



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.767 OF 2022

Kishor Suryabhanji Naukarkar,
Age 55 years, Occupation – Business,
R/o. C/o. Ramesh Nauakakar,
Veer Hanuman Ward, Hinganghat,
District Wardha

...PETITIONER

VERSUS

1. The State of Maharashtra,
through the Director of Town Planning,
Central Building, Pune-1
2. The Municipal Council (M.C.)/Nagar Parishad
Hinganghat, through its Chief Officer,
Tq. Hinganghat, District Wardha
3. Assistant Director of Town Planner Wardha,
Town Planning & Valuation office, Wardha
Off. Ambedkar Chowk,
Sawangi Road, Near Stadium,
Wardha

...RESPONDENTS

Mr. G.K. Mundhada, Advocate for the petitioner.
Mrs. Kalyani Deshpande, Assistant Government Pleader for
respondent Nos.1 and 3/State.
Mr. Anand Deshpande, Advocate for respondent No.2.

**CORAM : PRITHVIRAJ K. CHAVAN &
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : OCTOBER 11, 2023

PRONOUNCED ON : OCTOBER 13, 2023

JUDGMENT (Per Urmila Joshi-Phalke, J.)

RULE. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for both the parties.

2. By this petition, the petitioner has claimed that the declaration that the reservation in Revised Development Plan for the City of Hinganghat for Primary School vide Reservation No.87 dated 15/06/2006 admeasuring 1.03 HR of village Shahalangadi, Taluka Hinganghat, District Wardha be declared as lapsed under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred as “the MRTP Act” for short) and be declared that the petitioner is free to develop the land owned by him as per the development plan permissible to adjacent land. The petitioner also claimed the directions to the respondents to notify and publish lapsing of reservation in the official Gazette under Section 127 of the MRTP Act.

3. The petitioner is the owner of Khasra No.96/4 admeasuring 1.03 HR of village Shahalangadi, Taluka Hinganghat, District Wardha (hereinafter referred as “said land” for short) which is situated within the Municipal Limits of the Hinganghat Municipal Council. Respondent No.1 who is the Director and Technical Head of Town Planning and

Valuation Department of Maharashtra State whereas respondent No.2 is the Municipal Council, Hinganghat is responsible and the appropriate authority for whom the reservation is kept and under legal obligation for acquiring the affected land as per Section 2(3) of the MRTP Act.

4. In view of Revised Development Plan for the City of Hinganghat which was sanctioned by the State Government and published under sub-section (1) of Section 31 of the MRTP Act and Notification No.TPS 2905/3248/CR-121(A)/05/UD-9 dated 26/04/2006 and which came into force with effect from 15/06/2006. By the said Revised Development Plan of Hinganghat city, the land owned by the petitioner was reserved for the purpose of Primary School vide Reservation No.87. Respondent No.2 - Municipal Council is the Local authority and is also appropriate authority under Section 2(3) of the MRTP Act for whom the reservation is kept. Due to the reservation of the land, the petitioner is deprived from the beneficial use of the said land from residential use as the said land owned by him was reserved for the development plan of Hinganghat city. Though the land was reserved for the Development Plan but no steps were taken by the respondents for the acquisition of the said land within the prescribed period. Therefore, on 26/09/2018, the petitioner has issued notice under Section 127 of the MRTP Act. By the said notice, respondents were requested to initiate

the acquisition of the said land as it has been reserved for the above stated purpose. Said notice was sent along with 7/12 extract, 8-A extract, measurement sheet and relevant documents showing details of reservation published under Section 31(6) of the MRTP Act. Said notice was received by the respondents on 26/09/2018 itself. Despite of receipt of the notice, the respondents have not taken any steps for the acquisition of the said land. The statutory period came to an end on 25/09/2020 and in view of that the reservation of the above said property stands lapsed. The Counsel of the petitioner had made inquiry in the office of respondent No.2 whether they have taken any steps in pursuance of the said notice but it was informed that respondent No.2 has not forwarded any proposal to the Collector, Wardha due to the weak financial position and, therefore, no notification or declaration was issued under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 read with Section 126 of the MRTP Act.

