



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

WRIT PETITION NO. 6238 OF 2024

1. Vasantrao Digambarrao Salunke
Age: 66 years, Occu: Legal Practitioner,
R/o.Shri Ganesh Krupa, N-4, H-9,
CIDCO, Aurangabad
 2. Pratap Shankarrao Borade,
Since deceased through his Legal Heirs,
Shashikala Prataprao Borade,
Age: 62 years, Occu.: Household,
R/o. "Bhushan Bunglow", N-1,
Near Ganpati Temple, N-1,
CIDCO, Aurangabad
- ... PETITIONERS**

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Ministry of Urban Development Department,
Mantralaya, Mumbai – 32
2. The Director of Town Planning Department,
Maharashtra State, Pune
3. Aurangabad Municipal Corporation,
Through its Municipal Commissioner,
Aurangabad
4. Deputy Director of Town Planning,
Municipal Corporation, Aurangabad,
Aurangabad.
5. The District Collector,
Aurangabad

6. Deputy Director,
D P Unit, Municipal Corporation,
Aurangabad

... **RESPONDENTS**

....

Mr. D. P. Palodkar, Advocate for the Petitioners

Mr. M. M. Nerlikar, AGP for Respondent Nos. 1, 2 and 5

Mr. J. R. Shah, Advocate for Respondent Nos. 3, 4 and 6

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

DATE : 21.08.2024

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

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

2. The Petitioner has put forth prayer clauses (A), (B) (i)
and (ii), as under:-

“(A) The Hon’ble High Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby declare that the reservation of “12 Mtrs. Wide DP road” in the Sanctioned Development Plan/Draft Development Plan of Chhatrapati Sambhajinagar Municipal Corporation out of Gat No.19 of Nakshatrawadi, Tq. And District Aurangabad (writ property) has been lapsed and the land is free from the reservation and available to the petitioner for utilization as per the use permissible to the adjacent land.

(B) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby:

- (i) Direct the respondents to initiate and complete the requisite proceedings as contemplated by Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966 within a stipulated period in respect of writ property;*
- (ii) Direct the respondents to consider the development proposal of the petitioners without insisting for notification under Section 127(2) of the MRTP Act, 1966 in respect of writ property.”*

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

- (a) The development plan for the additional area of the Aurangabad Municipal Corporation was sanctioned by the Government, on 15.11.1991. The land of the Petitioners situated in Gut No.19 at Nakshatrawadi, admeasuring 53.04 R is affected by the reservation meant for a 12 meters wide road.
- (b) Since no development took place, the Petitioners issued a purchase notice on 04.04.2016 under Section 127 of the MRTP Act, 1966.
- (c) The Municipal Corporation issued a communication to the Petitioners on 02.06.2016, asking for an Akhiv Patrika, Toch map and measurement.
- (d) The Petitioners replied to the said communication on 17.08.2017 and pointed out that city survey has not been

carried out in respect of the land of the Petitioners and, therefore, the Akhiv Patrika has not been prepared.

(e) Since the planning authority did not take any steps towards acquisition, the Petitioners moved an application dated 03.04.2018, praying for development permission.

(f) This Petition was finally lodged on 14.06.2024.

4. The learned Advocate representing the Municipal Corporation submits that a draft development plan was published on 07.03.2024. Under the revised plan, the reservation with regard to the Petitioners' writ property for 12 meters wide road, has been maintained. The learned Advocate for the Corporation has, therefore, vehemently prayed that this Petition be dismissed with costs.

5. Keeping in view the above dates and events which are not contradicted, the law laid down by the Hon'ble Supreme Court in *Prafulla C. Dave and others Vs. Municipal Commissioner and others, (2015) 11 SCC 90*, would squarely apply. The Hon'ble Supreme Court has concluded in paragraph Nos. 18 to 23, in similar circumstances, 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 MRTP Act which contemplates that in so far as reservation of land for public purposes specified in sub-section (b) and (c) of Section 22 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. 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 vs. Dr. Hakimwadi Tenants' Association & Ors.[2] 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."*

6. It is, thus, clear that the Hon'ble Supreme Court has considered as to what would be the impact if no notice is issued by the land owner after 10 years of reservation and prior to the declaration of the revised development plan. It has been concluded that after expiry of 10 years of reservation, when no steps have been taken to acquire the land, the owner or interested person gets the right to issue a purchase notice under Section 127 of the MRTP Act. There cannot be automatic lapsing of reservation after 10 years, if the purchase notice is not issued.

7. It was further held that if no purchase notice is issued after 10 years and there is a revised plan under Section 38, which is published by the Authority, the land owner will then have to wait for

10 years and then issue a purchase notice, in the backdrop of there being no purchase notice in between the publication of the revised reservation and lapsing of 10 years. However, if the purchase notice is issued after lapsing of 10 years and prior to the publication of the revised plan, the revised plan would not neutralize the purchase notice.

8. For the sake of repetition, we are referring to the following portion of paragraph Nos.21 and 22 as under:-

“21. 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. Dr. Hakimwadi Tenants' Association & Ors.*[2] in the following terms:

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9. In view of the above, **this Writ Petition is allowed** in terms of prayer clause (A). The Municipal Corporation shall forward a communication to Respondent No.1 conveying the lapsing of reservation, within 45 days. Thereafter, Respondent No.1 shall issue a notification under Section 127(2), within a period of 60 days. If felt necessary, the Municipal Corporation shall urgently initiate steps in coordination with the Petitioners for measurement and preparation of a fresh map. If the Petitioners have a map readily available, they would tender the said map to the Corporation, expeditiously.

10. We make it clear that the Code of Conduct on account of the State Elections, would not be an impediment for the State Government to comply with this order for issuing a notification.

11. Rule is made absolute in the above terms.

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

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