

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

WRIT PETITION NO. 11194 OF 2021

- 1] Umesh S/o. Shashikumar Ahuja
Age 47 years, Occ. Business,
- 2] Hitesh S/o./ Shashikumar Ahuja,
Age 45 years, Occ. Business.
- 3] Rohit S/o. Shashikumar Ahuja,
Age 41 years, Occ. Business.
- 4] Shashikumar S/o. Ramsharan Ahuja,
Age 70 years, Occ. Business

All R/o. Vishal Nagar, Chitali Road, Rahata,
Tq. Rahata, Dist. Ahmednagar.

.. Petitioners

Versus

- 1] The State of Maharashtra
Through the Secretary,
Ministry of Urban Development,
Mantralaya, Mumbai – 32.
- 2] The Director of Town Planning Department,
Maharashtra State, Pune.
- 3] The Deputy Director of Town Planning,
Nashik Division, Nashik.
- 4] The Municipal Council Rahata,
Tq. Rahata, Dist. Ahmednagar,
Through its Chief Executive Officer,
- 5] The District Collector, Ahmednagar,
Tq. And dist. Ahmednagar.

.. Respondents.

Mr. A.S. Gandhi, Advocate for petitioner.

Mr. P.K. Lakhotiya, AGP for respondent Nos. 1 to 3 and 5

Mr. Amol S. Sawant, Advocate for respondent No.4.

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

DATE : 20rd APRIL, 2023

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

1. The petitioners No.1 to 3 are the joint owners of land bearing Survey No. 179/5 admeasuring 4R and petitioners No.1 to 4 are the joint owners of land bearing Survey No. 179/5 admeasuring 2R being legal heirs of Jogindar w/o. Shashikumar Ahuja situated at Rahata, Taluka Rahata, Dist. Ahmednagar. The land of the petitioners is affected by reservation site No. 45, as per development plan of Municipal Council, Rahata. According to petitioners, although development plan of Municipal Council, Rahata was notified on 16.8.2004, no steps for acquisition of the property owned by petitioner was taken. The petitioners could not beneficially use their property, therefore, they issued notice dated 6.9.2019 to the respondents as per Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act" for sake of brevity) requiring the respondents to acquire the property.

2. The petitioners contend that in response to their notice, Collector Ahmednagar, by his communication dated 20.9.2019 directed Town Planning Authority to take necessary action in respect of the de-reservation of land of the petitioners as the Municipal Council has

already forwarded proposal to delete the reservation under Resolution dated 16.1.2007.

3. The petitioners further contend that the land owned by Sarthak Rajesh Bhansale and others has been de-reserved from very same reservation owing to failure of Municipal Council to take steps towards acquisition of the land. It is further contention of the petitioners that the purchase notice dated 6.9.2019 issued by the petitioners has been duly served upon the respondents. The period of two years is lapsed; however, no steps are taken for acquisition of their land in terms of Section 6 of the Land Acquisition Act, 1894 or Act of 2013 r/w. Section 126 of the MRTP Act. The petitioners are therefore seeking issuance of writ of Mandamus directing the respondents to release the land from reservation No.45 and also to issue notification of de-reservation in terms of Section 127(2) of the MRTP Act.

4. In response to notice of writ petition, respondent Nos. 1 to 3 have filed affidavit in reply. It is admitted that the development plan for Rahata Municipal Council has been sanctioned under Section 37(1) of the MRTP Act and enforced vide notification dated 15.9.2004. The area to the extent of 19250 square meters from Survey No. 179 was reserved for Garden under site No.45. Purchase notice dated 6.9.2019 issued in terms of Section 127 of the MRTP Act has been served upon the respondent No.4 Municipal Council. It is further contended that respondent No.4 Municipal Council has submitted a proposal of modification of final development plan in respect of site No.45. The report was called from the Director of Town Planning, Pune. It is not disputed by respondent Nos. 1 to 3 that the petitioner has served

purchase notice under Section 127 of the MRTP Act but the same has not been acted upon.

5. The respondent No.4 Municipal Council filed affidavit in reply contending that after service of purchase notice dated 6.9.2019, the proposal for acquisition of reservation site No.45 has been prepared and forwarded to Collector, Ahmednagar. However, certain deficiencies were pointed out by the office of the District Collector, Ahmednagar. After removing those deficiencies, the Chief Officer of Municipal Council, Rahata submitted a fresh proposal dated 3.8.2021 with a request to take appropriate steps for the purpose of acquisition of the land. It is the contention of the respondent No.4 that the process for acquisition of the land have been initiated. It is further contended that the claim for declaration of lapsing of reservation may not be entertained.

