

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7135 OF 2021

1. **CHETAN @ CHANBASSAPPA
SADASHIV BOLKOTE,**
Age 36 yrs, Occ: Business
2. **PARIMAL SADASHIV BOLKOTE,**
Age 32 yrs, Occ: Business
3. **RUSHIKESH SADASHIV
BOLKOTE,**
Age 37 yrs, Occ: Business
All Nos. 1 to 3 above R/a 892, Ashok
Chowk, Solapur

... PETITIONERS

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. **THE MUNICIPAL CORPORATION
OF SOLAPUR,**
Through its Municipal Commissioner,
Having its office at Indrabhavan,
Ambedkar Chowk, Railway Lines,
Solapur-413001.
3. **THE DIRECTOR OF TOWN
PLANNING,**
Maharashtra State, Pune, Having its

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office at Central Building, Station Road,
Agarkar Nagar, Pune-411001.

4. **THE ASST. DIRECTOR OF TOWN
PLANNING,**
Solapur Municipal Corporation,
Having office at Indrabhavan,
Ambedkar Chowk, Railway Lines,
Solapur-413001.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS Mr Tejas Deepak Deshmukh.

FOR RESPONDENTS Mr AA Alaspurkar, AGP.
NOS. 1 & 3

FOR RESPONDENTS Mr AA Rao.
NOS. 2 & 4

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

RESERVED ON : 07th February 2024

PRONOUNCED ON : 27th February 2024

JUDGMENT (Per Kamal Khata J):-

1. **Rule.** Respondents waive service. Rule made returnable forthwith.

2. By this Petition under Article 226 of the Constitution of India the Petitioners seek a writ of mandamus directing the Respondent No.1 to issue a notification in the Official Gazette as per Section 127(2) of the Maharashtra Regional and Town Planning Act, 1966

(“**MRTP Act**”) that the reservation for a ‘Stadium’ on the Petitioners’ land has lapsed and the said land is available to the Petitioners to develop.

3. The Petitioners are the sons of one Sadashiv Bolkote (“Petitioners”). They as owners are in possession of Site No. 13/55 new survey No. 33/1(Pt), having old survey No. 238/1, situated at Balkote Nagar, Taluka North Solapur, District Solapur admeasuring 14150 sq. mtrs.

4. The State of Maharashtra, through the Principal Secretary Urban Development Department, is arrayed as Respondent No.1 as it exercises powers and functions, under the provisions of Maharashtra Regional Town Planning Act 1966 (“**MRTP Act**”) to issue the notification sought. The Municipal Corporation of Solapur, which is the planning authority under Section 2(19) of the MRTP Act, is Respondent No.2, and the Director and Assistant Director of Town Planning are Respondent Nos 3 and 4 respectively.

5. By a Notification dated 28th October 2004, the Respondent No. 1 sanctioned the Development Plan for the city of Solapur under Section 31(1) of the MRTP Act which came into effect from 15th December 2004. By the said Notification, the said land was reserved for the purposes of ‘Stadium’ bearing reservation site No. 13/55.

6. The Petitioners contend that the Respondents did not acquire the land within a period of 10 years of the sanctioned development plan. That 10-year period expired on 15th December 2014.

Therefore, on 8th July 2019, the Petitioners issued a notice under Section 127 of the MRTP Act calling on the Respondents to take steps for acquisition and notified the Respondents that the reservation would stand lapsed on failure. The documents, namely, the 7/12 extracts of the said land along with the demarcation plan, were attached for their ready reference. That the purchase notice was duly received by Respondent No. 1 on 3rd August 2019 is not disputed.

7. By its response dated 17th June 2019, the Respondent No. 1 pointed out defects in the purchase notice to the Petitioners. The defects according to the Respondents was that the purchase notice issued through the Advocate did not attach his Vakalatnama and the original measurement plan as also the zone certificate of the said land. The Respondents also required documents showing approval and/or rejection of any permission by the competent authorities. According to the Respondents they would not proceed with the Petitioners application under Section 126 of the MRTP Act until the requisitions were complied.

8. There was an exchange of communications between the Petitioners and Respondents whereby the Respondents contended that the Petitioners had not complied with the requisitions and the Petitioners contended that all original relevant documents as required by law were tendered. Further, the Respondents called upon the Petitioners to make an application for TDR in the prescribed format whilst the Petitioners refused and asked them to acquire the land for compensation.

