

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

**WRIT PETITION NO.13651 OF 2021**

1. Mahesh s/o Prabhakar Rao Saraf  
Age: 55 years, Occu: Business,  
R/o: Gandhi Park, Parbhani ... Petitioner

Versus

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

2. The Planning Authority/Commissioner,  
Parbhani City Municipal Corporation,  
Station Road, Parbhani

3. Development Authority,  
C/o Maharashtra Regional and Town Planning  
Department, Central Building, Pune ... Respondents

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Mr. S. S. Gangakhedkar, Advocate for the Petitioner  
Mr. S. B. Yawalkar, AGP for Respondent No.1  
Mrs. Rani Bora with Mr. S. S. Bora, Advocates for Respondent No.2

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

**Closed on : 18.04.2023**

**Pronounced on : 03.05.2023**

**FINAL ORDER : [PER S. G. CHAPALGAONKAR, J.]**

1. The petitioner approaches this Court under Article 226 of the Constitution of India, thereby seeking declaration that reservation in respect land bearing Survey Nos.599/P and 600/P, admeasuring 40 R situated at Parbhani Taluka and District Parbhani has been lapsed and the land is available for his desired development. The petitioner further

seeks direction against the respondents to publish notification under Section 127 (2) of the Maharashtra Regional Town Planning Act, 1966 [hereinafter referred to as 'MRTP Act' for short] declaring deletion of the land from reservation.

2. Learned Advocate Mr. S. S. Gangakhedkar appearing for the petitioner would submit that the petitioner is an owner of the land bearing Survey Nos. 599/P and 600/P situated at Parbhani Taluka and District Parbhani to the extent of 4 Hectare 80 R. The Municipal Corporation [then Municipal Council] published the development plan which has been sanctioned vide notification dated 30/09/1999 and enforced with effect from 16/12/1999. The land of the petitioner from Survey Nos. 599/P and 600/P is affected by the reservation No.3/32 and earmarked for Primary School and Play Ground to the extent of 40 R. The State Government notified a fresh development plan sanctioned on 24/08/2001 and has been enforced w.e.f. 16/10/2001. The reservation of the land owned by the petitioner has been notified under the final development plan dated 24/08/2001.

3. Mr. Gangakhedkar would further submit that the respondent / planning authority was under obligation to acquire the land within the period of 10 years. However, no steps are taken towards acquisition of the land. The petitioner cannot use the land or he cannot have desired development of the land in pursuance of existing reservation. The petitioner issued a purchase notice dated 29/12/2017 and called upon the respondent to acquire the land. However, no steps are taken in pursuance of the such notice.

4. Mr. Gangakhedkar would further submit that since no steps towards acquisition of land reserved has been taken by the

respondent/corporation during the statutory period of two years after the service of purchase notice dated 29/12/2017, the reservation is deemed to have been lapsed and it was incumbent upon the respondents to issue notification in terms of Section 127(2) of MRTP Act.

5. Smt. Rani Bora with Mr. Satyajeet Bora Learned Advocates appearing for respondent No.2/Municipal Corporation would submit that Corporation has passed resolution No.160 dated 29/12/2018 to purchase the land under reservation. The proposal for acquisition of the land has been forwarded to the District Collector, Parbhani vide communications dated 23/10/2020 and 11/12/2020. The petitioner was requested to accept the TDR in lieu of monetary compensation. The District Collector, Parbhani under its communication dated 07/09/2021 informed the Corporation to take steps to decide the valuation of the land for the purpose of direct purchase. The petitioner was also called upon to record his consent for the valuation of the land. According to Smt. Bora, the Corporation has taken steps towards acquisition of the land. As such, she would urge to reject the writ petition.

6. We have considered the submissions advanced by the learned counsels appearing for the respective parties.

7. The petitioner is the owner of the land admeasuring Survey Nos.599/P and 600/P situated at Parbhani. Approximately 40 R land from aforesaid survey numbers have been notified under reservation No.3/32, and earmarked for Primary School and Play Ground under the development plan sanctioned for the Parbhani Municipal Council. The aforesaid reservation appears in re-notified development plan which has been sanctioned on 24/8/2001 and enforced with effect from 16/10/2001. The petitioner served the notice dated 29/12/2017 in

terms of Section 127 of the MRTP Act and requested the respondent/corporation to acquire the property under reservation. The notice is accompanied by a copy of 7/12 extract, measurement map and part of the development plan for site No.3/32. It appears that the respondent/corporation offered TDR in lieu of compensation vide communication dated 30/01/2018 and also passed the resolution dated 24/09/2018 to acquire the land. The petitioner has denied receipt of communication dated 31/01/2018. The respondent/corporation is relying upon the certain communications to show that the proposal was forwarded to the Collector for acquisition of the land and the District Collector had issued certain directions to initiate the action for direct purchase and determine valuation for that purpose.

8. Except the aforementioned communications, there is nothing to indicate that the respondent/corporation has taken effective steps for acquisition of the land reserved under the Site No.3/32 of the development plan.

9. The petitioner served the purchase notice to the respondents dated 29/12/2017. The respondent/corporation neither issued notification under Section 126 of the MRTP Act, nor has taken steps in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Communication by planning authority to offer TDR in lieu of monetary compensation cannot be construed as the steps towards the acquisition land. Similarly, the land owner cannot be compelled to accept the TDR and forgo the monetary compensation. The issue is no more *res-integra*. The Full Bench of this Court, in Writ Petition No.2231/2019 [Shree Vinayak Builders & Developers Vs. The State of Maharashtra & Others] concluded thus:

*“43. In view of the above, we answer the reference as under:*

**Question (1)** - *This Court holds that the acquisition under Section 126(1)(a) and (b) of the Maharashtra Regional & 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.”*

10. Though the respondent/corporation has passed the resolution to acquire the land and forwarded the proposal for acquisition to District Collector and District Collector in turn suggested corporation to go for the acquisition of land by direct purchase, such actions cannot be construed as effective steps for acquisition of the land.

11. The Supreme Court of India in the matter of **Girnar Traders and another Vs. State of Maharashtra reported in (2007) 7 SCC 555**, observed in Paragraph No.57 of the judgment 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 MRTTP 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 view of the aforesaid observations, in absence of issuance of notification in terms of section 126 of MRTP Act and Right to fair compensation Act of 2013 there is no room to accept the defense put-forth by the respondents. The reservation is, therefore, deemed to have been lapsed for want of requisite steps within two years from the date of service of purchase notice. The writ petition therefore succeeds. Hence, we proceed to pass the following order:

### **ORDER**

(I) The writ petition is allowed.

(II) We hold and declare that the reservation to the extent of 40 R land from Survey Nos.599/P & 600/P reserved for Primary School and Play Ground at Parbhani as part plan of development plan notified on 30.09.1999 and enforced vide notification dated 24.08.2001 stands lapsed.

(III) The respondent No.1 is hereby directed to publish notification under Section 127(2) of MRTP Act for deletion of the land to the extent of 40 R land from Survey Nos.599/P & 600/P reserved for Primary School and Play Ground at Parbhani.

**(S. G. CHAPALGAONKAR, J.)**

**(NITIN W. SAMBRE, J.)**