



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6395 OF 2022

Jyoti Balu Chate
Age: 36 Years, Occu: Household,
R/o. Shriram Mandir Chowk,
Mehrun, Jalgaon,
Tq. and Dist. Jalgaon.

Through G.P.A. holder
Balu Namdeo Chate
Age: 46 Years, Occu: Business,
R/o. Shriram Mandir Chowk,
Mehrun, Jalgaon,
Tq. and Dist. Jalgaon.

... PETITIONER

V/s.

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. District Collector, Jalgaon
Office of Collectorate, Jalgaon,
Dist. Jalgaon.
3. Special Land Acquisition Officer,
Jalgaon, Dist. Jalgaon.
4. Commissioner, Jalgaon City
Municipal Corporation, Jalgaon,
Dist. Jalgaon.

... RESPONDENTS

...
Mr. R.P. Adgaonkar, *Advocate for the Petitioner*
Mr. S.K. Tambe, AGP for Respondent-State
Mr. M.V. Navandar, *Advocate for Respondent No.4*
...

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

DATE : 12th January, 2024

JUDGMENT (Per: Y.G. Khobragade, J.) :-

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

2. By this petition under Article 226 of the Constitution of India, the Petitioner has put-forth prayer clauses A and B as under:

“A] By appropriate writ order or directions in the nature of writ, the Hon’ble Court may kindly please hold and declared that the land admeasuring 81 R (8100.00 Sq. Mts.) out of land Gut No. 257/1, situated at Mehrun Shivar, Jalgaon as designated has Reservation Site No. 170 for town hall and library (extended limit) for Jalgaon City Municipal Corporation, is deemed to have been released from the reservation and designation.

B] By appropriate writ order or directions in the nature of writ, the Hon’ble Court may be please order or direct respondent No. 1 to issue notification duly published in official gazette about lapsing of reservation of admeasuring 81 R (8100.00 Sq. Mtr.) out of land Gut No. 257/1, situated at Mehrun Shivar, Jalgaon and as designated has reservation Site No. 170 for town hall and library (extended limit) for Jalgaon City Municipal Corporation.”

3. The learned advocate for Petitioner submits that, the Petitioner is the owner of land Gut No. 257/1, situated at Mehrun Shivar, Jalgaon ad-measuring 81 R (8100.00 Sq. Mtr.). The draft development plan for extended limit of Jalgaon Municipal Corporation was finally sanctioned under

notification dated 11.02.2002, which came into force w.e.f. 07.04.2002. As per the Final Development plan, the Petitioner's land bearing Gut No. 257/1, situated at Mehrun Shivar, Jalgaon admeasuring 81 R (8100.00 Sq. Mts.) was reserved vide Site No. 170 for town hall and library (extended limit) for Jalgaon City Municipal Corporation. Though, the development plan for extended limit was sanctioned on 11.02.2002, but no steps were taken by the Respondent No. 4 for acquisition of the land in question for more than 12 years. Therefore, on 12.02.2019, the Petitioner issued a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (in short the MRTP ACT) calling upon the Respondent No. 4 to acquire the reserved land. The notice was served upon the Respondent No.4 on 14.02.2019. However, no steps were taken by the Respondent No. 4 for acquisition of the land within the period of 24 months from the date of service of notice u/s 127 of the MRTP Act. Hence, prayed for lapsing of reservation.

4. The learned counsel for the Petitioner submits that, Section 127 of MRTP Act provides that the notice can be issued only on fulfillment of two conditions i.e. the period of ten years have lapsed after commencement of the Development Plan and within a period of 10 years, a notification u/s 126(4) is not issued. In the case in hand, though the land of the Petitioner is shown under reservation vide Site No. 170 in development plan published on

07.04.2002, but said land is not acquired within the period of 10 years, So also, in spite of service of notice dated 29.12.2000 issued u/s 127, land was not acquired. Hence, reservation is lapsed.

5. The Respondent No.4 - Development Authority filed a reply affidavit and strongly resisted the petition. Mr. Navandar, the learned advocate for Respondent No.4 submits that, on 11.02.2002 development plan for Jalgaon City was published and came into force w.e.f. 01.10.2004. As per the development plan, the land was reserved at Site No. 170 for Town Hall and Library, but due to some exigencies acquisition proceeding could not be initiated. On 12.02.2019, the Petitioner i.e. land owner issued a notice under Section 127 of the M.R.T.P. Act claiming de-reservation. Since, the Writ land is required for the development, therefore, on 29.05.2019, Respondent No. 4 issued a letter to the Petitioner and offered TDR, so also, issue in respect of acquisition of petition land was discussed in the General Body of Respondent No.4 and proposal for acquisition of the land was forwarded to the Collector and State Government seeking appointment of the Commissioner under Section 162 (1) of the MRTP Act vide letter dated 18.10.2019. Accordingly, on 11.02.2020, the State Government appointed the Commissioner of Jalgaon Municipal Corporation as a Special Officer to complete the acquisition proceeding. The joint measurement was carried out and vide letter dated

