

Ganesh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 11736 OF 2022**

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- 1. JAGDISH MALLIKARJUN PATIL,**  
Age - 66 years, Occ- Business,  
R/at- Shelgi, Gavthan Shelgi,  
Taluka Solapur, District Solapur.
- 2. SUNIL MALLIKARJUN PATIL,**  
Age- 46 years, Occ- Business,  
R/at - Shelgi, Gavthan Shelgi,  
Taluka Solapur, District Solapur.
- 3. DILIP MALLIKARJUN PATIL,**  
Age- 58 years, Occ- Business,  
R/at - Shelgi, Gavthan Shelgi,  
Taluka Solapur, District Solapur.
- 4. PRAKASH MALLIKARJUN PATIL**  
Age- 44 years, Occ- Business,  
R/at - Shelgi, Gavthan Shelgi,  
Taluka Solapur, District Solapur.

**... PETITIONERS**

**~ VERSUS ~**

- 1. STATE OF MAHARASHTRA,**  
[Summons to be served on the Learned  
Government Pleader appearing for  
State of Maharashtra under Order  
XXVII, Rule 4, of the Code of Civil  
Procedure, 1908].
- 2. SOLAPUR MUNICIPAL**

**CORPORATION SOLAPUR,**  
[summons to be served on the  
Municipal Commissioner Solapur  
Municipal Corporation Solapur]

**3. JOINT DIRECTOR TOWN  
PLANNING, SOLAPUR  
MUNICIPAL CORPORATION,  
SOLAPUR**

**...RESPONDENTS**

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**APPEARANCES**

**FOR THE PETITIONERS      Mr Tanaji Mhatugade.**

**FOR RESPONDENT-          Mr AC Bhadang, AGP.**  
**STATE**

**FOR RESPONDENTS          Ms Geeta R Shastri.**  
**NOS. 2 & 3, SOLAPUR**  
**MUNICIPAL**  
**CORPORATION.**

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

**RESERVED ON : 27th February 2024**

**PRONOUNCED ON : 14th March 2024**

**JUDGMENT (Per Kamal Khata, 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 Petitioners seek a writ of mandamus for a declaration that

the reservation in respect of the Petitioners property stands lapsed under the provisions of the Maharashtra Regional Town Planning Act, 1966 (“**MRTP Act**”). In addition, this Petition also seeks quashing and setting aside of the letter dated 23rd February 2018 by Respondent No. 3.

3. The Petitioners are the owners of the land bearing Survey No. 77 admeasuring 22000 sq mts at Shelgi, Solapur (“**Petitioners’ property**”). By a Reservation No. 3/24 and 3/25, the Petitioners’ property was reserved for ‘Truck Parking’ and ‘Truck Repair and Garage’ respectively.

4. In 1997, the Solapur Municipal Corporation (Respondent No. 2) published a development plan whereby the Petitioners property reservation for ‘Truck Parking’ and ‘Truck Repair and Garage’ was sanctioned. In view of such reservation, the Petitioners were unable to develop the property to its full potential.

5. On 9th February 2018, i.e., almost two decades later, the Petitioners issued a purchase notice under Section 127 of the MRTP Act calling upon the Respondents to acquire the land and award compensation. The Respondent No. 3 responded to the purchase notice calling upon the Petitioners to submit documents mentioned in their letter. That letter is at page 19 of the Petition. Then on 2nd May 2019 the Petitioners made an application for a zone certificate. The Petitioners’ property is in the yellow zone which means not under reservation as per the Town Planning Scheme No. 2 as stated in the reply of the Respondent.

6. However, the development plan shows the Petitioners' property for 'Truck Parking' and 'Truck Repair and Garage'. The Petitioners therefore filed the present Petition on 9th August 2022 as the Respondent failed and neglected to take steps of acquisition as required under the MRTP Act.

7. Mr Mhatugade for the Petitioners has multiple arguments based on two main assertions: (i) that there is no reservation and alternatively (ii) that there is reservation. On the first assertion he submits is that the city within the limits of Solapur Municipal Corporation is surrounded by ring roads in all directions. Consequently, the trucks are not allowed to enter in the city during day time. Therefore, he submits that keeping a reservation for 'truck parking and garage' on the Petitioners land would be totally unnecessary. He then draws our attention to Form-B statement (for redistribution and valuation) under the Town Planning Scheme, to submit that there is no reservation. Besides this he submits that the Town Planning Scheme prevails over the Development Plan and since there is no reservation under the Town Planning Scheme, the Petitioners property cannot be treated as reserved in the development plan.

8. As an alternative plea Mr Mhatugade submits that assuming the Petitioners' property was reserved, pursuant to the purchase notice of 9th February 2018 since no steps were taken by the Respondent No. 2, that is to say there was no declaration under Section 6 of the Land Acquisition Act or under the Right to Fair Compensation Act, 2013 had been initiated, to acquire the property

within the statutory period the reservation stood lapsed. Mr Mhatugade relies upon the judgment of this Court in the case of *Sunil Mallikarjun Patil v State of Maharashtra & Ors*<sup>1</sup> where one of us namely Kamal Khata, J was a member held that if the Respondents failed to acquire the land within a period of one year from the date of receipt of purchase notice under Section 127 (1) of the MRTP Act, the reservation would lapse. By the said judgment it was also held that it was the choice of the person whose land is sought to be acquired whether to accept monetary compensation or TDR in lieu of the monetary compensation. The court held that there could not be any compulsion on the owner and the Municipal Corporation could not compel the owner to accept TDR in lieu of monetary compensation.