5. As the petitioner is aggrieved and desirous to develop the said land, he requested the respondents either to take steps or to release his land. The respondents were under statutory obligation to commence and complete acquisition proceeding under Section 126(2) and (4) read with Section 19 of the Right To Fair Compensation And Transparency In Land

Acquisition, Rehabilitation And Resettlement Act, 2013 within the statutory period of 24 months from the receipt of the said notice under Section 127 of the MRTP Act and, therefore, the petitioner approached to this Court for direction of lapsing of the reservation as no steps were taken by the respondents to acquire the said land.

6. Said petition is opposed by respondent No.2 on the ground that due to paucity of funds, respondents have not initiated any steps for the acquisition of the land. It is further the contention of the respondents that the land in question is shown for the public utility like school and play ground and if the reservation is lapsed, the development plan get affected and the city could not be developed as per the development plan and prays for dismissal of the writ petition.

7. Heard Mr. G.K. Mundhada, learned Counsel for the petitioner, Mr. Anand Deshpande, learned Counsel for respondent No.2 and Mrs. Kalyani Deshpande, learned Assistant Government Pleader for respondent Nos.1 and 3.

8. Learned Counsel for the petitioner reiterated the contention raised in the writ petition. In addition to the same he submitted that in view of the statutory provisions, it was the duty of the respondents to acquire the land within the statutory period of 24 months after issuance

of the purchase notice, no effective steps are taken by the respondents. The statutory period has come to an end on 25/09/2018. The respondents have not issued any notification under Section 126 (2) of the MRTP Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013.

9. Heard Mr. Anand Deshpande, learned Counsel for respondent No.2. He reiterated the contention that due to paucity of funds, respondent No.2 could not take a step for the acquisition of the land. Learned Counsel for respondent No.2 as well as Mrs. Kalyani Deshpande, learned Assistant Government Pleader for respondent Nos.1 and 3 submitted that considering the land in question is shown for the public utility like school and play ground and if the reservation is lapsed, the development plan would get affected. In view of this, the writ petition is liable to be dismissed.

10. Having heard both the sides and on perusal of the record, it is necessary to consider whether the petitioner has made out the case for lapsing of the reservation. It is an admitted fact that the land was reserved in the year 2006 by 1st revised Development Plan of the city of Hinganghat vide Reservation No.87 vide Notification No.TPS 2905/3248/CR-121(A)/05/UD-9 which was sanctioned on 26/04/2006

and came into force on 15/06/2006. The land was reserved for the primary school and play ground in Hinganghat city. There is no dispute as far as the factual aspect is concerned as no steps for acquiring the land have been taken. The position has reached at the stage where the petitioner who is the owner of the land has now issued a notice under Section 127 of the MRTP Act on 26/09/2018. The statutory period of 24 months has already been expired inspite of which no proceeding for acquisition have been commenced which resulted into filing of the said writ petition.

11. The entire controversy in this petition revolves around Section 126 and Section 127 of the MRTP Act. The statutory mandate under Section 126 denotes that while acquiring the land for public purposes, the due procedure given under Section 126(2) of the MRTP Act is to be followed. Section 126 of the MRTP Act is reproduced hereunder :

“126. Acquisition of land required for public purposes specified in plans

(1) When after the publication of a draft Regional Plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time, the Planning Authority, Development Authority, or as the case may be, [any Appropriate Authority may, except as otherwise provided in section 113A] [acquire the land,—

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned [on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], Floor Space Index [FSI] or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making in application to the State Government for acquiring such land [under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections [or under the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority. Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or [if the State Government (except in cases falling under section 49 (and except as provided in section 113A))] itself is of opinion] that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, [in the manner provided in section 6

of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

*[**Provided that**, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.]*

[(3) On publication of a declaration under the said section 19], the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,—

(i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as undeveloped area; and

(iii) in any other case, the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme:

***Provided that**, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972 :*

***Provided further that**, for the purpose of clause (ii) of this sub-section, the market value in respect of land included in any undeveloped area notified under*

subsection (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.]

