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

906 WRIT PETITION NO. 12484 OF 2021

- 1] Govind s/o Madhavdas Shah,
Age: 73 years, occu: Business
R/o. Desaipura, Nandurbar,
Dist: Nandurbar.
- 2) Anish Girishchandra Shah,
Age: 51years, occu: Advocate,
R/o. Old Agra Road, Dhule
- 3) Anjanaben Pravinkumar Shah,
Age years, occu: Household
R/o. N-3, Cidco, Aurangabad
- 4) Gopal Madhavdas Daftari,
Age: 71 years, occu: Business,
R/o. 104, Lilykunj, New Thakkar Road,
Vile Parle(E), Mumbai
- 5) Bhupendra Mansukhlal Shah,
Age: 69 years, occu: Business,
R/o. A/704, Harmony, Mahavir Nagar,
Near Pawan Dham, Boriwali (W),
Mumbai.
- 6) Ramesh Madhavdas Wani,
Age: 74 years, occu: Business,
R/o. 103, Laldas Peth, Desaipura,
Nandurbar, Dist: Nandurbar.
- 7) Suresh Madhavdas Daftari,
Age:75 years, occu: Business,
R/o. A-3/101, Gopal Park, B/H
Jivkor Nagar, Bhatar Road, Althan,
Surat (Gujrat)

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- 8) Shejal Mayur Shah,
Age: 46years, occu: Household
R/o. Rangmahel Galli, Desaipura,
Nandurbar, Dist: Nandurbar

....PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai.
- 2] The Director,
Town Planning Department,
Maharashtra State, Pune.
- 3] Joint Director,
Town Planning Department,
Nashik, Dist. Nashik.
- 4] The Collector, Nandurbar,
Taluka & District Nandurbar
- 5] Shahada Nagar Parishad, Shahada,
Through its Chief Officer

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Mr Amol S. Sawant, Advocate for Petitioners;
Mr B. M. Dhanure, A.G.P. for Respondent Nos.1 to 4
Mr J. R. Shah, Advocate for Respondent No.5

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

DATE : 11th June, 2024

ORAL JUDGMENT (PER : Ravindra V. Ghuge, J.)

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

2. The Petitioners have put forth prayer clauses (A), (B) and (C), which read as under :-

“A] The Hon'ble High Court may be pleased to issue order, writ or direction in the nature of writ, directing the respondent authorities to take steps for acquisition of petition property i.e. Survey No. 571/A reserved for site Nos. 33, 34, 35 as per the Development Plan situated within the limits of Shahada Nagar Parishad, Shahada and to publish the notification U/sec. 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within stipulated period and further be pleased to pass necessary orders for the said purpose;

B] Alternatively, the Hon'ble High Court may be pleased to declare that, the petition property i.e. Survey No. 571/A reserved for site Nos. 33, 34, 35 as per the Development Plan situated within the limits of Shahada Nagar Parishad, Shahada is released from the reservation and the said property became available to the petitioners for the purpose of Development as otherwise permissible in the case of adjacent land under the relevant plant and further be pleased to pass necessary orders for the said purpose;

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C] Pending hearing and final disposal of this Writ Petition, the respondent authorities to take steps for acquisition of petition property i.e. Survey No. 571/A reserved for site Nos. 33, 34, 35 as per the Development Plan situated within the limits of Shahada Nagar Parishad, Shahada and to publish the notification U/sec. 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within stipulated period and further be pleased to pass necessary orders for the said purpose;”

3. The dates and sequence of events are as under :-

(a) On 12/07/2005, the Development Plan was published by the Shahada Municipal Council, Tq. Shahada. We are informed that the Development Plan was made effective from 01/09/2005.

(b) The Development Plan included Survey No.571/A owned by the Petitioners, admeasuring 3.336 Hectors.

(c) The three sites bearing Nos.33, 34 and 35, were earmarked for a Library, admeasuring 0.18 Hector; a Primary School, admeasuring 0.426 Hector; and for a playground, admeasuring 2.76 Hectors, respectively.

