offer to grant TDR in lieu of monetary compensation. The petitioner replied the aforesaid communication on 18.8.2020 and submitted a copy of the 7x12 extract, PR Card of CTS No. 7766 and copy of Schedule I maintained by the Charity Commissioner and requested for granting permission to the petitioner to develop the land. However, the respondent corporation failed to take effective steps. Hence, the petitioner approached this Court.

6. In response to the notice of this petition, the respondent No.1 filed affidavit in reply stating the respondent No.3 is the appropriate authority for acquisition and development of the reservation site. The petitioner has served notice dated 9.7.2018 under Section 127 of the MRTP Act to the respondent No.3 and they are expected to take effective steps. The respondent No.3 Municipal Corporation also filed affidavit in reply stating that the petitioner has failed to supply measurement map and other documents prescribed under the communication dated

18.8.2020. It is further stated that the Corporation is ready to offer Reservation Credit Certificate (RCC) in lieu of monetary compensation, which can be used for payment of various charges till exhausting the amount mentioned in the certificate.

7. It is further stated that after receipt of the notice under Section 127 of the MRTP Act the petitioner was offered TDR in lieu of monetary compensation. Further the Municipal Corporation has passed a resolution for acquisition of the land dated 30.8.2021. However, because of shortage of funds they are not in a position to initiate and complete the acquisition of land in absence of financial support from the respondent No.1.

8. Mr. S.V. Natu, learned counsel appearing for the petitioner submits that the respondents have failed to take effective steps for acquisition of the land designated under the development plan which enforced w.e.f. 15.9.2006. The petitioner served purchase notice dated 9.7.2018. The respondents have merely offered TDR in lieu of monetary compensation without taking further steps for acquisition. He would submit that the petitioner has specifically refused offer to accept the TDR. He would submit, even after service of purchase notice, statutory period of two years has been lapsed, the respondent No.3 failed to take steps in terms of Section 126 of the MRTP Act. As such, there is deemed lapsing of reservation. It is incumbent upon the respondent No.1 to publish notification of order regarding lapsing of reservation in terms of Section 127(2) of the MRTP Act.

9. Mr. A.R. Kale, learned AGP for respondent No.2 would submit that the respondent No.3 Corporation is the Acquisition Authority

as per the development plan. However, no steps are taken by them.

10. Mr. R.K. Ingole, learned Advocate appearing for respondent No.3 Corporation would submit that the petitioner has failed to comply with the requirements of documents, particularly, measurement map, in respect of the portion of land owned by the petitioner, which is subject matter of reservation/designation. He would submit that the Corporation has given option of accepting the TDR/RCC in terms of clause 40 and Rule 11.3 of the Development Control Rules. Further, General Body of the Corporation has passed a resolution dated 30.8.2021 for acquisition of the land. However, due to shortage of financial support, it is difficult to acquire the land of the petitioner.

11. We have heard the learned advocates appearing for the respective parties and perused the record.

It is not in dispute that the petitioner owns 7 acres of land in CTS No. 7766 out of survey No. 20/1. The land has been affected by the development plan of Nanded Waghala Municipal Corporation which has been enforced w.e.f. 15.9.2006. For more than 10 years of enforcement of the development plan, no steps for acquisition have been taken towards the designated land. The petitioner served notice dated 19.9.2018 in terms of Section 127 of the MRTP Act. After lapse of statutory period of 2 years, the petitioner made representation dated 23.7.2000 seeking declaration of de-reservation, however respondents failed to take cognizance.

11. The respondents are trying to contend that the petitioner has not provided the requisite documents, particularly, the measurement map of the property affected under the reservation along with his purchase

notice. However, we find that such submissions are fallacious. The petitioner has provided relevant documents indicating his interest in land reserved along with his purchase notice. Further on 19/09/2018 he informed to Assistant director Town Planning that the copy of the City Survey Sheet has been provided. Hence notice issued by petitioner is compliant of statutory requirement.

12. Respondent No.3 further contends that the petitioner was offered TDR/RCC in lieu of monetary compensation. However, he refused to accept the same. The reserved property is required for public purpose as has been designated under reservation A-22 to A-25. The Municipal Corporation has passed resolution to acquire the land during general body meeting dated 30.8.2021. However, due to financial constraints further steps could not be taken. It is no more res-integra that land holder has discretion to accept TDR in lieu of monetary compensation. He cannot be compelled for the same.

13. The Full Bench of this Court in the matter of ***“Shree Vinayak Builders & Developers vs. The State of Maharashtra and others”*** reported in ***Manu/MH/2436/2022*** has observed as under :-

“43. Question (1) – This Court holds that the acquisition under Section 126(10(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.

Question (2) - Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.

Question (3) – Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.”

14. It is trite that the planning authority is required to take steps within the statutory period of 10 years for acquisition of the land reserved/ designated under the development plan. After lapse of the period of 10 years, the owner or the person interested in the land is entitled to serve purchase notice under Section 127 of the MRTP Act. After service of purchase notice the acquiring authority can take effective steps within a period of two years. However, failure entails lapsing of the reservation.

15. In the present case, the development plan has been enforced w.e.f 15.9.2006. The period of 10 years has been lapsed on 14.9.2016. The petitioner served purchase notice dated 19.9.2018 in terms of Section 127 of the Act. Period of 2 years from the date of service expired on 20.9.2020. The petitioner made further representation dated 23.7.2021 and requested the respondents to declare release of the land from the reservation. However, respondents neither issued such declaration nor have taken the steps for acquisition of the land.

16. The law on the point of lapsing of reservation has been considered by the Supreme Court in the matter of ***“Shrirampur Municipal Council Vs. Satyabhamabai Bhimaji Dawkher and others” (2013) 5 SCC 627***. Para. 43 of the said judgment reads thus :-

“43. The expression “No steps as aforesaid” used in Section 127 of the 1966 Act has to be read in

the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceeding for the acquisition of the land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the Development plan/Town Planning Scheme, etc., are not left high and dry. This is the reason why time limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300A of the Constitution."

17. In view of the aforesaid observations, merely offering TDR/RCC or passing resolution affirming requirement of the land in response to purchase notice, cannot be construed as effective steps for acquisition of the land. Even the land holder cannot be compelled to forego the monetary compensation and his land by accepting TDR/RCC. In that view of the matter, the stand taken by the respondents cannot be accepted. In absence of issuance of notification u/s 126 of MRTP Act

coupled with initiation of proceedings under Section 6 of the Land Acquisition Act, 1894/ Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement Act, 2013, the reservation/designation under the development plan stands lapsed. Hence, petition succeeds. We proceed to pass the following order.

ORDER

- I] The writ petition is allowed.
- II] We hold and declare that the land bearing CTS No. 7766 out of survey No. 20/1 situated at Nanded owned by the petitioner admeasuring 0.34H, 0.30H, 0.40 H and 1.76H under reservation No. A-22, A-23, A-24 and A-25, respectively, stands lapsed from the development plan of Nanded Waghala Municipal Corporation.
- III] We direct the respondent No.2 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/-