

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

WRIT PETITION NO. 12031 OF 2022

Gorakhnath s/o. Kashinath Gore,
Age 73 years, Occ. Business,
R/o. Shivaji Chowk, Shrigonda,
Tq.Shrigonda, Dist. Ahmednagar.

... Petitioner.

Versus

1. The State of Maharashtra
through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Collector,
Ahmednagar.
3. The Municipal Council
Shrigonda, Dist. Ahmednagar,
through its Chief Officer.

.. Respondents.

Mr. Abhijeet S. More, Advocate for petitioner
Mr. P.K. Lakhotiya, AGP for respondent Nos. 1 and 2,
Mr. P.N. Khedkar, Advocate for respondentNo.3

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

DATE : 28th APRIL, 2023

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

The petitioner has approached this court under Article 226 of the Constitution of India thereby seeking declaration that the development plan reservation No.12, in respect of land bearing CTS No.

1139 admeasuring 54.20 square meters, situated within the limits of Shrigonda Municipal Council has been lapsed and the land is free for development as per the choice of the petitioner. The petitioner further seeks direction against respondent No.1 – State of Maharashtra to issue notification of order in terms of Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the “MRTP Act”). declaring lapsing of reservation.

3. Mr. A.S. More, learned advocate appearing for the petitioner would submit that the petitioner is owner and possessor of the land bearing CTS No. 1139 admeasuring 54.20 sq. meters situated within the limits of Shrigonda Municipal Council. The respondent No.1 sanctioned the development plan for Shrigonda Municipal Council, vide notification dated 31.9.1997. The land owned by the petitioner has been affected by reservation site No.12, earmarked for Library. Although 23 years passed from the date of notification, the respondent No.3 Planning Authority/Municipal council, Shrigonda failed to take steps for acquisition of the land. The petitioner is prevented from using his land to his benefit on account existing reservation. In that view of the matter, the petitioner issued a purchase notice dated 24.9.2020 to respondent No.3 planing authority, requesting to initiate the acquisition proceedings, else, permit the petitioner to develop his land. The said notice has been duly served upon the respondent No.3 and acknowledged by his office. In spite of service of aforesaid notice, no steps in terms of Section 126 (2) read with Section 19 of the Right to Fair Compensation and Transparency of Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as, “the Act of 2013”) have been initiated for more than two years. As such, the purchase notice is not acted upon. Mr. More, therefore, urged that by operation of law, the reservation over the land of the petitioner is deemed to have been lapsed and the declaration to that effect needs to be issued.

3. Mr. P.N. Khedkar, learned counsel appearing for respondent No.3 would submit that the land of the petitioner is affected by development plan reservation earmarked for Library. The petitioner served purchase notice dated 24.9.2020 in terms of Section 127 of the MRTP Act. In deference to the purchase notice, the matter was placed for consideration before the general body of the Municipal Council on 10.3.2021. After due deliberation, the resolution No. 218 has been passed, thereby resolving not to acquire the land of the petitioner, since the Municipal Council is short of funds. He would further invite attention of this court to the communication dated 22.9.2022 issued by the Chief Officer, Municipal Council, Shrigonda and addressed to the District Collector, Ahmednagar. He would urge that the said communication shows that the proposal has been moved by the municipal council for acquisition of land with further request to take appropriate steps.

4. We have heard the learned counsel appearing for respective parties. Perused the record with their able assistance.

5. The Supreme court of India 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.”

6. Considering the aforesaid analysis of the scheme under the provisions of Sections 126 and 127 of the MRTP Act, it is mandatory on the part of the Planning Authority to take steps for acquisition of the land reserved under the development plan within a period of 10 years from the date of publication of Development plan notification. In the present case, the notification of sanctioned development plan has been issued on 14.3.1997 by the respondent No.1. The sanctioned development was enforced from 31.9.1997. The reservation site No.12 shows that the land bearing Survey No. 1139 has been affected by reservation and earmarked for library. In that view of the matter, it was incumbent upon the planning authority/respondent No.3 to take adequate steps to acquire the land in terms of Section 126(2) of the MRTP Act, read with section 19 of the Act of 2013. It is evident that for more than 23 years, reservation clamped on the land of the petitioner was never acted upon, which prompted him to issue purchase notice dated 24.9.2020. It has been duly acknowledged by the office of the respondent No.3 Municipal Council. Pertinently, under general body resolution dated 10.3.2021 passed by the Municipal council, it has been resolved not to acquire the land of the petitioner for want of requisite funds. Conversely, vide communication dated 16.7.2021, the request of the petitioner seeking permission for development of the land has been rejected giving reference to development plan reservation vide site No.12. Further, the

communication is made on 22.9.2022 to the District Collector in form of the proposal for acquisition of the land in response to purchase notice issued by the petitioner. As such, we observe that the Municipal council is adopting inconsistent stand.

7. Perusal of the record shows that the petitioner has duly served purchase notice dated 24.9.2020. After service of notice within a period of two years, the respondent No.3 Municipal council was expected to take necessary steps for acquisition of the land, if they were to implement the development plan. The respondent No.3 Chief Officer, Municipal Council, inconsistent with the resolution of the Municipal Council, forwarded communication dated 22.9.2022 i.e just two days before expiry of two years statutory notice period to the District Collector, requesting to take appropriate action in deference to the purchase notice dated 24.9.2020. However, said communication cannot be termed as “requisite step” towards acquisition of the land in view of law laid down by supreme court of India in case of Girnar Traders (Supra). On expiry of period of two years from date of service of purchase notice i.e.24.9.2020, the reservation stood lapsed by operation of law. After expiry of two years from the date of purchase notice, the petitioner approached this court seeking declaration as prayed to which he is entitled under law.

8. For the reasons stated hereinabove, the writ petition succeeds. Hence, we pass the following order:-

ORDER

[I] Writ petition is allowed.

[ii] We hold and declare that development plan reservation of land bearing CTS No. 1139 admeasuring 54.20 square meters situated within the limits of Shrigonda Municipal Council, Dist Ahmednagar from reservation site No.12

earmarked for 'Library' is lapsed.

- [iii] The respondent No.1 is directed to issue notification of order in terms of Section 127(2) of the MRTP Act, notifying release of land bearing CTS No. 1139 admeasuring 54.20 square meters, situated within the limits of Shrigonda Municipal Council, Dist Ahmednagar from development plan reservation site No.12, earmarked for 'Library' within period of six months of this order.

[S.G. CHAPALGAONKAR]
JUDGE

[NITIN W. SAMBRE]
JUDGE

grt/-