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(d) As no steps for acquisition of the land were taken by the Municipal Council, Shahada, the Petitioners served a purchase notice, dated 18/05/2012, under Section 49 of the Maharashtra Regional And Town Planning Act, 1966 (for short 'the MRTP Act'), which was received by the Municipal Council on 21/05/2012.

(e) The Town Planning Department, Nandurbar Branch, issued a letter dated 30/07/2012, addressed to the Director, Town Planning, Maharashtra State, Pune, wherein the Deputy Director, Town Planning, Nandurbar set out reasons, as to why the said land was not appropriate for acquisition and opined that the purchase notice be accepted.

(f) By a communication dated 12/11/2012, the Director, Town Planning, Maharashtra State, Pune, addressed the Petitioners, stating therein that the purchase notice issued by the Petitioner under Section 49(1) of the MRTP Act, is confirmed under Section 49(4). They were advised to approach the Shahada Municipal Council.

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(g) On 04/05/2013, the Shahada Municipal Council addressed a communication to the District Collector, Nandurbar, stating therein that the purchase notice issued by the Petitioners under Section 49 of the MRTP Act has become final. However, an opinion is further expressed that the three sites be acquired.

(h) By a communication dated 22/08/2013, the Resident Deputy Collector, Nandurbar addressed the Chief Officer of the Shahada Municipal Council that, relevant documents be forwarded to the Authority and an appropriate proposal be sent to the office of the District Collector.

(i) The Petitioners addressed a letter to the District Collector, dated 30/08/2021, putting forth a dual offer of either acquiring the land or releasing it from reservation.

(j) The Chief Officer of the Shahada Municipal Council addressed a letter dated 02/09/2021, to the Petitioners, stating therein that, certain correspondence has been made with regard to the acquisition of the land with the office of the District Collector and since no Notification is received in this regard, no provision is

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made for payment of compensation pursuant to acquisition of land.

4. The learned Advocate for the Petitioners submits that, even today, the Petitioners have no objection if the land is acquired. Considering the passage of 19 years, it is their request that, this Court may direct the Municipal Council, Shahada, to follow Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act') in view of the judgment delivered by the Hon'ble Supreme Court in **Chhabildas Vs. State of Maharashtra and others, (2018) 2 SCC 784**. In the alternative, it is prayed that the land may be released from the reservation.

5. The learned Advocate representing the Shahada Municipal Council relies upon the affidavit-in-reply dated 17/06/2022, filed by the Chief Officer, Shahada Municipal Council and submits that, as a purchase notice under Section 127 of the MRTP Act was not issued, there cannot be lapsing of

reservation. In paragraph No.6 of the said affidavit-in-reply, it is categorically stated as under :-

“6. I state and submit that the acquisition process is going on in due course of time statutory declaration would be published and the petitioner would get you compensation for their land; I further states and submit the answering respondent is enduring hard to arrange the necessary funds for acquiring the land, any timeframe would hamper the development work and therefore, in absence of any notice under section 127 of the Maharashtra Regional and Town Planning Act, the petitioners are not entitled to get relief of direction to complete the acquisition in particular timeframe, such direction would adversely affect the other development work of Municipal Council and therefore the petition deserves to be dismissed in limine and caused may be awarded to the answering respondent.”

6. The learned Advocate for the Petitioners submits that the contention of the Municipal Council as regards the justification for acquisition of the land for the purpose of a Library, a Primary School and a playground, is meaningless, since there is no seriousness on the part of the Municipal Council. It is only for the purpose of seeking the dismissal of this Petition that an attempt is made to indicate that the object for which the land is reserved, is laudable. The fact remains that, for 19 years, no steps

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have been taken by the Municipal Council. He reiterates that the Petitioners would pray for a direction to the Municipal Council to issue a Notification under Section 19 of the 2013 Act and acquire the lands.

7. We have perused the affidavit-in-reply dated 22/06/2022, filed by the Assistant Director, Town Planning, Nandurbar. The affidavit is aimed at purely opposing the Petitioners. Except the averment that the Petitioner should have issued a notice under Section 127 of the MRTP Act, the affidavit-in-reply is devoid of any contention, as to whether the land deserves to be acquired and as to whether the Government would be funding the payment of compensation. It is equally undisputed that, after the Chief Officer, Shahada Municipal Council addressed the District Collector, Nandurbar on 04/05/2013, to make a provision for the payment of compensation, no further steps have been taken by the office of the District Collector.

