



Judgment

120 wp8257.22

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

WRIT PETITION NO.8257 OF 2022

1. Harilal Arjunbhai Patel, deceased through legal heirs.

1a) Deepak Harilal Patel, age 34 years, occupation : business.

1b) Uttam Harilal Patel, age 32 years, occupation : business.

1c) Heena Vinod Lambani, age 30 years, occupation : household.

1d) Narmada Harilal Patel, age 60 years, occupation : household.

2. Rajendra Arjunbhai Patel, deceased through legal heirs

2a) Romit Rajendra Patel, age 33 years, occupation : business.

2b) Vinay Rajendra Patel, age 31 years, occupation : business.

2c) Vidya Pravin Patel, age 29 years, occupation : household.

2d) Neera Rajendra Patel, age 57 years, occupation : household.

3. Ashok Arjunbhai Patel, age 65 years, occupation : business.

4. Vijay Arjunbhai Patel, age 59 years, occupation : business.

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5. Narendra Arjunbhai Patel, age 57 years,
occupation : business.
All r/o Gaurakshan Ward, Ballapur,
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.

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

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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.

3. By this petition, petitioners sought declaration that Reservation in Revised Development Plan for the city of Ballarpur for "Stadium" vide Reservation No.45 dated 1.10.2005 in respect of land survey No.31/42 admeasuring 1H62R of village Ballarpur, district Chandrapur be declared as lapsed under Section 127 of the Maharashtra Regional and Town Planning Act of 1966 (the MRTP Act). The petitioners also sought declaration that they be declared that they are free to develop the said land owned by them as per Development Plan permissible to adjacent lands. The petitioners also sought directions to respondents to notify and publish lapsing of reservation in official gazette under Section 127 of the MRTP Act.

4. The petitioners are owners and in possession of the said land of village Ballapur, district Chandrapur which is

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situated within the Municipal limits of Ballapur Nagar Parishad. Respondent No.1, the Director and Technical Head of the Town Planning and Valuation Department of the Maharashtra State and respondent No.2, Nagar Parishad, Ballarpur, are responsible and appropriate authorities for whom the reservation is kept and under legal obligation for acquiring the affected land as per Section 2(3) of the MRTTP Act.

5. The Development Plan of Ballapur City was published by the Government under Section 31(1) vide Notification NO.TPS-2202/1260/CR-2B/2004/UD-9 dated 16.8.2005, which came into force on 1.10.2005, in which the above said property owned by petitioners was reserved by Reservation No.45 for "Stadium". Respondent No.2 - Ballarpur Nagar Parishad is the local authority and is also appropriate authority under Section 2(3) of the MRTTP Act for whom the reservation is kept. Due to the Reservation of the said land, petitioners are deprived from beneficial use of the said land from residential use as the said land owned by them was reserved for the Development Plan of Ballarpur City. Though the said land was reserved, no step was taken

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by respondents for acquisition of the said land within the prescribed period. The respondent No.2 on 13.7.2018 issued a letter to petitioners to remain present in the office of respondent No.2 in a meeting scheduled to be held on 16.7.2018 for further discussion regarding acquisition of the said land. After the said meeting, petitioners on 26.7.2018 gave their consent for acquisition of the said said land by mutual consent. As no steps are taken by respondents to acquire the said land, on 16.1.2019 petitioners have personally served purchase notice under Section 127 of the MRTD Act. Again, on 6.5.2019 and 7.5.2019, petitioners served a fresh purchase notice under Section 127 of the MRTD Act requesting respondent No.2 to acquire the said land, otherwise the reservation affecting the said land will lapse. The said notice was sent along with 7/12 Extract, Part Development Plan, and measurement sheet. On 28.5.2019, respondent No.2 had issued a letter to petitioners by which it was informed that as per 7/12 Extract, permission from the Sub Divisional Officer was obtained for conversion of land from Class-II to Class-I occupancy. Unless and until matter relating to breach of

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condition is resolved, respondents would not take further steps under Section 127 of the MRTP Act. In the general body meeting of respondent No.2 dated 18.2.2020, Resolution no.04 was passed unanimously by which it was decided that the said land of petitioners which is reserved for "Stadium" vide Reservation No.45 shall be acquired as Notice under Section 127 of the MRTP Act has been served on 7.5.2009. All steps to receive funds and grant for the Government were decided to be taken. The respondent No.2 vide letter No.1594 informed petitioners that proposal for acquisition had been submitted to the Collector, Chandrapur on 26.6.2020 and is pending before the Collector, Chandrapur. The Sub Divisional Officer at Ballarpur on 21.4.2022, after scrutiny of the said proposal, informed respondent No.2 that joint measurement sheet, consent letter of petitioners, and legal search report of the said land, in respect of which proposal for acquisition has been submitted, are not supplied. In response to the said letter, respondent No.2 issued a letter to petitioners to remove the above stated deficiencies informed by the Sub Divisional Officer at Ballarpur. The said letter was replied by

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petitioners on 7.6.2022 informing that the acquisition proceedings initiated by respondent No.2 has not been completed within two years after service of purchase notice dated 16.1.2019 and, therefore, the reservation is lapsed.