9. Mr. Deshmukh for the Petitioners submitted that the 24 months statutory period of the purchase notice dated 8th July 2019, under Section 127 of the MRTP Act, expired on 7th July 2021. He submitted that though the Petitioners had complied with all requisitions, no steps as contemplated in the case of the *Girnar Traders (2) v State of Maharashtra & Ors*¹ namely issuance of notification under Section 127(2) of the MRTP Act were taken. Thus, the reservation on the said land lapsed.

10. He placed reliance on the case of *Shrirampur Municipal Council, Shrirampur v Satyabhamabai Bhimaji Dawkher & Ors*² to submit that upon failure to take steps within the meaning of Section 126(1)(c) of the MRTP Act, namely for the planning authority to apply to the State Government to acquire the said land as per Section 19 of the Right to Fair Compensation Act, 2013, the reservation would be deemed to have lapsed. He submitted that the mandatory provisions of issuing the notification under Section 127(2) of the MRTP Act were not complied with. He thus submitted that the Petition be made absolute with costs.

11. *Per contra*, Mr Rao, for Respondents Nos. 2 and 4, submitted that the land was reserved for the purposes of 'Stadium' which was necessary for the city. He contended that the communication by the Respondents made it amply clear that the Petitioners had failed to issue an appropriate purchase notice. He further submitted that the reservation was in the interest of the citizens of Solapur and on account of financial crunches faced by the Respondents, they had

¹ (2007) 7 SCC 555.

² (2013) 5 SCC 627.

offered the Petitioners compensation by way of TDR as provided under Section 126(1)(b) of the MRTP Act.

12. Mr Alaspurkar for Respondents Nos. 1 and 3 contended that the appropriate authority for acquisition and development of the reservation was the Municipal Corporation. He fairly admitted that the notice under Section 127(1) of the MRTP Act 1966 was received by Respondent No. 2 on 8th July 2019. He submitted that the record of the Respondent No. 2 would evince the action taken by the Respondent No. 2 pursuant to the purchase notice.

13. The issue of lapsing is no longer *res integra*. In the case of *Shabnam Altaf Pardiwala and Another v State of Maharashtra*,³ this court considered the judgements of the Supreme Court in the case of *Girnar Traders (2) v State of Maharashtra & Ors*,⁴ *Girnar Traders (3) v State of Maharashtra & Ors*,⁵ and *Municipal Corporation, Greater Bombay v Hakimwadi Tenants Association*⁶ the relevant paragraphs of *Shabnam Pardiwala's* case (*supra*) read thus:

“24. The Apex Court in the case of *Girnar Traders (2) v State of Maharashtra* in paragraph 31 has held as under:

“31. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced.

³ Writ Petition No. 10465 of 2019, judgment dated 13th December 2023.

⁴ (2007) 7 SCC 555.

⁵ (2011) 3 SCC 1.

⁶ 1988 SCC (Supp) 55.

Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. **The word “aforesaid” in the collocation of the words “no steps as aforesaid are commenced for its acquisition” obviously refers to the steps contemplated by Section 126 of the MRTP Act.**

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of

adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.

[Emphasis supplied]

25. Earlier, the Supreme Court had in the case of *Municipal Corporation of Greater Bombay v Dr Hakimwadi Tenants' Association & Ors* held as under:

11. Section 127 of the Act is a part of the law for acquisition of lands required for public purposes, namely, for implementation of schemes of town planning. The statutory bar created by Section 127 providing that reservation of land under a development scheme shall lapse if no steps are taken for acquisition of land within a period of six months from the date of service of the purchase notice, is an integral part of the machinery created by which acquisition of land takes place. **The word “aforesaid” in the collocation of the words “no steps as aforesaid are commenced for its acquisition” obviously refer to the steps contemplated by Section 126(1).** The effect of a declaration by the State Government under sub-section (2) thereof, if it is satisfied that the land is required for the implementation of a regional plan, development plan or any other town planning scheme, followed by the requisite declaration to that effect in the official Gazette, in the manner provided by Section 6 of the Land Acquisition Act, is to freeze the prices of the lands affected. The Act lays down the principles of fixation by providing firstly, by the proviso to Section 126(2) that no such declaration under sub-section (2) shall be made after the expiry

