



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4252 OF 2024

1. KESARBAI SADASHIVRAO LOKHANDE.
Died through her L.Rs. Petitioner Nos.2 to 7.
2. Vishnu S/o Sadashivrao Lokhande,
Age: 66 years, Occ: Retired,
Resident of: Plot No. 1058,
Sainagar, N-6, CIDCO, Chhatrapati
Sambhaji Nagar, Tq. & District Aurangabad.
3. Arun S/o Sadashivrao Lokhande,
Through Rushikesh S/o Arun Lokhande,
Age: 27 years, Occ: Service,
Resident of: Old Bhavsingpura,
Chhatrapati Sambhaji Nagar,
Tq. & District Aurangabad.
4. Uddhav S/o Sadashivrao Lokhande,
Age: 53 years, Occ: Service,
Resident of: Plot No. 15,
Dwarka Nagari, Near Auditor Society,
Harsool T Point, Chhatrapati Sambhaji
Nagar, Tq. & District Aurangabad.
5. Prahlad S/o Sadashivrao Lokhande,
Age: 51 years, Occ: Service,
Resident of: House No. 21,
Opposite Mhasoba Mandir,
Mhasoba Nagar, Harsool,
Chhatrapati Sambhaji Nagar,
Tq. & District Aurangabad.
6. Pushpavati D/o Sadashivrao Lokhande
@ Pushpavati W/o Atmaram Bidve,
Age: 73 years, Occ: Household,
Resident of: Sahkar Bank Colony,
Near Jamuna Nagar, Jalna,

Tq. & District Jalna.

7. Nirmalabai D/o Sadashivrao Lokhande
@ Nirmalabai W/o Vishwas Pimpale,
Age: 60 years, Occ: Household,
Resident of: at Kalegaon,
Post Kumbharzari, Tq. Jafarabad,
District Jalna.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Collector,
Chhatrapati Sambhaji Nagar,
Tq. & District Aurangabad.
3. The Special Land Acquisition
Officer, Special Unit, Chhatrapati
Sambhaji Nagar,
Tq. & District Aurangabad.
4. The Director of Town Planning,
Maharashtra State, Pune,
Tq. & District Pune – 1.
5. The Joint Director of Town
Planning, State of Maharashtra,
Chhatrapati Sambhaji Nagar,
Tq. & District Aurangabad.
6. The Deputy Director of Town
Planning, Chhatrapati Sambhaji
Nagar Municipal Corporation,
Chhatrapati Sambhaji Nagar,
Tq. & District Aurangabad.

7. The Chhatrapati Sambhaji Nagar
Municipal Corporation,
Chhatrapati Sambhaji Nagar,
Though it's Municipal Commissioner,
Municipal Corporation Office,
Chhatrapati Sambhaji Nagar,
Tq. & District Aurangabad.

..RESPONDENTS

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Shri Mahesh V. Ghatge, Advocate for the Petitioners.
Shri R.S. Wani, AGP for Respondent Nos.1 to 5/State.
Shri Sambhaji S. Tope, Advocate for Respondent Nos.6 and 7.

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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 28th August, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. The learned Advocate for the Petitioners tenders a purshis dated 28.08.2024, stating therein that Petitioner No.1 Kesarbai has passed away on 24.08.2024. Her legal heirs are Petitioner Nos.2 to 7. As such, leave to amend the description of Petitioner No.1, to be shown as deceased.

3. The Petitioners have put forth prayer clauses A and B, as under:-

- “A) *The Hon'ble High Court may be pleased to issue a writ or direction or order in the nature of writ and thereby hold and declare that the reservation on the property owned and possessed by the Petitioners, bearing City Survey No. 910/198 and 910/199 admeasuring 800.80 Square Meters situated at Bhavsingpura, Tq. & District Aurangabad has lapsed in view of the inaction of the Respondents to acquire the property despite service of notice under Section 127 of the Maharashtra Regional and Town Panning Act, 1966 and issue appropriate order for the said purpose;*
- B) *The Hon'ble High Court may be pleased to direct the Respondents more particularly the Respondent No. 1 State to forthwith issue Gazette notification about lapsing of reservation on the property owned and possessed by the Petitioners, bearing City Survey No. 910/198 and 910/199 admeasuring 800.80 Square Meters situated at Bhavsingpura, Tq. & District Aurangabad as contemplated by Section 127 (2) of the Maharashtra Regional and Town Planning Act, 1966 and issue appropriate order for the said purpose;”*

4. With the assistance of the learned Advocates for the respective parties, we have perused the petition paper book.

5. Dates and sequence of events, as they emerge from

the record, are undisputed. For ready reference, we summarize the dates and events, as under:-

(a) Respondent No.1/ State of Maharashtra approved the Development Plan of the then Aurangabad Municipality in 1975 (exact date is not set out).

(b) The revised Development Plan for the Aurangabad Municipal Corporation was sanctioned, on 17.08.2002.

(c) The Petitioners' property bearing City Survey Nos.910/198 and 910/199 admeasuring 800.80 square meters at Bhavsingpura, Taluka and District Aurangabad, was reserved for a garden and road.

(d) On 30.06.2021, the Petitioner issued the purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the MRTP Act').

(e) On 07.03.2024, one more revised plan was prepared by the Municipal Corporation by changing the earlier development plan from garden and road, to a children's park.

6. Having considered the submissions of the learned Advocates for the respective sides, the view taken by the Honourable Supreme Court in ***Prafulla C. Dave and others vs.***

Municipal Commissioner and others, 2015 (11) SCC 90,

would be squarely applicable. It has been concluded in paragraph

Nos.18 to 23, in ***Prafulla Dave (supra)***, as under:-

- “18. *On behalf of the Appellants it is contended that the period of ten years Under Section 126 of the Act has to be reckoned from the date of coming into force of the initial final development plan and not the revised development plan made Under Section 38 of the Act. Any other view, according to the learned Counsel, would amount to a perpetual deprivation of the owner of land which, at the same time is also not being put to use for the public purpose specified in the development plan. Section 127 of the Act, it is contended, is a beneficial provision in so far as the land owner is concerned calling for a liberal interpretation of its effect. Learned Counsel has also drawn attention to the provisions of Section 31(5) of the MRTTP Act which contemplates that in so far as reservation of land for public purposes specified in Sub-section (b) and (c) of Section 21 is concerned inclusion of such land in the Development Plan should not be made unless the authority is reasonably confident of acquiring the land within a period of ten years. Learned Counsel has, therefore, submitted that the legislative intent was to give the authority under the Act a maximum of ten years to acquire the land earmarked for a public purpose or at least to initiate steps for such acquisition failing which the reservation would lapse. Reliance has been placed on a decision of this Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors. 2003 (2) SCC 111 in support of the contentions made by them.*
19. *In reply, Shri Naphade has submitted that the scheme of the Act would suggest that a revised plan prepared Under Section 38 tantamounts to a complete development plan contemplated in Sections 21 to 30 of the Act. The legislative scheme takes into account that development is a dynamic process and cannot be frozen by strict*

prescriptions of time. Once the final development plan is revised Under Section 38 the period of ten years would necessarily run from the date of coming into force of such revised plan. Any other interpretation, according to the learned Counsel, would render all provisions of the Act dealing with the revised plan otiose. Shri Naphade has also argued that in the event a revised plan Under Section 38 is sanctioned and brought into force the relevant date for determination of compensation would stand transposed to the fresh dates of the declaration Under Section 6 of the Land Acquisition Act which would ensure payment of a fair compensation to the land owner. This is by virtue of Section 126(4) of the Act and, according to Shri Naphade, is how the balance between public interest and the interest of the land owner is maintained under the provisions of the Act.

20. *In so far as the decision in Bhavnagar University (supra) is concerned, Shri Naphade has submitted that there are certain provisions of the MRTP Act which are not embodied in the provisions of the Gujarat Act that was considered in Bhavnagar University (supra). Specifically it is pointed out that the provisions similar to Sections 37, 49 and 50 of the MRTP Act which provide alternative escape routes to the land owners are absent in the Gujarat Act. It is on the aforesaid broad basis the decision in Bhavnagar University (supra) has been sought to be distinguished.*

21. *Under Section 127 of the MRTP 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 MRTP 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 provisions for acquisition is not*

initiated within ten 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 elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said 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 ten years. On the contrary upon expiry of the said period of ten 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. What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan Under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years Under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that Under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan Under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years.

*Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation Under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the provisions of the Act dealing with the preparation of revised plan Under Section 38 will have full play. Action on the part of the land owner or the person interested as required Under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in *Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association and Ors.* 1988 Supp. SCC 55 in the following terms:*

“If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice Under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise.”

22. *In fact the views expressed in Bhavnagar University (supra) in para 34 is to the same effect:*

“34. The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein

viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse.”

23. *The facts of the present case makes it plainly clear that the notice Under Section 127 by the Appellants was issued only two years after the final revised plan Under Section 38 had come into operation. The rejection of the Appellants' plea before the appellate authority Under Section 47 of the Act as well as the rejection of the writ petition filed by the Appellants before the Bombay High Court was, therefore, fully justified. Consequently, we find no reason to interfere with the impugned order dated 20th September, 2007 passed by the High Court of Bombay. Accordingly, the appeal is dismissed. However, in the facts and circumstances of the case, we make no order as to costs.”*

7. The Municipal Corporation has relied upon the view taken by this Court at the Nagpur Bench, vide judgment dated 04.05.2023 in Writ Petition No.1700/2019, filed by ***Mandakini Ruprao Khangar and others vs. The State of Maharashtra and others***. In *Mandakini (supra)*, though the development plan was published on 20.09.1973, no steps were taken for quite sometime. Another notification was issued on 31.03.2012 and the revised development plan was published under Section 38. Since no steps were taken for acquisition of the land, the Petitioner issued the purchase notice under Section 127 on 30.12.2015, which is after three years after the revised development plan

dated 31.03.2012 was published. Placing reliance upon the law enunciated by the Honourable Supreme Court in ***Prafulla Dave (supra)***, the Nagpur Bench dismissed the petition.

8. However, in the case in our hands, the purchase notice was issued after 19 years of the development plan on 30.06.2021. Two years lapsed after the purchase notice. The revised plan was published on 07.03.2024, which is after the purchase notice was issued. Hence, in the light of the law laid down in ***Prafulla Dave (supra)***, this petition deserves to be allowed.

9. In view of the above, **this Writ Petition is allowed in terms of prayer clauses A and B.**

10. The Municipal Corporation shall, within 45 days from today, send a communication along with this order, to Respondent No.1, stating that the reservation has lapsed. Thereafter, Respondent No.1 shall issue a notification under Section 127(2) of the MRTP Act, within 60 days.

11. If the Model Code of Conduct is introduced, the same shall not be an impediment in implementing this order.

12. Rule is made absolute in the above terms.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)