

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

WRIT PETITION NO.7447/2022

Dr. Vasant Rushaji Masram,
age 79 Yrs., Occ. Retired,
R/o Plot No.8, Mahalakshmi Society,
Manish Nagar, Nagpur.

... Petitioner

- Versus -

1. The State of Maharashtra,
through the Director of Town
Planning, State of Maharashtra,
Central Building, Pune -1.
2. Municipal Council (M.C.) / Nagar
Parishad, Ballarpur, through its
Chief Officer, Tq. Ballarpur,
Dist. Chandrapur.
3. Assistant Town Planner Chandrapur,
Town Planning & Valuation Office
Chandrapur, Branch Office, Prashaskiy
Building, 2nd Floor, Room No.23,
Chandrapur, Pin 442 101.

... Respondents

Mr. Girish K. Mundhada, Counsel for the Petitioner.
Mr. M.K. Pathan, Additional Government Pleader for
Respondents 1 and 3 / State.
Mr. M.V. Bute, Counsel for Respondent 2.

CORAM: ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 11.4.2023

ORAL JUDGMENT (Per Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. By this petition, the petitioner is seeking relief of declaration that the land owned by the petitioner stand lapsed from the reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) due to non-issuance of notification under Section 126 of the MRTP Act read with Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

3. The petitioner is owner and possessor and person interested in the above land of Survey No.200, area admeasuring 0.95 HR of Mouja Ballarpur, Tq. Ballarpur, Dist. Chandrapur.

4. The final development plan of Ballarpur City was published under Section 31(1) vide notification No.TPS-2202/1260/CR-2B/2004/UD-9 dated 16.8.2005 and came into force on 1.10.2005. After modification sanctioned by government under Section 31(1) of the MRTP Act vide above notification, the excluded part of the development plan of Ballarpur City in which the development of said property owned by the petitioner affected area admeasuring 6900.54 Sq. Mtrs. is shown to be reserved for the purpose of 'play ground' vide reservation No.75.

5. As the petitioner was interested in the development of said land had issued notice under Section 49 of the MRTP Act on 1.4.2011 and had also preferred the Writ Petition No.645/2020. Said petition was withdrawn by the petitioner on 22.9.2022 with liberty to file a fresh petition.

6. The petitioner has explored all the remedies provided by statues for development of said land after issuing notice under

Section 49 on 1.4.2011 but not receiving any fruitful result, the petitioner issued fresh notices under Section 127 of the MRTP Act on 8.3.2016, on 20.4.2016 and 20.6.2016 and he requested to respondent No.2 to initiate the acquisition proceedings or to declare that the said reservation stand lapsed. On 31.8.2016 respondent No.2 directed the petitioner to submit all the required documents showing ownership of the petitioner. On 9.2.2017 he gave a letter giving reference of notice under Section 49 on 1.4.2011 and stated that all the required documents showing ownership of petitioner were already submitted with notice under Section 49 dated 1.4.2011. Again on 19.9.2018 petitioner had issued purchase notice under Section 127 of the MRTP Act to respondent No.2 giving reference of all the previous communications made by the petitioner along with all documents showing his interest in the property. The notice dated 19.9.2018 issued under Section 127 of the MRTP Act was served along with documents such as 7/12 extract, part plan of the development plan and proposed lay out plan. In response to the purchase

notice under Section 127, which fulfilled all the statutory requirements of Section 127 of the MRTP Act, respondent No.2 has immediately on 2.11.2018 in General Body Meeting of Municipal Council, Ballarpur, Tq. Ballarpur, Dist. Chandrapur had taken decision unanimously to initiate the acquisition proceedings to acquire the said land by sending a proposal for acquisition to the Collector, Chandrapur.

7. As the petitioner was desperately in need of monetary compensation he had issued two communications in the form of request notice to respondent No.2 on 8.2.2019 and 6.8.2019 in which a request to disburse the compensation amount by completing the acquisition proceedings by taking into consideration the Resolution No.2 dated 2.11.2018 which was passed unanimously for acquisition of the same in which it has been resolved to acquire the said land of the petitioner and release compensation by way of executing the sale deed was made.

8. On 9.8.2019 respondent No.2 had submitted incomplete land acquisition proposal to the Collector, Chandrapur vide Outward No.3921/2019 without making preliminary arrangement for the deposit of compensation in respect of the said land in question, in respect of which it is necessary to initiate the acquisition proceedings or else the reservation affecting the said land owned by the petitioner will lapse. Along with the said letter respondent No.2 informed about the General Body Resolution No.2 passed unanimously on 2.11.2018 for initiating the acquisition proceedings in respect of the said land of petitioner along with said letter notice issued by the petitioner. Respondent No.2 on 21.8.2019 had informed the petitioner that proposal for acquisition of the said land owned by him and determination of compensation amount to be paid to the petitioner has been submitted to Collector, Chandrapur, and said proposal is pending before the Collector.

9. On 21.4.2022 deficiency letter was issued by the Special Land Acquisition Officer, Ballarpur appointed by Collector, Chandrapur for the purpose of acquisition in respect of said land for which proposal for acquisition has been submitted by respondent No.2. Eight deficiencies were pointed out by respondent No.2. By said letter the Sub-Divisional Officer, Ballarpur has directed respondent No.2 to fulfil the said deficiencies. As there were deficiencies in said proposal, the proposal for acquisition has been returned back to respondent No.2 by the Sub-Divisional Officer, Ballarpur.

10. It is argued by the learned counsel for the petitioner that the steps required to initiate the land acquisition proceedings under the MRTP Act is publication of declaration under Section 126(2) and (4) of the said Act. No such declaration has been published within a period of 24 months as contemplated by Section 127 of the MRTP Act. The said publication should be reckoned from the date of service of notice dated 19.9.2018.

Statutory period came to an end on 18.9.2020 which is over and thus reservation of the said land stand lapsed.

11. The notices were issued. The respondents have not filed their reply. On the date of hearing, the learned counsel for the petitioner has stated that issue is covered by the judgments of this Court and the Hon'ble Supreme Court. Therefore, we heard the petition. The provisions of Section 127(1) of MRTP Act show that notice can be issued by the owner or any person interested in the land, and in consequence of such notice, the person issuing notice becomes entitled to development as otherwise, permissible in the case of adjacent land under the relevant plan. In petition there is no express challenge to the communication dated 21.4.2022. There is an effort to seek a declaration that reservation has already lapsed. Support is being taken from notice issued under Section 127. It is, therefore, obvious that the petitioner is not accepting the communication dated 21.4.2022 as legal and valid and, therefore, has sought

declaration of lapse of reservation in the present petition. The petitioner has urged that said communication dated 21.4.2022 has no significance in law.

12. The petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of Laxmikant and others V/s. State of Maharashtra and others reported in **2022 7 SCC 252**.

13. The statutory period of 24 months has thus expired on 18.9.2020. No declaration under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 126(2) of the MRTP Act has been issued or published. It is by fiction of law after the lapse of 24 months if no steps for acquisition are taken, the reservation of land stands lapsed and benefit would accrue to the owner of the land. In view of the above discussion, the writ petition is allowed in terms of prayer

clauses (A) and (B). Rule is made absolute in the aforesaid terms.

There shall be no orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)