of three years from the date of publication of the draft regional plan, development plan or any other plan, secondly, by enacting sub-section (4) of Section 126 that if a declaration is not made within the period referred to in sub- section (2), the State Government may make a fresh declaration but, in that event, the market value of the land shall be the market value at the date of the declaration under Section 6 and not the market value at the date of the notification under Section 4, and **thirdly, by Section 127 that if any land reserved, allotted or designated for any purpose in any development plan is not acquired by agreement within 10 years from the date on which a final regional plan or development plan comes into force or if proceedings for the acquisition of such land under the Land Acquisition Act are not commenced within such period, such land shall be deemed to be released from such reservation, allotment or designation and become available to the owner for the purpose of development on the failure of the Appropriate Authority to initiate any steps for its acquisition within a period of six months from the date of service of a notice by the owner or any person interested in the land.** It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to

which they can be exercised must be strictly followed.

[Emphasis Supplied]

26. Now let us consider the decision of *Girnar Traders (3) v State of Maharashtra & Ors*, referred to by the Respondents. The relevant paragraphs of the Apex Court's judgment are as under:

“45. The objects and reasons for amendment of Section 127 of the MRTP Act specifically referred to the hardship to the landowners, stated in the judgment of this Court in *Girnar Traders (2) v. State of Maharashtra* [(2007) 7 SCC 555 [hereinafter referred to as “*Girnar Traders (2)*”], pertaining to indefinite waiting for release of their respective lands because of inaction on the part of the Planning Authority in acquisition of their lands. The legislature was obviously aware of the provisions of Section 11-A of the Land Acquisition Act which permitted lapse of entire acquisition proceedings after the prescribed period. Still, the legislature opted to amend Section 127 of the MRTP Act in the manner as it has been amended. The intention appears to be to remove the doubt, if any, created by the unamended provisions of Section 127 of the MRTP Act with regard to application of Section 11-A of the Central Act to the State Act. Once the State Legislature has, by amendment, restricted the application of default clause only in the situations covered under Sections 126(2) and 126(4) of the State Act respectively, it will then be impermissible to read Section 11-A of the Land Acquisition Act into the language of Section 126(2) of the State Act. **The amendment ex facie appears to be to avoid undue hardship to the owners of the land on the one**

hand while on the other, exclusion of the underlined [Ed.: Herein italicised.] portion supra especially the words “under the Land Acquisition Act”, suggests the legislative intent to complete all proceedings within the framework of the MRTTP Act.”

[Emphasis Supplied]

14. After *Girnar Traders* (3) (supra), the Supreme Court in the case of *Shrirampur Municipal Council v Satyabhamabai Bhimaji Dawkher* (supra) held that the expression “no steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the Land Acquisition Act, 1894 and now the 2013 Act. For clarity paragraphs 42 and 43 of *Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher* (supra), are reproduced as under:

“42. We are further of the view that the majority in *Girnar Traders* [*Girnar Traders v. State of Maharashtra*, (2007) 7 SCC 555] had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression “no steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated

as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. **But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilised for execution of the development plan/town planning scheme, etc. are not left high and dry. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed.** Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution.”

(Emphasis added)

15. In the above context it would be worthwhile to reproduce the sections 126 and 127 of the MRTP Act for ready reference:

“126. Acquisition of land required for public purposes specified in plans

(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme,

any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority, or as the case may be, any appropriate Authority may, except as otherwise provided in section 113A acquire the land,—

(a) by an agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,

and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by

grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

Provided that, subject to the provisions of sub-section (4), no such declaration shall be made after the expiry of one year from the date of publication of the draft Regional Plan, Development Plan or any other Plan, or Scheme, as the case may be.

(3) On publication of a declaration under the said section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be,—

- (i) where the land is to be acquired for the purposes of a new town, the market value prevailing on the date of publication of the notification constituting or declaring the Development Authority for such town;
- (ii) where the land is acquired for the purposes of a Special Planning Authority, the market value prevailing on the date of publication of the notification of the area as an undeveloped area; and
- (iii) in any other case the market value on the date of publication of the interim development plan, the draft development plan or the plan for the area or areas for comprehensive development, whichever is earlier, or as the case may be, the date of publication of the draft town planning scheme:

Provided that, nothing in this sub-section shall affect the date for the purposes of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972:

Provided further that, for the purpose clause (ii) of this subsection, the market value in respect of land included in any undeveloped area notified under sub-section (1) of section 40 prior to the commencement of the Maharashtra Regional and Town Planning (Second Amendment) Act, 1972, shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to subsection (2) and sub-section (3), if a declaration is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional Town Planning (Amendment) Act, 1993, the State Government may make a fresh declaration for acquiring the land under

the provisions of the Right of Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.

