

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

WRIT PETITION NO. 10044 OF 2018

Gopal Kashinath Lad (Kele)
Age: 66, Occu.: Agri. & Business,
R/o. "Matoshri", Survey No.74/1 B,
Plot No.1, Behind Gajanan Maharaj Temple,
Deopur, Dhule. ... **PETITIONER**

V/s.

1. The State of Maharashtra,
Through Secretary,
Urban Development Department
Mantralaya, Mumbai.
2. The Collector,
Dhule, Taluka & District Dhule.
3. Assistant Director,
Town Planning Department,
Dhule Municipal Corporation, Dhule.
4. Dhule Municipal Corporation,
Through its Commissioner,
Dhule Municipal Corporation,
Dhule, Taluka & District Dhule. ... **RESPONDENTS**

...
Mr. Subodh P. Shah, Advocate for the Petitioner
Mr. P.K. Lakhotiya, AGP for Respondent/State
Mr. Amol S. Sawant, Advocate for Respondent No.4
...

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

RESERVED ON : 03.08.2023

PRONOUNCED ON : 22.08.2023

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

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally.

2. In this petition under Article 226 of the Constitution of India, the Petitioner has put-forth prayer clause- A, B and C as under:

“A] The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby declare that the southern side plot in reservation site no. 35 in Survey No. 76/2-1 to 5 + Survey No. 76/1-4 situated at Dhule (particularly described in paragraph no. 3), is free from any encumbrance of reservation as reserved in final development plan of 1986 as site no. 35 (Children's Play Ground) and subsequently inclusion as site no. 47 (Children's Play Ground) in Final Development Plan of Dhule (II Revised) of 2015.

B] The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby direct the respondents to notify the same, by an order published in Official Gazette, in pursuant to section 127 (2) of the Maharashtra Regional Town Planning act, 1966.

C] The Hon'ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ, and thereby quash and set aside the order dated 29.07.2017 passed by respondent no. 4.”

3. Adv. Subodh Shah, the learned counsel appearing for the petitioner canvassed that, Shenphadu Tukaram Bhai and others were the owners of land Survey No.76/2 - 1 to 5 + Survey No.76/1-4 admeasuring 3039 Sq. Mtrs., which is subject matter of the present petition. On 17/10/1986, the Final Development plan for Dhule was sanctioned and the said land was reserved vide Site No. 35 for Children's playground. On 24/07/1999, the Original Owner Shenphadu Bhoi and his family members

executed a Notorised Power of Attorney in favour of Rajendra Vasantrao Sonar. As per para 5 of the power of attorney, the original owner had empowered Shri Rajendra Vasantrao Sonar for taking appropriate action to free the land from reservation. Therefore, on the basis of authorisation by the original land owners, Shri Rajendra Vasantrao Sonar issued a purchase notice on 29/12/2000 claiming to be the owner of the petition land and referred to this notarized Power of Attorney. Thereafter, on 15/06/2001, the Respondent No. 4 Municipal Council Dhule submitted a proposal to the collector for acquisition of land pursuant to the purchase notice. Therefore, the development authority acted upon the purchase notice. However, the Respondent No. 4 has not taken step to acquire the land within the period of 24 months, therefore, the reservation lapses and the land is free from acquisition.

4. The learned counsel for the petitioner further canvassed that, on 13/11/2002, the Respondent No. 4 Municipal council issued a communication in favour of the Power of attorney holder Shri Rajendra Sonar with reference to purchase notice dated 29/12/2000 informing that the proposal for acquisition of land is submitted on 15/06/2001. Thereafter, on 26/06/2003, it passed the Resolution No. 528 observing that the land owners of reserved land appointed Mr. Rajendra Vasantrao Sonar (Pingale) being their General Power of Attorney and issued a purchase notice dated 29/12/2000 u/s 127 of the MRTP Act. So also under said Resolution the proposal for acquisition of reserved land was

submitted with the Respondent no. 2 Collector Dhule. Therefore, the Respondent no. 4 Development Authority acted upon the purchase notice, which is legal, valid and any defect in the notice stands waived and the Respondent no. 4 is now estopped from raising a defense that the notice was not valid.

5. The learned counsel for the petitioner submits that, Sec. 127 of MRTP Act provides that the notice can be issued only on fulfillment of two conditions i.e. the period of ten years lapsed after commencement of the Development Plan and within the period of 10 years, a notification u/s 126(4) is not issued. However in the case in hand, though the land of the petitioner is shown under reservation vide site No. 35 in development plan published in the year 1986, but said land is not acquired within period of 10 years, So also, inspite of service of notice dt. 29/12/2000 issued u/s 127, no land has been acquired, and, therefore, it is lapsed.