04.01.2022, Respondent No.3 informed the Respondent No.4 about checking the correctness of measurement and had directed to deposit 50% of the amount i.e. Rs.2,92,78,260/-. Therefore, Respondent No. 4 already started the process about acquisition in respect of petition land, hence prayed for dismissal of the petition.

6. It is not in dispute that the Petitioner is the owner of land Gut No. 257/1, situated at Mehrun Shivar, Jalgaon ad-measuring 81 R (8100.00 Sq. Mtr.), which is subject matter of the present petition. The draft development plan submitted by Respondent No.4 for extended limit of Jalgaon Municipal Corporation was finally sanctioned under notification dated 11.02.2002, which came into force w.e.f. 07.04.2002. As per the Final Development plan for the Respondent No.4, the land bearing Gut No. 257/1, situated at Mehrun Shivar, Jalgaon ad-measuring 81 R (8100.00 Sq. Mtr.) was reserved vide Site No. 170 for town hall and library (extended limit) for Jalgaon City Municipal Corporation. Though development plan for extended limit for Respondent No.4 was sanctioned on 11.02.2002 but no steps were taken by Respondent No.4 for acquisition of the land in question for more than 12 years. The surrounding area of subject matter of the petition land is already put for use of residential purposes. Therefore, the Petitioner issued a notice dated 12.02.2019 under Section 127 of the MRTP ACT, calling upon Respondent No.4 to acquire

the land reserved for the town hall and library. Accordingly, said notice was served upon Respondent No.4 on 14.02.2019. Thereafter, the Petitioner was called upon to submit measurement map, record of rights and copy of sale deed vide letter dated 16.03.2019. Thereafter, Respondent No.3 prepared the proposal with the noting that the Petitioner's land Gut No. 257 is required to the District Collector. On 03.08.2019, Respondent No.4 passed the resolution and offered Transferable Development Rights (in short "TDR"), but the Petitioner refused to accept the TDR. Therefore, the development authority acted upon the purchase notice. However, Respondent No.4 has not taken steps to acquire the land within the period of 24 months from the date of service of notice u/s 127 of the MRTP Act.

7. Section 127 of of the MRTP Act provides as under:

“127. Lapsing of reservations -(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

(2) *On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette."*

8. In the case of **Mohandas and Others Vs. State of Maharashtra and Others; (2020) 12 SCC 215**, the Hon'ble Supreme Court in Para Nos.38 and 39 observed as under:

"38. The only question is whether it is to be ignored in deciding whether we should invoke Article 142 of the Constitution of India. On 24-8-1984, the Final Development Plan is published. On 3-9-1992, the declaration under Section 126(4) of the Act was published. After expiry of ten years from 24-8-1984, notice was given by the previous owners on 9-6-2004. Thereafter, draft revised draft plan publication was made on 29-11-2007. Still, thereafter, on 15-5-2012, a final revised development plan was published. Although, under the original Final Development Plan dated 24-8-1984, the property of the appellants was reserved for shopping complex, and under the revised Final Development Plan dated 15-5-2012, the appellants' lands have been subjected to the reservation that it is meant for use as shopping complex and vegetable market, apart from issuing the declaration, under Section 126(4) of the Act in the year 1992, there is no declaration issued under the revised plan dated 15-5-2015. While, it is true that the original Final Development Plan came into force on 24-8-1984 and the revised development plan came into force in the year 2012, one crucial fact cannot be overlooked. Admittedly, 9 the appellants purchased lands from the erstwhile owners only on 2-1-2006. Therefore, on the facts, particularly, having regard to the fact that they have purchased the property apparently knowing that the property was subjected to reservation, and as also we have found that their case, based on the notice of previous owners, would not hold good in law and as the subsequent revision of the plan has come into force with effect from 15-5-2012, we do not find that this is a case where we should exercise our powers under Article 142 of the Constitution. The appellants cannot be compared with the appellant in Hasmukhrai V. Mehta' as the appellant therein was a person who was favoured with a permission to develop his land on the basis that the land was meant for residential purpose and it was he who went to court and the lapse of twenty years was in the context found to have a deep impact.

39. *The appellants must wait for a period of ten years under Section 127 of the Act from 15-5-2012 and then can issue notice contemplated under the Act. That is, within a period of little over two years from now, the appellants would have a cause of action to give notice under Section 127 of the Act unless action is already taken in the meantime. No doubt, we would expect that the respondents would be alive to the object of the statute and also the rights of the owners and will not act mechanically and unfairly in the matter in the future. As far as invoking Section 49 of the Act, is concerned, we do not express any view. Leaving open all the remedies available to the appellants, the appeal shall stand dismissed."*

9. In the case of ***Prafulla C. Dave & others Vs. Municipal Commissioner & Ors. (2005) 11 SCC 90***, the Hon'ble Supreme Court observed in Para Nos. 21 & 22 as under:

"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 vs. Hakimwadi Tenants' Assn.* in the following terms : (SCC p. 62, para 10)*

“10. 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* in para 34 is to the same effect: (SCC p. 123)*

“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.”

10. Suffice for the purpose of this Petition, we refer to the decision of **Girnar Traders and Another Vs. State of Maharashtra and others; 2007 AIR (SC) 318**, wherein, it has been laid down that, the steps in the direction of acquisition of land reserved under the provisions of the MRTP Act would be nothing short of a declaration under Section 6 of the Land Acquisition Act 1894 (analogous to Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) read with section 126 of the MRTP Act. Admittedly, no such steps have been taken for whatever reason.

11. Though, it is stated about offering of the TDR in lieu of compensation, no such offer letter is produced on record. Be that as it may, the learned advocate for the petitioners, on instructions, stated that they are not ready to accept the TDR in lieu of compensation. Moreover, the right of property owners to insist for payment of monetary compensation by refusing

TDR is also settled by the full bench decision of this court in the matter of **Vinayak Builders & Developers Vs. The State of Maharashtra and others (Writ Petition No. 2231 of 2019) dated 25.07.2022 (Nagpur Bench)**, wherein it has been laid down that it is the choice of the property owner either to accept the TDR or to insist for payment of compensation.

12. In the case in hand, under notification dated 11.02.2002, development plan was published by Respondent No.4 and which came into force w.e.f. 07.04.2002. Under the Final Development plan, the Petitioner's land bearing Gut No. 257/1, situated at Mehrun Shivar, Jalgaon admeasuring 81 R (8100.00 Sq. Mtr.) reserved vide Site No. 170 for town hall and library for Jalgaon City Municipal Corporation. Though development plan for extended limit for Respondent No. 4 was sanctioned on 11.02.2002, but no steps were taken by the Respondent no. 4 for acquisition of the land in question for more than 12 years.

13. The Petitioner issued a notice dated 12.02.2019 under Section 127 of the MRTP ACT and called upon the Respondent No.4 to acquire reserved land. Said notice was served upon the Respondent No.4 on 14.02.2019. Thereafter, the Petitioner was called upon to submit measurement map, record of rights and copy of sale deed vide letter dated 16.03-.019. Accordingly, the Petitioner complied with the said notice. Thereafter, the Respondent No.3

prepared the proposal with the official note-sheet about requirement of the Petitioner's land Gut no. 257/1 to the office of District Collector. On 03.08.2019, Respondent No. 4 passed the resolution and offered the TDR, but the Petitioner refused to accept TDR. Therefore, the development authority acted upon the purchase notice. No doubt, on 29.05.2019 the Respondent No.4 issued a letter to the Petitioner and offered TDR, but Respondent No.4 has not brought any substantial material on record to show that the Petitioner had accepted TDR. Further, though Respondent No.4 contended that on 11.02.2020, the State Government appointed the Commissioner of Respondent No.4 as a Special Officer to conduct the joint measurement and complete the acquisition proceedings and was directed to deposit 50% of the amount i.e. Rs.2,92,78,260/-, Respondent No.4 has not brought any material on record to show that the said amount has been paid to the Petitioner. Therefore, it appears that for want of funds no acquisition proceeding has been completed. Apparently, Respondent No. 4 has not taken steps to acquire the land within a period of 24 months from the date of service of notice u/s 127 of the MRTP Act. Therefore, reservation of land has lapsed.

14. In view of the above discussion and considering the ratio laid down in the case of **Girnar Traders** (supra), we are inclined to **allow the Writ Petition** and declare that, the reservation on land of the Petitioner ad-

measuring 81 R (8100.00 sq.mtr.) out of land Gut No. 257/1, stands lapsed. The Respondents shall take steps for issuance of notification under Sub-section 2 of Section 127 of the MRTP Act as early as possible.

15. Rule is made absolute in above terms.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]