8. In **Chhabildas (supra)**, the Hon'ble Supreme Court exercised its powers under Article 142 of the Constitution of India and recorded in paragraph Nos.29 and 30 as under :-

“29. The aforesaid judgment lays down that since more than 20 years had elapsed since the date of the purchase notice under Section 49 on the facts of that case, the land will have to be released from acquisition. No doubt this Court held that over 20 years is an inordinately long period of delay, and therefore, lapsing has taken place under Section 127 of the MRTP Act. However, on the facts of that case, no purchase notice under Section 127 was issued after 10 years had elapsed from the date of publication of the requisite plan. This being the case, we read the judgment as having allowed a lapse to take place, in view of the inordinately long delay of over 20 years, by really doing complete justice on the facts of that case under Article 142 of the Constitution of India.

30. In the present case, 15 years have passed since the date of publication of the development plan, and over 10 years have passed since the date of the purchase notice issued under Section 49. Considering the fact that there has been no stay at any stage by any court, it is clear that an inordinately long period of time has elapsed, both since the date of publication of the development plan, as well as the date of the purchase notice served under Section 49. No doubt, the letter of 26-9-2008 shows that an application was made within the requisite time period to acquire the aforesaid land. However, on the facts of this case, since after the aforesaid letter nothing has been done to acquire the appellant's property, we are of the view that the reservation contained in the development plan as well as acquisition proposal have lapsed. We make it clear that we hold this in order to do complete justice between the parties under Article 142 of the Constitution of India. However, in all future cases that may arise under the provisions of Section 49, the drill of Section 127 must be followed i.e. that

after 10 years have elapsed from the date of publication of the relevant plan, a second purchase notice must be served in accordance with the provisions of Section 127, in order that lapsing can take place under the aforesaid section. With these observations, the appeal is disposed of.”

9. It is, thus, in view of Article 142 of the Constitution of India, that the Hon’ble Supreme Court declared that the reservation has lapsed with a rider that, in future, the drill of Section 127 of the MRTP Act, shall be complied with before the declaration of lapsing of reservation. Nevertheless, the Hon’ble Supreme Court has directed that the compliance of Section 127 would be necessary.

10. The Petitioners’ contention that a direction be issued in terms of the view taken by the Hon’ble Supreme Court in paragraph 23.2 of **Chhabildas (supra)**, would be substantiated by the fact that 19 years have lapsed post the reservation. The record reveals that, neither the Municipal Council, Shahada, nor the State Government are serious with regard to the object, for which the land was reserved. It is merely an attempt to impress the Court by contending that the three parcels of land have been included in the

reservation plan for a fruitfull purpose of a Library, a Primary School and a playground. Had the Municipal Council and the Government been serious of this aspect, especially the need of establishing a Library and providing land for a Primary School and a Playground, it would not have taken 19 years to act in furtherance of the said object. Even today, neither the Government, nor the Municipal Council are committal or are willing to make statement, as to when the funds would be made available and whether the land can be acquired. Since the Petitioners have placed reliance upon paragraph No.23 of **Chhabildas (supra)**, more particularly, paragraph No. 23.2, we deem it appropriate to entertain the said request of the Petitioners in the light of passage of 19 years. Paragraph 23 in **Chhabildas (supra)** reads as under :-

“23. On a conspectus of the above authorities, the following position in law emerges:

23.1. In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the

reservation, designation, etc. shall be deemed to have lapsed.

23.2. *If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.*

23.3. *If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).”*

11. In view of the above, **this Writ Petition is partly allowed.** In the light of paragraph No.23.2 of **Chhabildas (supra)**, we direct that, the appropriate Government shall issue a notice within one year by following the procedure as is laid down

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in Section 19 of the 2013 Act. Needless to state, considering the law laid down in Chhabildas (supra), if the appropriate Government fails to initiate such action, as is directed, the Petitioners would be at liberty to avail of the remedies, as may be permissible in law.

12. Rule is made partly absolute in the above terms.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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