6. Mr. A.S. Gandhik, learned advocate appearing for the petitioner would submit that the respondents have failed to take necessary steps for acquisition of the land affected by reservation site No.45 as per the development plan dated 16.8.2004. The petitioner served purchase notice under Section 127 of the MRTP Act on 6.9.2019. The respondent No.5 District Collector, Ahmednagar issue communication dated 20.9.2019 to the planning authority i.e. respondent No.4 and directed to take necessary action. However, no effective steps for acquisition are taken. As such, reservation is deemed to be lapsed.

7. Mr. Amol S. Sawant, learned advocate appearing for respondent No.4 would submit that immediately after the receipt of

purchase notice, the Municipal Council had submitted a proposal for acquisition to the District Collector. Thereafter, the District Collector, pointed out certain deficiencies. Those are cleared and a fresh proposal is also forwarded and the same is pending.

8. Having considered the submissions advanced by the respective counsel appearing for the parties, it could be appreciated that the draft development plan for Municipal Council, Rahata was sanctioned on 16.8.2004 and it has been enforced with effect from 15.9.2004. The land bearing survey No. 179/5 admeasuring 4R + 2R situated at Rahata, Taluka Rahata Dist. Ahmednagar owned by petitioners has been shown reserved for Garden under site No.45 as per the sanctioned development plan. Apparently, no steps are taken for acquisition of land. Hence, the petitioner served purchase notice dated 6.9.2019 under Section 127 of the MRTP Act. In response to said notice, Municipal Council passed a resolution to take prompt steps for acquisition of the land. A proposal, appears to have been forwarded to the District Collector, Ahmednagar and same has been pending with the Collector since 3.8.2021. The period of two years after service of purchase notice has been lapsed.

9. It is the contention of the learned counsel for respondent No.4 Municipal Council that after receipt of purchase notice, as per the resolution passed by the Municipal Council the proposal has been moved to the District Collector for acquisition of the land. Therefore, it cannot be said that the petitioner is entitled for declaration in terms of Section 127(2) of the MRTP Act.

10. Pertinently, writ petition No. 1229 of 2017 with 1256 of

2017 in respect of the same reservation has been decided by this Court at the behest of the other owners of the property from Survey No. 179. This Court, after considering the rival submissions declared lapsing of reservation. In the present case, though it has been contended on behalf of the respondent No.4 that effective steps are taken for acquisition of the land, such contention is unacceptable. Merely passing resolution to acquire the land by planning authority and forwarding proposal for acquisition cannot be termed as effective steps. For that purpose, reference can be given to the decision of Supreme court in the matter of ***Girnar Traders and another Vs. State of Maharashtra reported in (2007) 7 SCC 555***, Observations in para.57 of the said judgment reads thus :-

“57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps” (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leave it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.”

11. In the light of the aforesaid observations, it can be inferred that no steps like issuance of notification under Section 6 of the Land Acquisition Act, 1894 has been taken after service of purchase notice within statutory period of two years. The conclusion deducible is that reservation over petitioner's land in site no 45 in final development plan of Rahata Municipal Council, stood lapsed. The writ petition, therefore, succeeds. Hence, we proceed to pass the following order: -

: O R D E R :

- (a) The writ petition is allowed.
- (b) We hold and declare that Development Plan reservation on the land bearing Survey No. 179/5 admeasuring 4R owned by petitioner Nos. 1 to 3 and land admeasuring 2R owned by petitioner Nos. 1 to 4, they being legal heirs of Jogindar w/o. Shashikumar Ahuja situated at Rahata, Taluka Rahata, Dist. Ahmednagar is lapsed from reservation site No.45 earmarked for Garden.
- (c) The respondent No.1 is directed to issue notification in terms of Section 127(2) of the MRTP Act, notifying release of land Survey No. 179/5 admeasuring 4R owned by petitioner Nos. 1 to 3 and area admeasuring 2R owned by petitioner Nos. 1 to 4, they being legal heir of Jogindar w/o. Shashikumar Ahuja, situated at Rahata, Dist. Rahata, from reservation site No.45 earmarked for Garden.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE