



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5611 OF 2022

- 1) Surendra Narayandas Javandhiya,
Age about 52 years,
Occupation – Agriculturist,
R/o Main Road, Deoli/Pulgaon,
Tq. Pulgaon, District Washim.
- 2) Sunil Sitaram Bhut (HUF),
through Karta male member
Sunil Sitaram Bhut, Age 56 years,
R/o Kurha Road, Dhanraj Nagar,
Plot No. 10A & B, Chandur Railway,
Tq. Chandur Railway, District Amravati.
- 3) Sau. Shilpa Niraj Khatri, age-44 years,
Occ. - Agriculture and Business,
through its Power of Attorney Holder
Shree, Niraj Antarchandji Khatri,
Age – 48 years, R/o Tukdoji Chowk,
Pulgaon, Tq. Deoli, Dist. Wardha
- 4) Surendra Rambhoji Tank,
Age – 50 years, Occ. - Business,
R/o Plot No.70, Kolatkar Colony,
Amravati.

.... **PETITIONERS**

VERSUS

- 1) The State of Maharashtra.
through the Secretary, Urban Development
Department, Mantralaya, Mumbai
- 2) The Director of Town Planning,
State of Maharashtra, Central Building,
Pune-1.

- 3) Assistant Director of Town Planner Wardha,
Town Planning & Valuation Office, Wardha,
Ambedkar Chowk, Sawangi Road, Near
Stadium, Wardha.
- 4) Municipal Council (M.C)/Nagar Parishad
Pulgaon, through its Chief Officer at Pulgaon
Tq. Deoli, Dist. Wardha.

.... **RESPONDENTS**

Mr. G.K. Mundhada, Counsel for the petitioners,
Shri A.A. Madiwale, AGP for respondent Nos. 1 to 3.
Shri S.A. Sahu, Counsel h/f. Mr. M.I. Dhatrak, Counsel for respondent
No.4.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**
DATED : 20th JULY, 2024

ORAL JUDGMENT: (Per : Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith. Heard finally with
the consent of the learned Counsel for the parties.

2. By this petition, the petitioners are invoking the deeming
fiction of lapsing of reservation under Section 127 of the Maharashtra
Regional & Town Planning Act, 1966 (for short- the “*Act of 1966*”) as
no steps have been commenced for the acquisition of the land of the
petitioners by the respondents.

3. Petitioner Nos. 2 to 4 are the joint owners of land Survey
No.455/A, admeasuring 36R of village Gunjakhed, Tahsil-Deoli,

District-Wardha (for short, the “*said land*”). Petitioner No.1 was the previous owner of the said land. Subsequently, petitioners Nos.2 to 4 have purchased the said land. Hence, petitioners Nos.2 to 4 have acquired the ownership rights over the said land.

4. The said land has been reserved for the purpose of a vegetable market and shopping centre vide Resolution No.23 by the Urban Development Department, Mantralaya, Mumbai, vide Notification No.TPS-2696/771/CR-242/96/UD-9 dated 14-03-1997, which has come into force with effect from 19-05-1997. Also, the excluded part of the Development Plan vide Notification No.TPS-2696/771A & B/CR-242/96/UD-9 dated 29-02-2000 has come into force with effect from 01-06-2000. Later, the same was revised vide Notification No.TPS-2899/7639/CR-123/99UD30 came into force on 15-01-2003.

5. Since then, respondent No.4-Municipal Council, Pulgaon, has failed to take steps to acquire the said land for more than ten years. Therefore, on 01-07-2020, the petitioners issued a purchase notice under Section 127 of the MRTP Act to respondent No.4 to purchase the said land or release the said land from the reservation and give permission to the petitioners for development as per the adjacent development plan that was served on it.

6. After receipt of the said notice, on 02-07-2020, respondent No.2 directed respondents Nos.3 and 4 to submit a detailed report of adjacent development near the area of the land in question.

