

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

WRIT PETITION NO.13958 OF 2021

Jaspalsing Niranjansing Saluja,
Age: 51 years, Occu. Business,
R/o: Sawedi, Taluka and
District 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. S.J. Salgare
Advocate for respondent Nos.3 and 4 : Mr. V.S. Bedre

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

Reserved on 01.02.2023

Pronounced on : 07.02.2023

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

The petitioner is seeking declaration regarding lapsing of reservation under Section 127 of the Maharashtra Regional and Town

Planning Act, 1966 (herein after the MRTP Act). The petitioner claims that he is the owner of 40 Are portion from the land Gut No.9/1B-2 which is a part of the entire land reserved for playground in a development plan (Excluded Part) of the respondent - Municipal Corporation which came into effect from 21.08.2008.

2. We have heard both the sides and perused the papers. There is no dispute about the fact that though some attempts were made by the respondent - Corporation to take steps towards acquisition of the reserved land, those did not travel beyond a proposal to be forwarded to the department of corporation of the State Government. Even the affidavit-in-reply rests at that.

3. Conspicuously, the affidavit-in-reply does not mention about any step towards acquisition as is contemplated by law as interpreted in the matter of **Girnar Traders Vs. State of Maharashtra; 2007 (7) SCC 555**, was taken for issuance of any notification under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act, 1894 and Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. There is also no dispute regarding the fact that a notice under Section 127 was issued by the petitioner after lapse of 10 years of coming into force of the Development Plan (EP). There is also no dispute that after waiting for 24 months the petition has been filed.

4. The only grievance raised by the respondent - Municipal

Corporation in reply to the petitioner's notice under Section 127 and also in the affidavit-in-reply and as submitted by the learned advocate Mr. Bedre is to the effect that the petitioner is not the owner of the entire land that was reserved and is only an owner of a portion of 40 Are out of 1 Hectare and 2 Are portion and therefore he is not entitled to seek any declaration. Though at the first blush the argument of Mr. Bedre and the stand of the respondent Corporation catches eye, it is pertinent to note that there is a distinction between the concept of joint ownership and ownership in common. The petitioner is the owner of a distinct 40 Are portion from the land survey No.9/1B-2. The map also specifically demarcates the portion of 40 Are exclusively owned by him. Therefore, it is abundantly clear that the petitioner is merely having the ownership in common as distinguished from a joint ownership. The respondent is not disputing the fact that the 40 Are portion owned by the petitioner is identifiable. Consequently the stand of the respondent Corporation to make out capital out of this fact deserves to be discarded.

5. The Second objection being raised by the respondent corporation is regarding absence of any approachable road to the petitioner's land. The stand needs to be mentioned only for discarding it. When the law does not take into consideration any exception regarding the consequences of lapsing of reservation under Section 127 of the MRTP Act, absence of any approachable road to the land which is to be dereserved is too spacious a ground to be considered for rejection of claim of lapsing of

reservation.

6. The writ petition is allowed. It is declared that the reservation on the petitioner's property admeasuring 40 Are from land bearing Survey No.9/1B-2, Savedi Ahmednagar (writ property) 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.)