



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

WRIT PETITION NO. 8351/2023

1. Markandey Uddhavrao Bonde,
Age 65 yrs., Occ. Retired,
2. Sau Shalini M. Bonde,
Age 61 yrs., Occ. Household work,
3. Vitthal Shamrao Masatwar,
Age 67 yrs., Occ. Retired,
4. Sau. Rekha Vitthal Masatwar,
Age 56 yrs., Occ. Insurance Agent,
5. Sau. Lalita Yuvraj Bobade,
Age 64 yrs., Occ. Household work,
6. Ashok Narayan Kasawar,
Age 65 yrs., occ. Retired,

All R/o. Balaji Ward, Ballarpur,
Tq. Ballarpur, Dist. Chandrapur.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Director of Town
Planning, State of Maharashtra,
Central Building, Pune-1.
2. Municipal Council (M.C.)/
Nagar Parishad, Ballarpur through
its Chief Officer, Tq. Ballarpur,
Dist. Chandrapur.

3. Assistant Director of Town Planning,
Town Planning & Valuation office,
Branch Office, Prashaskiy Building,
2nd Floor, Room No.23,
Chandrapur – 442101.

RESPONDENTS

G.K. Mundhada, with Ms. P. Jinde & Mr. R.G. Mundhada, Advocates
for petitioners.

Mr. N.R. Patil, Asst. Government Pleader for respondent Nos. 1 & 3.

Mr. M. I. Dhatrak, Advocate for respondent No.2.

CORAM : **VINAY JOSHI AND**
SMT. M. S. JAWALKAR, JJ..

DATE : **23.07.2024**

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

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

2. The petitioners are seeking for declaration of lapsing of
reservation No.4 and issuance of consequential notification thereof.

3. The Development plan of Ballarpur city was notified on
01.10.2005, wherein under reservation No. 4, the petitioners' land of
sheet No. 10, City Survey No. 22/4 admeasuring 929 sq. mtr. was

reserved for market. The said development plan was came into force on 01.10.2005. Since there was no progress for next ten years, the petitioners have issued a purchase notice on 29.09.2021 in terms of Section 127 of the Maharashtra Regional and Town Planning Act Act, 1966 ("MRTP Act"). The petitioners have annexed revenue extract and copy of sale-deed along with purchase notice. In pursuance of that, respondent No.2 Municipal Council, Ballarpur in its General Body Meeting dated 31.12.2021 passed resolution by which decided to forward the proposal for acquisition. Accordingly, the proposal was forwarded, but no requisite amount has been deposited. The petitioners would submit that despite receipt of purchase notice, no positive steps have been taken within two years, hence the reservation deemed to be lapsed by legal fiction.

4. The respondents resisted the petition. The proposal for acquisition of land was already forwarded. Moreover, the petitioners have not submitted the measurement map and thus, it was incomplete notice. The learned counsel appearing for petitioner relied on the decision of this Court in case of **Raju s/o Jagan Gannar & ors. Vs. State of Maharashtra & ors.** (Writ Petition No. 4173/2022, decided on

08.09.2023) which has dealt the similar issue. This Court by relying on the decision of the Supreme Court in case of ***Girnar Traders Vs. State of Maharashtra (2007) 7 SCC 555*** has ruled that forwarding of proposal to the Collector does not amount to take step towards acquisition. The relevant portion of the decision in paras 7 and 8 reads as under:-

“7. In this regard the law is settled by the various pronouncements of this Court as well as of the Supreme Court. In the case of Girnar Traders Vs. State of Maharashtra [(2007) 7 SCC 555], the Hon’ble Apex Court held as under:-

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under section 6 of the LA Act. Clause (c) of Section 126 (1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which

the acquisition is sought for by the authorities. Thus the step towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

8. *In view of the settled law that mere sending of proposal to the Land Acquisition Authority does not amount to taking up steps for acquisition of land, and since, the statutory period of 24 months, as envisaged under Section 127 of the MRTP Act from the date of purchase notice, is already lapsed and no steps for acquisition of the land is taken by respondent no. 4, therefore deeming fiction of lapsing of reservation on the said land of the petitioner has to follow.”*

5. In the decision of Raju s/o Jagan Gannar (*supra*), this Court has also negated the demand of measurement map stating that it is not a legal requirement. The said observation in para 10 of the decision as below:-

“10. It is pertinent to note here that in view of the decision in the cases of Anil Mohanlal Vyas Vs. The State of Maharashtra (Writ Petition No. 4498/2019, decided on 23.01.2020) and Jaika Vanijye Ltd. Vs. State of Maharashtra [(2014) 1 All MR 136], wherein this Court negated the demand of measurement map alongwith the purchase notice by holding that it is not a requirement under Section 127 of the MRTP Act, we do not find force in the argument of the learned counsel for respondent no. 4. We also do not find force in the argument of learned counsel

for respondent no. 4 that 7/12 extract, which was annexed with the notice, is not a document showing interest in the land.”

6. The learned AGP has relied on the decision of this Court in case of ***Sau. Alka Dilip Dabhade & anr. Vs. The State of Maharashtra & ors***, (Writ Petition No. 671/2020, decided on 15.06.2020) to contend that sanction demarcated lay-out map has not been submitted. However the same is not a legal requirement in terms of Section 127 of the MRTP Act. The said decision being on different facts, would not assist in any manner. Reliance is also placed on the decision of this Court in case of ***Prashant s/o Vijaykumar Shet & anr. Vs. The State of Maharashtra & ors***. (Writ Petition No. 6481/2015 decided on 19.11.2015). In the said case, no documents showing title of petitioner in the land have been tendered, which is not a case here.

7. In substance, it is apparent that within ten years from the publication of notification, no steps towards development were taken nor within two years from the receipt of purchase notice positive steps have been taken. The petitioners have produced documents showing their title along with purchase notice and thus, the petitioners' claim for declaration of lapsing needs to be allowed.

8. In view of above, we are inclined to allow writ petition in terms of prayer clauses (A) and (B) which read as under:-

“A. Declare that the reservation for Market vide reservation no.4 affecting land owned by the petitioners of Sheet no. 10 City Survey no. 22/4 total area admeasuring 929 sq. mtr. (10000 sq.ft.) of Mouja Ballarpur, Tq. Ballarpur Dist. Chandrapur has lapsed under Sec. 127 of the Maharashtra Regional and Town Planning Act Act, 1966 and that the Petitioners are free to develop the land owned by them in the manner permissible to adjacent land as per Development Plan of Ballarpur city.

B. Direct the respondents to notify and publish in the official Gazette notification under Sec. 127 sub-Section (2) the lapsing and declare that the reservation for market vide reservation no.4 affecting the land owned by the petitioners of Sheet no.10 City Survey no. 22/4 total area admeasuring 929 sq.mtr. (10000 sq. ft) of Mouja Ballarpur, Tq. Ballarpur Dist. Chandrapur has lapsed or within eight weeks or the period as may be specified by this Hon’ble Court.”

9. Petition stands disposed of in above terms.

(SMT. M. S. JAWALKAR, J)

(VINAY JOSHI, J.)

Gohane