9. Ms Shastri appearing for the Respondent Corporation fairly submitted that there is no notification issued under Section 6 of the Land Acquisition Act or under the Right to Fair Compensation Act, 2013. Her argument, based on the reply filed, principally is that the Petitioners had failed to submit documents as required by the notice dated 23rd February 2018. Therefore, the Petitioners cannot submit that the Petitioners had complied with the requirements of a valid purchase notice.

10. In support of her contention, she relied upon the judgments of the full Bench of this Court in the case of *Madanlal Zumberlal Nahar v Chief Officer, Municipal Council Beed*<sup>2</sup> and *Jeevan Mallappa*

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1 Civil Writ Petition No. 7956 of 2021

2 2023(2) Mh LJ 618

*Tonemare v Chief Officer, Kankavali Nagar Panchayat.*<sup>3</sup> These judgments held that a valid notice would necessarily require to be accompanied by document showing title or interest in the land under reservation. Then drawing our attention to the correspondence seeking title documents she submitted that the Petitioners had failed to give those relevant documents and thus the notice was not a valid notice. She also contended that all the owners of the property did not give the purchase notice. She therefore contended that the purchase notice under Section 127 of the MRTP Act that is an essential prerequisite for lapsing of the reservation was defective. Thus, the Petition must necessarily fail.

11. In rejoinder, the Petitioners asserted that they had submitted the documents that were sought for by the Respondent Corporation and in spite of which the Respondent had failed to take steps as required under the MRTP Act. The Petitioners have annexed the property card that was submitted to the Respondents being the document of title at page 16 of the Petition. In the last row and 2nd last column, the name of the Petitioners is evident as the owner. The purchase notice also has categorically stated that the Petitioner no 1 is the co-owner of the said property and the purchase notice was issued on behalf of all the owners. The Respondent Corporation has not denied the assertion that the property card was sent by the Petitioners in their reply. The Respondents have also not pointed out any inconsistency with regard to any documents submitted or to the claim of the Petitioner no 1 being a co-owner.

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3      2022 (4) Mh LJ 22.

12. Whilst testing the Petitioners' case on the alternate submission, namely, assuming that the property stood reserved, we are satisfied that the purchase notice was valid. The Petitioners have stated on oath that they have sent the documents to the Respondent No. 2. The property card evinces the interest of the Petitioner no 1 as well as his co-ownership right. The essential ingredients or requisitions of the purchase notice have therefore been complied with by the Petitioner no 1, as it shows not only the title but also his co-ownership rights and interest in the Petitioners land.

13. In our view the three documents sought namely, (i) T.P. 2, Final Plot No 77, admeasuring area 22000 sq mts measurement plan and recent property card (ii) Demarcation plan & (iii) Verification of area as per Development Plan Report and joint measurement plan in the reply of Respondent Nos 2 & 3 are not documents contemplated by the section 127 of the MRTP Act. The words in section 127 namely, "*the owner or any person interested in the land may serve notice, along with the documents showing title or his interest in the said land*" can be by no stretch of imagination be expanded to mean and include measurement plan, demarcation plan, report showing verification of area as per development plan and joint measurement plan as claimed by the Respondents in the present case. Whereas the measurements plan, demarcation plan, and recent property card are necessarily a part of the municipal record, the verification of the area and joint measurement plan are to be obtained by the authorities through their officers and are not contemplated to be requirements under the MRTP Act. In our view since the document of title and interest in the property was tendered by the Petitioners,

the full Bench judgment of this court relied upon by Ms Shastri will not apply to the facts of this case.

14. In view of the aforesaid, since the statutory period pursuant to the issue of a valid purchase notice has lapsed, the Petition is made absolute in terms of prayer clauses (A) and (B) which reads thus:

“(A) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, holding that the reservation in respect of the suit property viz. Reservation No. 3/24 “Truck Parking” and Reservation No. 3/25 “Truck Repair and Garage” stands laps under the provision of Section 127 of the MRTP Act, and be pleased to direct the Respondent Municipal Corporation to treat the property is free from reservation.

(B) That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, quashing and setting aside the letter dated 23rd February 2018 written by Respondent No. 3 bearing No. Sa.San.Nara/Nara/18/8262.”

15. The State Government is also directed to notify the lapsing of reservation by publishing an order in the Official Gazette as per the requirement of ***Section 127(2)*** of the MRTP Act within a period of six months from the date of this order. Thereafter, if fresh plans for

building permissions are submitted by the Petitioners then the same should be considered as expeditiously as possible.

16. No orders as to costs.

17. The parties to act on the authenticated copy of the order.

**(Kamal Khata, J)**

**(G. S. Patel, J)**

Note: This judgment is modified as per order dated 22nd March 2024 passed on a praecipe.  
The corrections are shown in bold, italics and underline.