



Judgment

119 wp8256.22

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

WRIT PETITION NO.8256 OF 2022

1. Prabhakar Haribhau Akhade, age : 67 years,
occupation : agriculturist.
2. Lataru Kashinath Balki, age : 75 years,
occupation : agriculturist.
3. Pratap Jagannath Mane, age : 73 years,
occupation agriculturist.
4. Vijay Nilkanth Ghate, age : 65 years,
occupation agriculturist.
5. Vijay Balaji Lande, age : 67 years,
occupation agriculturist.
6. Vasant Tikaram Lanjewar, age : 83 years,
occupation agriculturist.
7. Sharifa Hatim Ali Noor deceased through
legal heir Noor Quaizar Hatimbhai
Munnawarali Noor, age : 35 years,
occupation : agriculturist.
8. Abdul Samad Shekh Ismail, age : 67 years,
occupation : agriculturist.
9. Vasant Ramchandra Kutarekar, age : 65 years,
occupation : agriculturist.

All r/o Near Hotel Square Point, Ganpati Ward,
Ballarpur, taluka Ballarpur, district Chandrapur. **Petitioners.**

:: V E R S U S ::

1. The State of Maharashtra, through the
Director of Town Planning, State of
Maharashtra, Central Building, Pune-1.

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2. The Municipal Council (M.C.)/Nagar Parishad, through its Chief Officer at Ballapur, taluka Ballarpur, district Chandrapur, PIN – 442 902.

3. Assistant Town Planner Chandrapur, Town Planning & Valuation office Chandrapur, Branch office, Prashaskiy Building, 2nd Floor, Room No.23, Chandrapur, PIN – 442101. **Respondents.**

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Shri G.K.Mundhada, Counsel for Petitioners.
Shri M.V.Bute, Counsel for Respondent No.2.
Mrs.K.R.Deshpande, Assistant Government Pleader for Respondent Nos.1 & 3.

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CORAM : PRITHVIRAJ K.CHAVAN & URMILA JOSHI-PHALKE, JJ.
CLOSED ON : 18/10/2023
PRONOUNCED ON : 26/10/2023

JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri G.K.Mundhada for petitioners; learned counsel Shri M.V.Bute for respondent No.2, and learned Assistant Government Pleader Mrs.K.R.Deshpande for respondent Nos.1 and 3.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for respective parties.

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3. Question which arises for consideration in this writ petition filed under Article 226 of the Constitution of India is, whether reservation is pursuant to Final Development Plan of Ballapur City dated 16.8.2005 which came into force on 1.10.2005 published having deemed to have lapsed under Section 127 of the Maharashtra Regional and Town Planning Act of 1966 (the MRTTP Act).

4. Facts relevant for consideration are as under:

The petitioners are owners of survey No.31/173 and Survey No.31/43 admeasuring 0H81R of village Ballapur, district Chandrapur. These lands are situated within the development limits of Municipal Council, Ballapur, district Chandrapur. Respondent No.1 is the Planning Authority. The Development Plan of Ballapur City was published under Section 31(1) vide Notification No.TPS-2202/1260/CR-2B/2004/UD-9 dated 16.8.2005 and the same came into force on 1.10.2005 in which the above said properties owned by petitioners affected by the reservation for "Stadium" was shown vide Reservation No.45.

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5. As per contentions of the petitioners, they were aggrieved as their properties have been reserved for the Development Plan of Ballarpur City and no step has been taken by respondents. To commence acquisition proceedings, in respect of the said lands from the last eighteen years, the said properties are reserved and respondents have not taken any step for development\or for acquisition of the said lands and, therefore, petitioners have issued Notice on 5.3.2016 under Section 127 of the MRTP Act. The said Notice was served to the office of respondent No.2. By the said Notice, it was requested to respondent No.2 to acquire the said lands or the reservation would lapse. The petitioners have also furnished copy of sale deed, copy of resolution passed by majority in the year 2001, 7/12 extract, talathi map, and Part Development Plan. Despite service of the Notice, respondents, who are under obligations to take necessary steps, have not taken necessary steps either for acquisition or de-reservation of the said lands. As such, petitioners have filed this petition seeking relief to declare the reservation for "Stadium" vide Reservation No.45 is affecting the lands owned by petitioners and deemed to have lapsed and to declare that

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petitioners are free to develop the lands in the manner permissible to adjacent lands as per the Development Plan of Ballarpur City.

6. The respondent No.2 opposed the petition on the ground that after receipt of the Notice, petitioners were asked to comply by furnishing documents which petitioners have not supplied and, therefore, further steps are not taken. It is further contentions of respondent No.2 that respondent No.2 Nagar Parishad is of Grade-C and due to paucity of funds, it could not initiate proceedings for acquisition. The respondents admitted that the lands of petitioners were reserved vide Reservation No.45. As such, it is prayed that the petition be dismissed as necessary documents are not furnished by petitioners.