[(4) [Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration,] is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993]), the State Government may make a fresh declaration for acquiring the land [under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh.]"

12. Whereas Section 127 of the MRTP Act speaks about consequences if timeline is not followed by the Government by taking appropriate steps. It states that if no steps are taken by appropriate authority within 24 months from the date of service of such notice, the reservation, allotment or designation shall be deemed to have lapsed. Thus, the MRTP Act fixes timeline which have to be followed, failing which consequences of lapses to be followed.

13. The Hon'ble Apex Court in the case of ***Chhabildas Vs. State of Maharashtra and ors. [(2018) 2 SCC 784]*** in paragraph No.7 observed

thus :

“(7). If within one year from the date of confirmation of the notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.”

14. In another judgment of the Hon’ble Apex Court in the case of ***Prafulla C. Dave and ors. vs. Municipal Commissioner and ors. [(2015) 11 SCC 90]*** held thus:

“21. Under Section 127 of the M.R.T.P. Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the M.R.T.P. Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceeding for acquisition are not initiated within 10 years from the date on which

the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to be lapsed within which time the authority can still initiate the necessary action. Section 127 of the M.R.T.P. Act or any other provision of the M.R.T.P. Act does not provide for automatic lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of 10 years. On the contrary, upon expiry of the said period of 10 years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127 of the M.R.T.P. Act.....”

15. In ***Kolhapur Municipal Corporation and others. vs. Vasant Mahadev Patil (dead), through LRs & Others, [2022 LawSuit (SC) 171]***, the Hon’ble Supreme Court held that when by operation of law the reservation is deemed to have lapsed under Section 127(1) of the Act of 1966 the reservation lapses for all purposes and for all times to come. In the said decision the Hon’ble Supreme Court was further pleased to observe that on the deemed lapse of such reservation under Section 127(1) of the said Act no writ of mandamus can be issued by the High Court to direct acquisition of that land and pay compensation to the land owners as on the lapse of such reservation the land becomes free and the

land owners can use the land as if there was no reservation but subject to the provisions of the Act of 1966.

16. In the light of what has been held hereinabove, we find that as no steps are taken by the respondents, respondent No.2 has shown its inability to initiate acquisition proceeding due to paucity of the funds, the petitioner is entitled for the relief of a direction to permit them to develop that part of the land which was subjected to reservation and notice under Section 127(1) of the MRTP Act was issued. Accordingly, it is held that in terms of notice dated 26/09/2018 issued with regard to the land bearing Khasra No.96/4 admeasuring 1.03 HR of village Shahalangadi, Taluka Hinganghat, District Wardha, the reservation is deemed to have lapsed. The petitioner is hence entitled for the relief of a direction to permit him to develop the land as prayed by him which was subjected for reservation and notice under Section 127(1) of the MRTP Act was issued.

17. In the result, we proceed to pass the following order :

- (i) Writ petition is allowed.
- (ii) It is declared that Khasra No.96/4 admeasuring 1.03 HR of village Shahalangadi, Taluka Hinganghat, District Wardha reserved vide Reservation No.87 is declared as lapsed

under Section 127 of the Maharashtra Regional and Town Planning Act, 1966.

(iii) Respondent No.1 – The State of Maharashtra, The Director of Town Planning, Pune shall issue notification indicating lapsing of aforesaid reservation within a period six weeks from the receipt of copy of the judgment.

(iv) It is declared that the petitioner is free to utilize the aforesaid land in the manner as permissible under the development plan as applicable to the adjoining land.

18. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(PRITHVIRAJ K. CHAVAN, J.)

**Divya*