6. The respondent No.2 replied the said letter wherein it is specifically mentioned that proposal for acquisition has been submitted to the Collector, Chandrapur and deficiencies pointed out by the Sub Divisional Officer are not satisfied by petitioners.

7. As per contentions of petitioners, it is the duty of respondent No.2 to review lacunae in the proposal which is not done by respondent No.2. Now, statutory period of 24 months is already over and, therefore, the Reservation is lapsed. Hence, this petition.

8. In response to the Notice, respondent No.2 opposed the petition on the ground that it had informed petitioners to remove lacunae by supplying the joint measurement sheet, consent letter, and legal search report, which is not done by petitioners. Thus, petitioners are at fault and prayed for dismissal of the petition.

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9. Learned counsel for petitioners reiterated the contentions raised in the petition. In addition to the same, he submitted that in view of the statutory provisions, it was the duty of respondents to acquire the said land within the statutory period of 24 months. After issuance of purchase notice, no effective step was taken by respondents. The statutory period has come to an end on 16.1.2021. 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.

10. Learned counsel for respondent No.2 has already submitted a proposal to the Collector. The Sub Divisional Officer at Ballarpur pointed out some lacunae and demanded joint measurement sheet, consent letter of petitioners, and legal search report. The said communication was communicated to petitioners. The petitioners have not complied with the same and, therefore, further process of acquisition could not be carried out. He further submitted that respondent No.2 Nagar Parishad is of Grade-C and now a days facing economical crisis and due to paucity of funds

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respondent No.2 is unable to carry out the further proceeding of the acquisition. As such, the writ petition deserves to be dismissed.

11. As regards submissions made by learned counsel for respondent No.2, petitioners have not complied objection raised by the Sub Divisional Officer at Ballarpur, Learned counsel for petitioners placed reliance on the decision in the case of **Abdul Gani N.Wadwan vs. State of Maharashtra and ors, reported in (2018 LawSuit (Bom) 1003)** wherein it has been 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. He submitted that lacunae pointed out by the Sub Divisional Officer at Ballarpur in the proposal are to be satisfied by respondent No.2 and not by petitioners.

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12. Having heard both the sides and perused the record, there is no dispute as to the fact that petitioners are owners of the said land situated at Ballarpur within the Municipal limits of Ballapur Nagar Parishad. It is also not disputed that vide Reservation No.45, which came into effect from 1.10.2005, the said land of petitioners was reserved for "Stadium". The consent letter for the acquisition of the said land from petitioners were also obtained on 26.7.2018. As no step are taken within 10 years from the date of reservation, on 16.1.2019 petitioners have served a purchase Notice under Section 127 of the MRTP Act. The petitioners again served Notices on 6.5.2019 and 7.5.2019 along with relevant documents such as 7/12 Extract, Part Development Plan, and Measurement Sheet etc.. The said notices were served on respondent No.2 on 7.5.2019. The respondent No.2 have also admitted that the Notice was served served upon it Undisputedly, in the General Body Meeting of respondent No.2, by passing Resolution on 18.2.2020, it has been decided by the office bearers of respondent No.2 that the said land of petitioners, which is reserved for "Stadium" and regarding which Notice under

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Section 127 of the MRTTP Act has been served upon it, all procedures to get the fund from the Government steps shall be taken. Accordingly, proposal was submitted to the Collector. However, the Sub Divisional Officer at Ballarpur pointed out some lacunae in the proposal as it was not accompanied with joint measurement sheet, consent letter of petitioners, and legal search report. Subsequent to raising the objection, that the proposal is not sent along with the required documents, respondent No.2 has not furnished the said documents and asked petitioners to comply the same. The petitioners submitted that it is the duty of respondent No.2 to supply the said documents which is not done by respondent No.2. Now, period of 24 months, after service of purchase notice, is already over and reservation deserves to be declared as lapsed and, therefore, they approached this Court.

13. The entire controversy in this petition revolves around Sections 126 and 127 of the MRTTP Act. The statutory mandate under Section 126 of the MRTTP Act denotes that while acquiring lands for public purposes, due procedure given under Section 126(2) of the MRTTP Act is to

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be followed. Section 126 of the MRTTP 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,—

(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

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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

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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:

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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.]”

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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.

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

15. 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 :

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

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development otherwise permissible in the case of adjacent land, under the relevant plan.

16. 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 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

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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.....”

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

18. 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 step is taken for acquisition of lands within prescribed period.

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

20. 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**

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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.

21. In the light of the above discussion, we find that as no step are taken, respondent No.2 has shown its inability to initiate acquisition proceedings. Due to paucity of funds, respondent No.2 has not taken any step to remove objections raised by the Sub Divisional Officer at Ballarpur. The petitioners are entitled to be permitted to develop the said land which was subjected to reservation and notice under Section 127(1) of the MRTP Act was issued.

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Accordingly, it is held that in terms of Notice dated 16.1.2019 issued with regard to the said land of village Ballarpur, district Chandrapur, the reservation is deemed to have lapsed. The petitioners, thus, are entitled to be permitted to develop the said land 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 land survey No.31/42 admeasuring 1H62R of village Ballarpur, district Chandrapur reserved vide Reservation No.45 is declared as lapsed under Section 127 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 land in a manner as is 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 !!