7. On 26-10-2020, respondent No.4 issued a letter to petitioner No.1 and asked him to submit the original copy of the measurement sheet in respect of the land in question. Subsequently, on enquiry, it was informed to the Counsel of the petitioners that the Municipal Council, in the General Body Meeting held on 28-01-2021, unanimously resolved to acquire the said land and to send the proposal for acquisition to the Collector, Wardha. It transpired that the Council did not have sufficient funds to deposit the preliminary amount in the Government Treasury.

8. Thereafter, the Collector, Wardha, vide order dated 16-09-2021, directed the Sub-Divisional Officer to complete the acquisition proceedings as per the provisions of Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the "*Act of 2013*") read with Section 126 of the MRTP Act. The Sub-Divisional Officer directed respondent No.4 to take appropriate steps to complete the acquisition of the land in question. However, until the filing of the petition, i.e. 05-09-2022, no steps have been taken under Section 19 of the Act of 2013 to acquire the land in question.

9. Despite the service of purchase notice dated 01-07-2020, respondent No.4 neither complied with the same nor acquired the said land, and, therefore, the petitioner preferred this petition.

10. Respondent No.4 resisted the claim on the ground that the petitioners have failed to comply with the provisions of Section 127 of the MRTP Act. Respondent No.4 admitted the service of purchase notice under Section 127 of the MRTP Act on 06-7-2020; however, they raised the objection that the same was not clear notice and does not specify the requirement of Section 127 of the MRTP Act and, hence, prayed for rejection of the petition.

11. Respondents Nos.1 to 3 also oppose the claim, contending that no valid notice was served on them by the petitioners. Respondent No.4 was responsible for not acquiring and developing the said reservation. Accordingly, respondent No.4 was directed to acquire the same; therefore, the petitioners are not entitled to any relief as claimed.

12. We have appreciated the rival contentions of the parties and perused the record.

13. At the outset, it seems that the petitioners are the owners of the land in question. By notification dated 14-03-1997 and subsequent notifications till 2003, the land in question has been reserved for the purposes of a vegetable market and shopping Centre vide Reservation No.23. It is not in dispute that in spite of above-referred notifications the land was not acquired for more than ten years by respondent No.4. Therefore, the petitioners issued purchase notices under Sections 49 and 127 of the MRTP Act to the respondents, which were served on them between 02-07-2020 to 06-7-2020. Despite the service of said purchase notices, undisputedly, the respondents failed to take any steps to comply with the said notice or acquire the said land for more than two years after the service of the said notice. Thus, it seems that as per the law laid down by this Court in the matter of *Vyankatesh Reality, Amravati v. The State of Maharashtra and others* in *Writ Petition No.1107/2014* decided on 01-4-2015 and *Chinmay Gurunath Parale v. State of Maharashtra, Director of Town Planning, Maharashtra State, Pune; Solapur Municipal Corporation* in *Writ Petition No.3898/2021* decided on 12-04-2023, the reservation stands deleted by fiction of law or the petitioners are entitled to claim the relief of lapsing of reservation.

14. As a result, in view of the above discussions, as per the provisions of Section 127 of the MRTP Act and the dictum laid down in

the judgments cited supra, we are of the opinion that despite service of purchase notice, respondent No.4 has failed to comply with the same or acquire the land or failed to deal with the provisions of Sections 126 and 127 of the MRTP Act. Therefore, the petitioners are entitled to seek a declaration that reservation on the land shall be deemed to have been lapsed under Section 127 of the MRTP Act.

15. As such, the petition stands allowed. It is declared that Reservation No.23 on land Survey No.455/A, admeasuring 36R of village Gunjakhed, Tahsil-Deoli, District-Wardha, stands lapsed as per Section 127 of the MRTP Act. As a sequel, the respondents shall issue a notification indicating the lapsing of the said reservation within a period of eight weeks from the date of production of a copy of this judgment.

Needless to clarify, after the issuance of the notification by the respondents, the petitioners are free to develop the land in accordance with the purpose for which the development of the adjoining land is permissible, as per the development plan.

16. Rule is made absolute in the terms above.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)