127. Lapsing of reservation

(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 a declaration under subsection (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development authority or, as the case may be, the Appropriate Authority to that effect; and if within twenty four 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.”

16. From an analysis of the aforesaid decisions it can be concluded that if the land reserved for any purpose specified in any

plan under the MRTP Act is not acquired by agreement as provided under section 127 then the reservation, allotment or designation shall be deemed to have lapsed and the land shall be deemed to be released from such reservation and shall become available to the owner for the purpose of development.

17. This Court, in *Shivgonda Anna Patil v Sangli, Miraj and Kupwad City Municipal Corporation*⁷ held that there is no need for the owner to seek a declaration from the Court. The relevant paragraph reads as under:

“3. On 9th January 2015 by its judgement **in the case of Uday Madhavrao Patwardhan And Others Versus Sangli, Miraj, And Kupwad Municipal Corporation, Sangli and others** [(2015) SCC OnLine Bom 659 held that there is **no need for the owner to seek a declaration from the Court.** The relevant paragraph 16 read thus:

“16 ... After service of a valid notice under section 127 to either the Appropriate Authority or the Planning Authority, as the case may be, if steps has contemplated by section 127 are not taken within the period stipulated in the section, the reservation shall be deemed to have been lapsed and the land in respect of which the notice is issued shall be deemed to be released from the reservation. Thus, by operation of law the land stands released from the reservation and the Planning Authority or Appropriate Authority cannot treat the land as reserved. **In fact, there is no need for the owner to seek a declaration from the court of law on the basis of notice under section 127. The effect of lapsing of reservation on the basis of the notice is automatic...**”

⁷ 2023:BHC-AS:29348-DB

(Emphasis added)

18. In the present case, the Respondents have not denied the stated facts. It is apparent that almost 20 years have lapsed since the reservation was sanctioned. As held in *Girnar Traders* (3) (supra), an owner cannot be deprived of his rights to the property after the statutory period has expired. In the present case too, it is admitted that no steps were taken to acquire the land as contemplated under Section 126 of the MRTP Act.

19. Having perused the proceedings, it is amply clear that no steps as contemplated in law have been taken till date. The property cannot be held under reservation without acquisition in perpetuity. The owner cannot be denied the right to enjoy the fruits of development or compensation. The Respondents have clearly failed in performing their duty. In view of the of the aforesaid, the Petition is made absolute in terms of prayer clauses (b) and (c) which reads thus:

“(b) This Hon’ble Court by way of its appropriate writ, order or direction in the nature of mandamus may kindly be pleased to hold that reservation bearing site no. 13/55 on portion of land admeasuring 14150 sq.mts. out of new survey No.33/1(Pt), having old survey No.238/1 situated at Bolkote Nagar, Tal. North Solapur, Dist. Solapur has lapsed and the said land is available to Petitioner for the purpose of development or otherwise, as is permissible.

(c) This Hon’ble Court by way of its appropriate writ, order or direction in the nature of mandamus may kindly be pleased to direct the State of Maharashtra to issue a notification u/s 127(2) of the MRTP Act and publish the same in official Gazette with respect to lapsing of reservation bearing Site No. 13/55 on portion of land

admeasuring 14150 sq.mts. out of new survey No.33/1(Pt),
having old survey No.238/1 situated at Bolkote Nagar, Tal.
North Solapur, Dist. Solapur.”

20. Rule is made absolute in terms of prayer clauses (b) & (c).
21. No orders as to costs.
22. The State Government to notify the lapsing of the reservation by an order published in the Official Gazette as per Section 127(2) of the MRTP Act on or before 12th April 2024.
23. It is clarified that the Petitioners will be entitled to proceed with the development of the property and the Respondents will not delay the granting of permissions as the notification in the official gazette is merely a ministerial act, as held by the co-ordinate bench of this Court in the case of *Arun Motiram Nimkar v Municipal Corporation of City of Amravati & Ors.*⁸
24. All concerned to act on an authenticated copy of this judgment.

(Kamal Khata, J)

(G. S. Patel, J)

⁸ 2013 SCC OnLine 739: (2013) 4 Mah LJ 714: (2013) 5 Bom CR 546