



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3188 OF 2022

Anil s/o Bapurao Yvawahare,
Aged about 68 years, Occ : Agriculturist,
R/o. Near Black Maroti Temple,
Pusad, Tq. Pusad, District Yavatmal. PETITIONER

// VERSUS //

1. District Collector, Yavatmal,
2. Sub Divisional Officer, Umarkhed,
Tahsil Umarkhed, District Yavatmal.
3. Municipal Council, Umarkhed,
through its Chief Officer, Umarkhed,
Taluka Umarkhed, District Yavatmal. RESPONDENTS

Shri. A. M. Ghare, Advocate for petitioner.
Ms. T. H. Khan, AGP for respondent Nos.1 and 2.
Shri. V. R. Chaudhari, Advocate for respondent No.3.

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.
RESERVED ON : 22.08.2023
PRONOUNCED ON : 12.09.2023**

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule is made returnable forthwith.
2. Heard finally with the consent of both the parties.
3. The Survey No.331/3 admeasuring 1 H 21 R, situated at Mouza Umarkhed Khand – 2, Taluka Umarkhed, District Yavatmal which totally

admeasuring 9 H 44 R was owned by one Bhujangrao @ Pradip Bhaurao Ekbode. There was some dispute between the original owner Bhujangrao and one Shri Kawane. The dispute was settled between the parties in the year 1998. Thereafter, the said Bhujangrao @ Pradip Bhaurao Ekbode executed a registered sale deed in favour of Gopalrao Laxmanrao Kondawar resident of Shrirampur, Pusad on 21.03.1998. For the said sale deed, Prabhu Kawane and others have given consent. Accordingly, sale deed was executed on 21.03.1998 in favour of Gopalrao Laxman Kondawar, After execution of sale deed, said Gopalrao Kondawar became the owner and possessor of the said land admeasuring 9 H 44 R. Accordingly, the mutation was effected in the revenue record. The said Gopalrao Kondawar sold 1 H 21 R land by demarcating South – North Dhura towards middle portion of the above land to the petitioner by executing sale deed on 16.12.1998. Thus, the petitioner Anil Bapurao Vyawahare became the owner of Survey No. 331/3 admeasuring 1 H 21 R land as absolute owner and possessor thereof. His name was also mutated.

4. The development plan of respondent No.3 was approved by the State Government on 27.01.1999 and said development plan was implemented from 15.04.1999. As per the said development plan, field survey No. 331/3 admeasuring 1 H 21 R was reserved for garden vide

reservation No.18. Relevant extract filed on record shows the reservation No.18 over 1 H 21 R of land from Survey No.331 for purposes of garden.

5. As per the contention of the petitioner though the said land had been reserved for the garden under the development plan and the respondent No.3 was under obligation to acquire the land within a period of ten years, however, the respondent No.3 has not taken any steps to acquire the said land. Therefore, the petitioner issued a legal notice to the respondent No.3 under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as “the MRTPA Act”) on 02.08.2019. The said notice was duly served upon the respondent No.3 on 05.08.2019. After receipt of the notice also no steps are taken by the respondent No.3 to require the land owned by the petitioner for the purposes of reservation No.18 under the development plan. Due to failure of the respondent No.3 to perform its statutory duty the petitioner is subjected to loss as he was prevented from developing the said land as said land was reserved under the development plan.

6. The petitioner on 17.08.2021 has raised objection and issued the objection notices to the respondent No.3 and Regional Director Town Planning, Amravati to bring to the notice of the said

authorities that due to their inaction to acquire the land owned by the petitioner, the alleged reservation No.18 has lapsed. The notices were duly received by the authorities, however, till date no steps are taken by the respondent Nos.2 and 3, and therefore, the reservation No.18 of Survey No.331/3 of Mouza Umarkhed Khand No.2 already stood lapsed in view of Section 127 of the MRTP Act. Therefore, the petitioner prayed that it be declared that the petitioner is free to develop the land owned by him in the manner permissible to adjacent land as per the development plan and respondent No.2 to issue notification indicating de-reservation of the aforesaid land.

7. The respondent No.3 – Municipal Council, Umarkhed raised the objection on the ground that as there was no regular Chief Officer appointed for Municipal Council, Umarkhed and the Chief Officer of Municipal Council, Pusad is holding the additional charge of Municipal Council, Umarkhed, therefore, he could not take the steps and he is unable to file his detail submission. It is further contended that the land admeasuring 1 H 21 R out of the field Survey No.331/3 of Mouza Umarkhed Khand - 2, Taluka Umarkhed, District Yavatmal is reserved vide reservation No.18 for garden. The development plan of respondent No.3 was approved by the State Government. It is further admitted that they have received the notice issued by the petitioner dated 02.08.2019,

therefore, the Municipal Council General Body has passed the resolution in meeting dated 20.08.2019 and passed resolution to acquire the said land and accordingly answering respondent issued a letter to the acquisition officer i.e. the office of Collector, Yavatmal. However, there was some error in the said proposal. Subsequently all the errors were rectified and the proposal was submitted to the Collector for acquisition of the said land. The Municipal Council has already submitted all the required documents to the Collector, Yavatmal. The Municipal Council has received order dated 27.12.2019 from the Collector, Yavatmal and respondent No.3 informed to the Sub-Divisional Officer, Umarkhed that the proposal for acquiring the land as per resolution No.18 for garden, the proposal was already forwarded to the Collector, Yavatmal along with all the requirements. It is further contended that the respondent No.3 has also issued a letter to the Sub-Divisional Officer, Umarkhed by its letter dated 30.12.2021 informing that a notice was received from the petitioner under Section 127 of the MRTP Act. With this submission, it is prayed that petition is to be dismissed.

8. Heard learned Counsel Shri A. M. Ghare for the petitioner, learned AGP Ms. T. H. Khan, for respondent Nos.1 and 2/State and Shri V. R. Chaudhary for respondent No.3.

9. It is an admitted position, as per the reply filed by the respondent No.3 that vide Notification dated 27.01.1999 the development plan was approved by the State Government and said development plan was implemented from 15.04.1999. As per the said development plan, the land owned by the petitioner was reserved for garden vide reservation No.18. Admittedly, within 20 years no steps have been taken by the respondent No.3 for acquisition of the said land for the purpose of which it was reserved. It is the part of the record that the petitioner who could not cultivate or develop the land as it was under the reservation. As no steps are taken by the respondent No.3 within ten years, the petitioner has issued the notice under Section 127 of the MRTP Act on 02.08.2019. Admittedly, the said notice was received by the respondent No.3. The respondent No.3 has admitted in reply that said notice was received. After receipt of the notice on 02.08.2019, no steps have been taken within 24 months for the acquisition of the said land. The entire issue revolves around Sections 126 and 127 of the MRTP Act. The statutory mandate under Section 126 of the MRTP Act denotes that while acquiring the land for public purposes, due procedure given under 126(2) of the MRTP Act has to be followed.

10. The entire controversy in this petition revolves around Sections 126 and 127 of the M.R.T.P. 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 M.R.T.P. Act is to be followed. Section 126 of the M.R.T.P. Act 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 sub-section (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.]”

11. Section 127 of the M.R.T.P. 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 M.R.T.P. Act fixes timeline which have to be followed, failing which consequences of lapses to be followed.

12. The Hon’ble Apex Court in the case of **Chhabildas Vs. State of Maharashtra and Ors.**, reported in **(2018) 2 SCC 784** in para 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.”

13. 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.....”

14. Thus, the principle underlying in Section 127 of the MRTP Act is either to utilize the land for the purpose for which it is reserved in the timeline given or let the owner utilize the land for the purpose as permissible under the town planning scheme. The reservation shall be deemed to have lapsed if no steps are taken for acquisition of the land within the prescribed period. Admittedly, in the present case, the respondents have not taken any steps to issue notification after receipt of the notice. This issue came up before the Hon’ble Apex Court in **Kolhapur Municipal Corporation and others Vs. Vasant Mahadev Patil (Dead) through legal heirs and others** reported in **2022 LawSuit (SC) 171** wherein in it is 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 Apex further observed that on the deemed lapsed 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.

15. In the light of well settled legal position, in view of decision referred above, the petitioner is entitled for relief of declaration as regards lapsing of reservation in respect of the property owned by him. Thus, the provisions under Sections 126(2) and 127 of MRTP Act fixes timeline which have to be followed, failing which consequence of deemed lapsing would follow.

16. In the above circumstances, we find that the respondent No.3 Municipal Council has failed to acquire the land within the stipulated period as per the provisions of MRTP Act. The Writ Petition therefore, succeeds and it deserves to be allowed. We, therefore, proceed to pass following order.

(i) The Writ Petition is allowed.

(ii) It is declared that reservation No.18 for garden affecting the land owned by the petitioner vide Survey No. 331/3 admeasuring 1 H 21 R situated at Mouza Umarkhed Khand – 2, Taluka Umarkhed, District Yavatmal is declared to have lapsed under Section 127 of the MRTP Act, 1966.

(iii) The respondent No.2 – Sub-Divisional Officer, Umarkhed, Taluka Umarkhed, District Yavatmal shall issue notification indicating lapsing of reservation, notifying and publishing it in the official gazette within a period six weeks from the receipt of the copy of the judgment.

(iv) The petitioner is free to develop the land in question in accordance with the existence plan as permissible for adjoining lands.

17. Rule is accordingly made absolute with aforesaid terms. No order as to costs.

(URMILA JOSHI-PHALKE, J.) (AVINASH G. GHAROTE, J.)

Sarkate.