

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO.11370 OF 2021

1. Chandrakalabai w/o Mahadev Madne,
Age-70 years, Occ: Agri.

2. Laxman S/o Mahadev Madne
Age-48 years, Occ: Agri.

3. Govind S/o Mahadev Madne
Age-38 years, Occ: Agri.

All R/o. Sul Galli, Latur.
Dist:- Latur – 413 512

...Petitioners

Versus

1. The State of Maharashtra.
Through, Secretary for Urban Development,
Mantralaya -Mumbai 32

2. The Municipal Corporation, Latur,
Through its Municipal Commissioner,
Office of Municipal Corporation Latur

3. The Town Planner,
Latur Municipal Corporation,
Office of Municipal Corporation Latur

...Respondents.

Mr U.R. Aute h/f Mr Balbhim R. Kedar, Advocate for Petitioners
Mr A.S. Shinde, AGP for Respondent No. 1 /State
Mr H.V. Patil, Advocate for Respondent Nos. 2 and 3

**CORAM : MANGESH S. PATIL AND
SANTOSH G. CHAPALGAONKAR, JJ.**

DATE : 02-01-2023

ORAL ORDER : (MANGESH S. PATIL, J.)

Heard.

2. Rule. Rule made returnable forthwith.

3. The learned Assistant Government Pleader waives service for the respondent No.1 . Mr H.V. Patil, learned advocate waives notice for respondent Nos. 2 and 3. At the joint request of the parties, the matter is heard finally at the stage of admission.

4. The petitioners are seeking declaration regarding de-reservation as contemplated under section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act").

5. It is averred that the fact that the revised development plan for the Latur Municipal Corporation came into effect from 2 January 2002. The petitioners' property from Survey No. 16 was earmarked for public purposes. No steps were taken for acquisition of land as contemplated by the law. The notice under section 127 of the MRTP Act was issued on 5 February 2019, but it was not responded to.

6. Learned Advocate Mr Patil, who appears for the respondent No.2 and 3, on instructions submits that the notice under section 127 of the MRTP Act was not accompanied with necessary documents. The Respondent-Corporation is also intending to offer the petitioner TDR in lieu of monetary compensation.

7. In absence of any response to the notice received under section 127 of the MRTP Act and in the absence of any affidavit in reply, it would not lie in the mouth of the respondents Nos. 2 and 3 now for the first time to come out with a stand that the notice was non compliant with the provision. If that was the case, the respondents Nos. 2 and 3 ought to have responded to the notice and pointed out the deficiencies which thereafter, petitioners could have complied with. In absence of which, we proceed on the premise that there is no substance in the objections being raised in respect of the legality of the notice under section 127 of the MRTP Act.

8. It can be seen from the office copy of the notice dated 5 February 2019, (Exh. "H") that it was duly received on behalf of respondent Nos. 2 and 3 Corporation on the very same day. Again, in absence of any concrete material, there is nothing to demonstrate that the steps as are contemplated under section 126 read with section 6 of the Land Acquisition Act, 1894 or Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 were taken within the statutory period of 10 years of finalization of the revised development plan or even within 24 months of receipt of the notice.

9. The consequences are inevitable in view of the decision in the matter of ***Girnar Traders vs. The State of Maharashtra and others; 2007 (7) SCC 555.***

10. So far as the offer to accept TDR in lieu of monetary compensation, except the bald statement made across the bar, there is nothing to demonstrate that the respondents Nos. 3 and 4 having taken steps first to resolve to offer TDR to the petitioners. Besides, in view of the Full Bench decision of this Court in case of **Shree Vinayak Builders and Developers Vs. State of Maharashtra and Ors. (Writ Petition No. 2231 of 2019, Nagpur Bench)**, even such a decision cannot be foisted upon the petitioners.

11. Since the petition has been filed after 24 months of service of notice under section 127 of the MRTP Act, *it is a fate accompli*.

12. We allow the writ petition.

13. It is declared that the reservation on the petitioners' property stands lapsed with immediate effect. The respondents shall take appropriate steps for issuing notification under sub section 2 of Section 127 of the MRTP Act as expeditiously as possible and in any event, within a period of six months from today.

14. Rule is made absolute in above terms.

[SANTOSH G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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