6. To buttress this submission, the learned counsel for the petitioner relied upon the following case law:

- i) *Gupta Loom Industries and another Vs The State of Mah. (2015) SCC OnLine Bom. 6600 = (2016) 1 AIR 170,*
- ii) *Satish Soma Bhole V/s. State of Maharashtra and Others; 2010 SCC Online Bom.1194=(2010) 6 AIR Bom. 676,*
- iii) *Meena Mohanlal Chauhan V/s Nashik Municipal Corporation; 2015 (2) Mh. L. J. 315*
- iv) *(2020) 12 SCC 215 Mohandas and others V/s State of Maharashtra*

- v) ***Order dated 13-06-2023 passed by co-ordinate bench of this court in W.P. No. 2396 of 2023 Shyamkumar Rathi V/s State of Maharashtra***
- vi) ***(2003) 2 SCC 111 Bhavnagar University V/s Palitana Sugar Mills, followed by co-ordinate bench of this court in following Judgments:***
 - a. *Dinkar Balwantrao Kadam V/s State of Maharashtra (WP 5281/ 2005)*
 - b. *Choria Builders and Association V/s State of Maharashtra (WP 11969/2021)*
 - c. *Rasiklal Jamnadas Shah V/s State of Maharashtra (WP 1791/2012)*
- vii) ***(2015) 11 SCC 554 Godrej and Boyce Manufacturing Co. V/s The State of Maharashtra***
- viii) ***2007 (3) Mh. L.J. 399 Kishor Siddheshwar Wadotkar (Dr.) V/s Director of Town Planning and ors.***

7. The Respondent No.4 Development Authority filed a reply affidavit and strongly resisted the petition, so also, filed written notes of arguments. Mr. Amol S. Sawant, the learned counsel for Respondent No.4 submits that, on 17/10/1986 development plan for Dhule town was published and came into force w.e.f. 01/01/1987. As per the development plan, the land was reserved at sr. no. 35 for Children's play ground, but due to some exigencies acquisition proceeding could not been initiated.

8. On 29/12/2000, One Rajendra Sonar (Pingale), the Power of Attorney holder of original land owner issued a notice under Section 127 of the M.R.T.P. Act claiming that he is the owner and is in possession of the land on the basis of a Power of Attorney registered with the Notary on 24/07/1999. However, the said Power of Attorney Holder failed to produce any documents to substantiate about his possession, interest over

the reserved property. He neither produced a copy of power of attorney nor the 7/12 extract to show that, on the day of issuance of purchase notice his name was mutated with the revenue record. Therefore, said notice dated 29/12/2000 itself is defective and the present petitioner was in no way concerned with the property in question, hence, prayed for dismissal of the petition.

9. The learned counsel for Respondent No. 4 further submits that, a notice under Section 26(1) of the M.R.T.P. Act was published in the year 2005 inviting objections and suggestions in respect of preparation of the second revised development plan. Thereafter, on 11/07/2017 the present Petitioner has purchased the petition land under sale-deed from the original owner Shenphadu Bhoi and others. However, the petitioner prayed for the release of land from reservation on the basis of notice dated 29/12/2000 issued by Mr. Rajendra Sonar, the Power of Attorney holder, who was the owner and in possession of the land. Further, the present petitioner never issued purchase notice after execution of registered sale deed dtd. 11/07/2006 in his favor. Therefore, no valid notice is served upon Respondent No. 4 and the said land is not entitled to be free from reservation for want of statutory notice, hence, prayed for dismissal of the petition.

10. In support of the submissions the learned counsel appearing for the Respondent No.4 Development Authority relied on the case of

Mohandas and Others Vs. State of Maharashtra and Others; (2020) 12

SCC 215, wherein the Hon'ble Supreme Court in para nos.38 and 39 observed as under:

*“38. The only question is whether it is to be ignored in deciding whether we should invoke Article 142 of the Constitution of India. On 24-8-1984, the Final Development Plan is published. On 3-9-1992, the declaration under Section 126(4) of the Act was published. After expiry of ten years from 24-8-1984, notice was given by the previous owners on 9-6-2004. Thereafter, draft revised draft plan publication was made on 29-11-2007. Still, thereafter, on 15-5-2012, a final revised development plan was published. Although, under the original Final Development Plan dated 24-8-1984, the property of the appellants was reserved for shopping complex, and under the revised Final Development Plan dated 15-5-2012, the appellants' lands have been subjected to the reservation that it is meant for use as shopping complex and vegetable market, apart from issuing the declaration, under Section 126(4) of the Act in the year 1992, there is no declaration issued under the revised plan dated 15-5-2015. While, it is true that the original Final Development Plan came into force on 24-8-1984 and the revised development plan came into force in the year 2012, one crucial fact cannot be overlooked. Admittedly, 9 the appellants purchased lands from the erstwhile owners only on 2-1-2006. Therefore, on the facts, particularly, having regard to the fact that they have purchased the property apparently knowing that the property was subjected to reservation, and as also we have found that their case, based on the notice of previous owners, would not hold good in law and as the subsequent revision of the plan has come into force with effect from 15-5-2012, we do not find that this is a case where we should exercise our powers under Article 142 of the Constitution. The appellants cannot be compared with the appellant in *Hasmukhrai V. Mehta* as the appellant therein was a person who was favoured with a permission to develop his land on the basis that the land was meant for residential purpose and it was he who went to court and the lapse of twenty years was in the context found to have a deep impact.*

39. The appellants must wait for a period of ten years under Section 127 of the Act from 15-5-2012 and then can issue notice contemplated under the Act. That is, within a period of little over two years from now, the appellants would have a cause of action to give notice under Section 127 of the Act unless action is already taken in the meantime. No doubt, we would expect that the respondents would be alive to the object of the statute and also the rights of the owners and will not act mechanically and unfairly in the

matter in the future. As far as invoking Section 49 of the Act, is concerned, we do not express any view. Leaving open all the remedies available to the appellants, the appeal shall stand dismissed.”

11. Mr. P.K. Lakhotiya, the learned AGP canvassed that, on 11/07/2006, the Petitioner allegedly purchased the land in question, when the land was under acquisition in the first development plan. Again in the second revised development plan, the petitioner's land was shown under reservation at site no.47 for children's play ground. The Petitioner submitted proposal for development of the property, but it was rejected on 29/09/2017 by the Competent Authority. Being aggrieved by the said order, the Petitioner had preferred an appeal under Section 47 of the M.R.T.P. Act before the State Government, but the said appeal came to be rejected on 21/03/2018 on the ground of delay and no sufficient Court fees was affixed while presenting the appeal. The Petitioner did not challenge the order of rejection of appeal, hence, it has attained finality.

12. The learned Assistant Government Pleader further submits that, on 29/12/2000, the notice under Section 127 of the M.R.T.P. Act was issued by Rajendra Sonar claiming that he is the owner and possessor of the property which is under reservation. However, no documents of ownership or interest were attached with the notice. So also, said power attorney did not disclose in which capacity he was in possession or was having interest in the property. No copy of General Power of Attorney, 7/12 extract, map etc., were attached. The present Petitioner purchased

the Writ land under sale-deed dated 11/7/2006. The Petitioner never issued notice under Section 127 of the M.R.T.P. Act subsequent to the sale deed. Therefore, the petitioner, who became owner of the said property in pursuance of sale deed dt. 11/7/2006 can not seeks release of land on the basis of the notice issued by the power of attorney of original owners. Therefore, for want of valid notice u/s 127 of the MRTP Act, the reservation of land does not lapse, hence, prayed for dismissal of the petition.

13. In order to substantiate his submissions, the learned AGP relied on the case of ***Prafulla C. Dave & others Vs. Municipal Commissioner & ors. - (2005)11 SCC 90***, wherein the Hon'ble Supreme Court observed in para no. 21 & 22 as under:

“21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or provisions for acquisition is not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure

on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan under Section 38 will have full play. Action on the part of the land owner or the person interested as required under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in *Municipal Corporation of Greater Bombay vs. Hakimwadi Tenants' Assn.* in the following terms : (SCC p. 62, para 10)

“10. If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise.”

22. *In fact the views expressed in Bhavnagar University in para 34 is to the same effect: (SCC p. 123)*

“34. ... The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.”

14. Having regard to the rival submissions canvassed on behalf of both sides we have gone through the record. We would like to describe the relevant dates and facts which are undisputed as under:

Sr. No.	Dates	Events
i.	17.10.1986	The Notification of Development Plan of Dhule Municipal Council came to be published.
ii.	01.01.1987	The final development plan came into force.
iii.	29.12.2000	One Shri. Rajendra Vasantrao Sonar (Pingle) served a notice purported to be issued u/sec. 127 of M.R.T.P. Act in respect of reservation site No.35 which is reserved for children's play ground.
iv	11.07.2006	The petitioner purchased the land i.e. reservation site No.35 from the owner Shenpadu Tukaram Bhoi and others.
v	23.12.2010	The publication of notice u/sec. 26 (1) of M.R.T.P. Act for inviting objections and suggestions in respect of preparation of 2nd revised draft development plan issued by the Corporation. The final Development plan (2 nd Revised) published and notified in the Government Gazette.
vi	03.07.2015	The final development plan (2nd revised) came to be published and notified under which the petition property is reserved as Site No.47 for children's play ground.
vii	11.07.2017	The petitioner submitted the proposal for the purpose of development of petition property.
viii	29.07.2017	The proposal of the petitioner is rejected on the ground

		that, the petition property is reserved for children's play ground.
ix	21.03.2018	The appeal preferred by the petitioner u/sec. 47 of M.R.T.P. Act before the State Government came to be rejected on the ground of delay and no sufficient court fees affixed in preferring appeal.

15. It would be worthwhile to mention here that, on 29/12/2000, Shri Rajendra Sonar, the Power of Attorney holder of the original land owners had issued purchase notice u/s 127 of the MRTP Act, claiming to be the owner and possessor of the petition land. It is not in dispute that the said Power of Attorney holder did not produce nor enclosed a single document to show that he was having interest in the property either being an owner or he was in possession of the petition land. So also, he did not produce the copy of the Power of Attorney. Therefore, it *prima-facie* appears that on the day of the issuance of the notice, he was not the owner and in possession of the property described in notice dated 29/12/2000. Therefore, the said notice is itself defective.

16. **Sec. 127 of of the MRTP 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."

17. The learned counsel for the petitioner contended that, Sec. 127 of M.R.T.P. Act mandates to serve notice by the owner or any person having interest in the land and as such in this case, Shri Rajendra V. Sonar (Pingle), who was General Power of Attorney holder for the original land owners served notice dated 29/12/2000. Subsequently, on 11/07/2006, the petitioner purchased the land. Therefore, as per the law laid down in ***Mohandas*** (supra), the petitioner subsequent purchaser seeks for lapse of reservation on the basis of the earlier notice issued on behalf of the original land owner. However, in the case in hand, it is admitted that, within 10 years from the development plan i.e. 01/01/1987, Respondent No. 4 failed to acquire the land u/s 126(4). Therefore, on 29/12/2000, the notice was served by Shri Rajendra V. Sonar (Pingle), the power of attorney holder for the original owner but he did not enclosed any document to show he was having interest in the land or he was the owner of land. Further, though the petitioner has purchased the petition land under Registered Sale Deed dt. 11/07/2006, the petitioner has not issued purchase notice u/s 127 of the Act in respect of the said land. It is trite that, the notice under Section 127 of the M.R.T.P. Act is not curable

and the petitioner is not entitled to seek lapsing of reservation of the petition land on the basis of notice dated 29/12/2000.

18. No doubt, in pursuant to the notice dated 29/12/2000, the Respondent No. 4 Municipal council issued a communication dated on 13/11/2002 to Shri Rajendra Sonar informing that the proposal for acquisition of land has been submitted on 15/06/2001. Thereafter, on 26/06/2003, Respondent no. 4 passed the Resolution No. 528 and submitted the proposal for acquisition of land with the Respondent no. 2 Collector Dhule. Hence, the Respondent no. 4 Development Authority acted upon the purchase notice and the defect if any is waived. However, it is submitted that, if the person who issued the notice under Sec. 127 of the Act, fails to establish his title, interest, possession over the reserved land under the development plan and as such said notice found defective, it does not create right in his favor. Therefore, it can not be accepted that, the petitioner stepped into shoes of the original owner. So also, merely because the Respondent no. 4 Development Authority issued the communication in favor of Shri Rajendra Sonar, would not create any right in favor of the petitioner. So also, the reservation does not lapse after Respondent No. 4 passed the Resolution No.528 pursuant to a defective notice. Needless to say that, the proposal dated 15/06/2001 does reflect about notice dated 29/12/2000. The letter dated 13/11/2002 issued by the development authority to Mr. Rajendra Sonar intimating about submission of proposal with the Respondent No.2-Collector for acquisition

of petition land does not show that either the petitioner or said Power of Attorney Holder original land owner was in possession of the land.

19. In addition to the above facts, on 11/07/2017, the present Petitioner submitted a proposal of development plan in respect of land but on 29/07/2017, the competent authority passed an order and rejected the same on various grounds enumerated therein. Being aggrieved by said order, the Petitioner filed appeal under Section 47 of the M.R.T.P. Act before the Respondent No.1. However, on 21/03/2018, the Respondent No.1 passed an order and dismissed the appeal of the Petitioner.

20. The Respondent- Development Authority published a notice dated 17/10/1986 under Section 26 (1) of the M.R.T.P. Act and showed the said land under reservation. The objections were invited for preparation of second revised development plan which came into force in the year 2005. However, at the relevant time, neither the Petitioner nor the erstwhile owners raised any demand for deemed de-reservation of the petition property. In the year 2005, second revised plan was published, but no objection was received for reservation of the land for children's play ground at serial no.47. After lapse of 17 years from service of notice, reservation of petition land does not lapse under Section 127 of the M.R.T.P. Act, for want of strict compliance as per view take in the cases of **M/s. Gupta Loom Industries, Satish Soma Bhole and Mohandas** cited (supra).

21. In view of the above, the present petition is devoid of merits and is liable to be dismissed. Hence, dismissed. The rule is discharged.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]