



(This order is corrected in view of order dated 27.09.2024 passed in CA No.10573 of 2024)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6665 OF 2024

SALIM RASULSAB MANIYAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

....

Ms Priyanka P. Shinde, Advocate h/f Ms Risha S. Navtake,
Advocate for Petitioner

Mr. S. B. Pulkundwar, AGP for Respondent No.1

Mr. S. P. Urgunde, Advocate for Respondent Nos. 2 and 3

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CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 22.07.2024

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

1. The Petitioner has put forth prayer clauses (A) and (B)
as under:-

*“(A) By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, it may kindly be hold and declare that, the reservation bearing no.49 in relation to land bearing plot no.41, 42 and 43 of Survey No.128-A admeasuring 13000 sq.ft., situated at **Maisur Colony**, Tq. And Dist. Latur, shall be deemed to have been lapsed and the land of present petitioner may kindly be declared as free from reservation or be released from reservation.*

*(B) The respondent Nos. 1 to 3 may kindly be directed to notify the lapsing of reservation of present petitioner in relation to land bearing plot no. **41, 42 and 43** of Survey No.128-A admeasuring 13000 sq.ft., situated at **Maisur Colony**, Tq. And Dist. Latur in the official gazette in accordance with sub section 2 of Sec. 127 of the Maharashtra Regional Town Planning Act, 1966 within period of 2 months from the date of receipt of order.”*

2. The learned Counsel appearing for the Petitioner canvassed that on 02.01.2002, Respondent No. 1, State Government had issued a notification and sanctioned the development plan for Municipal Corporation, Latur. The land bearing Survey No. 128-A, admeasuring 13000 sq.ft., situated at **Maisur Colony**, Taluka and District Latur, shown under reservation bearing No. 49 for playground. However, the Respondent Authorities failed to initiate acquisition proceeding within a period of ten years from the date of final regional plan. Therefore, on 27.12.2017, the Petitioner issued a notice under Section 127 of the Maharashtra Regional and Town Planning (M.R.T.P) Act, 1966, along with titled documents and 7/12 extract and called upon the Respondent Authorities to take appropriate steps for acquisition of reserved land as per the provisions of law. Accordingly, said notice was served upon the Respondent Authorities still they have not taken any steps, therefore, again on

19.05.2022, Petitioner issued a notice under Section 127(1) of the M.R.T.P. Act through R.P.A.D. along with titled documents, 7/12 extract, etc. The said notice served upon the Respondent Authorities. However, no steps have been taken within a period of 24 months for acquisition of the land under reservation. Therefore, the petitioner prayed for seeking declaration that the reservation has been lapsed.

3. The learned Counsel appearing for Respondent Municipal Corporation, canvassed in vehemence that the Respondent Corporation is ready and willing to acquire the land by offering TDR, within a period of one year as financial condition of Respondent No. 3 Municipal Corporation is not sound. It is further canvassed that for development of the Latur city, playground is necessary and the land of the Petitioner is necessarily required for acquisition.

4. It is an admitted fact that, under notification dated 02.01.2002, the land of the Petitioner bearing Survey No. 128-A admeasuring 13000 sq.ft., situated at ***Maisur Colony***, Taluka and District Latur, notified under reservation at site No. 49 for playground. However, the Respondent Authorities have not taken any steps to acquire the land even after lapse of more than ten years.

Ultimately, on 27.12.2017, the Petitioner has issued a purchase notice under Section 127 of the M.R.T.P Act and called upon the Respondents to acquire the land, but no any action was taken on the part of the Respondents. Therefore, again on 19.05.2022, the Petitioner issued a notice under Section 127(1) of the M.R.T.P Act through R.P.A.D, which was served upon the Respondent on 19.05.2022. In spite of service of notice, Respondent No. 3 have not acquired the land within a period of 24 months from the date of service of notice.

5. Though, Respondents have contended that they are ready and willing to acquire above said land within a period of one year by offering TDR to the Petitioner, however, the Petitioner refused to accept the TDR. So also, as per submissions, the financial condition of Respondent No. 3 / Acquiring Body, is not sound and unable to offer compensation to the Petitioner. Since, the Petitioner refused to accept TDR, therefore, as per the law laid down in the case of ***Girnar Traders Vs. State of Maharashtra and Others, (2007) 7 SCC 555*** and in the case of ***Shree Vinayak Builders & Developers Vs. The State of Maharashtra and Others, (2022) 4 Mh.L.J. 739***, it was held that offering of the TDR is not a step towards acquisition.

6. Considering the above, we do not find that the contention of the Respondent No. 3 Municipal Corporation, could be entertained to refute the request of the Petitioner for releasing the land from reservation.

7. In view of the above discussion, **this Petition is allowed** in terms of prayer clauses (A) and (B).

8. The Respondent No. 1 shall issue appropriate notification under Section 127(2) of the M.R.T.P. Act, within a period of 60 days from today.

9. Needless to state, if the model code of conduct is declared, the same shall not be an impediment for issuing the notification.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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