7. Learned counsel for petitioners reiterated the contentions raised in the writ petition. As far as the contention of respondent No.2, as to supply of necessary documents, is concerned, he submitted that petitioners have already served purchase Notice which was accompanied by copy of sale deed, copy of Resolution passed by respondent

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No.2 by majority in the year 2001, 7/12 extract, talathi map, Part Development Plan, and the said Notice is duly served on respondents. He submitted that this court in the case of **Abdul Gani N.Wadwan vs. State of Maharashtra and ors, reported in (2018 LawSuit (Bom) 1003)** has already held certain lacunae in proposal and these lacunae as per requirement of Section 127(1) of the MRTP Act are not to be removed by petitioner, but by respondent No.2. He further submitted that in view of the statutory provisions under Section 127 of the MRTP Act, respondents have not taken necessary steps and, therefore, the reservation deserves to be de-reserved as the statutory mandate is not followed.

8. Per contra, learned counsel for respondent No.2 submitted that as respondent No.2 Nagar Parishad is of Grade-C and facing problem of paucity of funds, is unable to acquire the lands. He further submitted that as petitioners have not submitted necessary documents, acquisition proceedings could not be processed. Hence, the petition deserves to be dismissed.

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9. Learned Assistant Government Pleader for respondent Nos.1 and 3 endorsed the said submissions canvassed by learned counsel for respondent No.2.

10. It is an admitted fact that petitioners, as per 7/12 extract, are owners and in possession of survey No.31/173 and Survey No.31/43 admeasuring 0H81R of village Ballarpur, district Chandrapur. In Final Development Plan came into effect on 1.10.2005 of Ballarpur City, lands owned by petitioners are reserved for "Stadium" vide Reservation No.45. As no steps are taken for acquisition of lands, which were reserved, petitioners have personally served purchase Notice under Section 127 of the MRTP Act on 5.3.2016 along with copy of sale deed, copy of Resolution passed by respondent No.2 by majority in 2001, 7/12 extract, talathi map, and Part Development Plan etc.. On 10.8.2017, in response to the Notice served under Section 127 of the MRTP Act, in the General Body meeting of respondent No.2, it has been unanimously resolved vide Resolution No.2 that subject as regards acquisition of the said properties should be decided in the next meeting after consultation with petitioners. On 23.7.2018, petitioners gave consent letter to respondent No.2

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to acquire the said lands by mutual agreement. Despite service of the Notice and consent letter issued by petitioners, incomplete proposal of acquisition has been forwarded to the Collector, Chandrapur through the Sub Divisional Officer. Thus, respondents have not taken any step for the acquisition of the lands as per the statutory provisions of the MRTP Act.

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

"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,—

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(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

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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

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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

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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.]”

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 step is taken by appropriate authority within 24 months from the date of service of such notice, reservation and allotment or designation shall be deemed to have lapsed.

12. Thus, the MRTP Act fixes timeline which have to be followed, failing which consequences of lapses to be followed.

13. The Honourable Apex Court in paragraph No.7 of its decision in the case of **Chhabildas vs. State of Maharashtra and ors reported in (2018)2 SCC 784** observed thus :

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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, the Honourable Apex Court in the case of **Prafulla C.Dave and ors. vs. Municipal Commissioner and ors**, reported in (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

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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. It appears that after reservation of the said lands for the purpose of “Stadium”, for eighteen years no acquisition proceeding was initiated by respondents.

16. Thus, the principle underlying in Section 126 of the MRTP Act is either to utilize lands for the purpose for which it is reserved in the timeline given or let owners utilize lands 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 lands within prescribed period.

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17. Admittedly, in the present case, respondents have not taken any step to issue Notification after receipt of the Notice.

18. The same issue involved in the present writ petition has already been dealt with by the Honourable Apex Court in the case of **Kolhapur Municipal Corporation and others. vs. Vasant Mahadev Patil (dead), through LRs & ors, reported in 2022 LawSuit (SC) 171**. In the said decision, the Honourable Apex 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.

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19. In the light of the above discussion and well settled legal position, we find that the Reservation for the lands in question has lapsed under Section 127(2) of the MRTP Act on expiry of 24 months from 5.3.2016. The petitioners are entitled to be permitted to develop the said lands which was subjected for Reservation issuing Notice under Section 127(1) of the MRTP Act. In the result, we proceed to pass following order:

ORDER

(1) The writ petition is **allowed**.

(2) It is declared that survey No.31/173 and Survey No.31/43 admeasuring 0H81R of village Ballarpur, district Chandrapur reserved vide Reservation No.45 are declared as lapsed under Section 126 of the MRTP Act.

(3) The respondent No.1 - State of Maharashtra, through the Director of Town Planning, Pune, shall issue Notification indicating lapsing of the aforesaid reservation within a period of six weeks from the date of receipt of writ of this judgment.

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(4) It is declared that petitioners are free to utilize the aforesaid lands in a manner as are permissible under the Development Plan and applicable to adjoining lands.

Rule is made absolute in the aforesaid terms. No order as to costs.

(URMILA JOSHI-PHALKE, J.) (PRITHVIRAJ K.CHAVAN, J.)

!! BrWankhede !!