

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

WRIT PETITION NO.13925 OF 2021

1. Namdeorao Bhausahab Padole,
Age: 86 years, Occu. Agriculturist,
R/o: Bhutkarwadi, Sawedi Road,
Ahmednagar
2. Appasaheb Vithal Padole,
Age: 48 years, Occu. Agriculturist,
R/o: Bhutkarwadi, Sawedi Road,
Ahmednagar
3. Ishwar Vithal Padole
Age: 60 years, Occu. Agriculturist,
R/o: Bhutkarwadi, Sawedi Road,
Ahmednagar

... **PETITIONERS**

VERSUS

1. The State of Maharashtra
Through the Secretary
Ministry of Urban Development
Mantralaya, Mumbai-32
2. The Director of Town Planning,
Maharashtra State,
Pune
3. Ahmednagar Municipal Corporation,
Through its Municipal Commissioner,
Ahmednagar
4. Assistant Director of Town Planning,
Municipal Corporation Ahmednagar,
Ahmednagar
5. The District Collector,
Ahmednagar

... **RESPONDENTS**

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Advocate for Petitioners : Mr. D.P. Palodkar
AGP for respondent - State : Mr. P.K. Lakhotiya
Advocate for respondent Nos.3 and 4 : Mr. K.N. Lokhande

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

DATE : 01.02.2023

ORDER :

The petitioner is seeking declaration regarding lapsing of reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (herein after the MRTTP Act).

2. We have heard both the sides and perused the papers.

3. The law as regards lapsing of reservation as contemplated under Section 127 of the MRTTP Act has been crystallized by catena of judgment. The oft-quoted decision in the matter of **Girnar Traders Vs. State of Maharashtra; 2007 (7) SCC 555**, clearly declares that any step towards acquisition as contemplated in that provision would be nothing short of issuance of a notification under Section 126 read with the relevant provision of the Land Acquisition Act, 1894. The consequences of failure to take such steps within the statutory time of 10 years from the date of enforcement of the development plan and further 24 months after a notice is issued by the land owner under Section 127 seals the fate.

4. There is no dispute between the parties as regards the facts. The petitioners' final plot No.10/1/2, Ahmednagar No.4, Ahmednagar, admeasuring 4038.09 sq. mtrs was put under reservation for primary school and playground in the Revised Development Plan of the respondent - Municipal Corporation which came into effect from 21.08.2008. After lapse

of 10 years since no steps were taken the petitioners served notice to the respondent Corporation on 07.02.2019 and after waiting for 24 months has filed this petition on 08.12.2021. The respondent - Corporation in its affidavit submits that the proposal was kept before the Commissioner for approval and it was thereafter forwarded to the State Government. The fact remains that irrespective of the *bona fides* on the part of the respondent - Corporation, the steps were not sufficient as is the requirement of the law as interpreted in **Girnar Traders** (supra). When no notification 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 was issued within the statutory time limit of 10 years plus 24 months after receipt of the notice, consequences are inevitable.

5. The writ petition is allowed. It is declared that the reservation on the petitioners' property bearing Final Plot No.10/1/2, Ahmednagar stands lapsed. The respondents shall take immediate steps for issuance of notification under Sub-Section 2 of Section 127 of the MRTP Act.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)