



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

918 WRIT PETITION NO. 1308 OF 2018

1. Siddheshwar Appasaheb Halkude,
Age : 60 years, Occu.: Agriculture,
2. Pushpalata wd/o Appasaheb Halkude,
Age : 79 years, Occu.: Agriculture

Both R/o.: "Janhavi Sankul",
Row House No.B-2, Near Gorakshan,
Ambajogai Road, Latur

..... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through : The Secretary,
Urban Development Department,
Maharashtra State,
Mantralya, Mumbai
2. Latur Municipal Corporation,
Through the Municipal Commissioner,
Latur
3. The Town Planner,
Latur Municipal Corporation,
Latur

..... RESPONDENTS

...

Mr. Patil Milind, Advocate for the Petitioners
Ms. R. R. Tandle, AGP for Respondent-State
Mr. Patil Hanmant V., Advocate for Respondent Nos.2 & 3

....

**CORAM : R. G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 16/04/2025.

ORAL JUDGMENT : (Per R. G. AVACHAT, J.)

1. The learned counsel for respondent Nos.2 & 3 tenders across the bar an affidavit in reply. The copy is already served to other side.

2. Heard.

3. **Rule.** Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

4. The petition, under Article 226 of the Constitution of India, has been filed mainly for the following reliefs :

“B) Rule may kindly be made absolute and it may kindly be declared that in view of failure of the Planning Authority and the State to acquire petitioners’ land from Gat No. 106 at Arvi, Tq. Latur, for the purpose for which the same is reserved under the development plan in force, reservation attached to petitioners’ land stands lapse. The responded-State and the Planning Authority may kindly be directed to issue notification confirming lapse of reservation attached to petitioners land from Gat No.106, located at Arvi, Tq. Latur.”

5. The petitioners are the owners in possession of the land bearing Survey No.49/B (Gut No.100), situated at village Arvi, Taluka and District : Latur. Respondent Nos.2 & 3 published a draft development

plan of Latur town on 02/01/2002. Initially, the land of the petitioner was affected by this draft development plan. However, a corrigendum was issued on 31st August, 2015 including land of the petitioners in the draft development plan. The State of Maharashtra in the Department of Urban Development, approved the said plan vide notification dated 31st August, 2015 reserving the land for playground, MSEB and primary school etc.

6. The petitioners issued a notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 dated 26/09/2016 to respondent No.2 calling upon him to take steps for acquisition of the lands affected by the reservation. According to the learned counsel for the petitioners, in spite of the service of the notice, respondent Nos.2 & 3 did not take any steps towards acquisition of the said land for the statutory period of 2 years and thereby the land would stand automatically – dereserved in view of mandate of Section 127 of the MRTP Act. The learned counsel for the petitioners advert our attention to para 3 of the petition, wherein it has been averred that the proposed modification as proposed in 2003, was sanctioned vide notification dated 31/08/2015. The said notification did not affect the reservation plan against the petitioner's properties, as part of the reserved site was converted into residential zone thereby benefiting one Mr. Om Brijwasi and his family. He would further submit that the reservation attached to

the petitioners' land should continue as per the development plan of 2002. He mean to say that after lapse of requisite period of 10 years after the said development plan, the petitioners issued notice under Section 127, which has not at all been responded to or no steps have yet been taken towards acquisition of the land and therefore, in view of the mandate of the Section 127, the land stood dereserved.

7. We have considered the submissions advanced. Perused the documents relied on. For better appreciation, we prefer to refer Section 127 fo the MRTTP Act and therefore, the same is reproduced below.

“127. *Lapsing of reservations :*

[(1)] If any land reserved, allotted or designated for any purpose specified I 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 sub-section (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, alongwith 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 f 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) n 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.”

8. Material part of notification dated 2/01/2002 reads thus :

“PART-I :

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 31 of the said Act, and of all other powers enabling it in that behalf, the Government of Maharashtra hereby -

- a) Sanctions the Draft Development Plan for the Ara of old Municipal Limit and extended limit subject to the modifications specified in the Schedule annexed hereto in PART-I which shall be the final Revised Development Plan of old Municipal Limit and extended area f Latur except the said excluded part of the Draft Development Plan.*
- b) Fixes the 18th February, 2002 to be the date on which final Development Plan of old Municipal Limit and extended area of Latur excluding the said excluded part of the Draft Development Plan shall come into force.*

Note : *The aforesaid final Development Plan except the said excluded part of the draft Development Plan modified and sanctioned by the State Government, the*

modification being shown on the Plan in Orange colour, shall be kept open for inspection by the public during working hours on all working days for a period fo 1 year in the office of the Latur Municipal Council.”

9. The development plan / sketch under this notification is not on record. It is true that in response to the application moved by the petitioners, the Chief Officer of Latur Municipal Council had informed the Under Secretary, Urban Development on 20/11/2005 and urged for dereserving land of the petitioners. Our attention was drawn to the last para of the said communication, whereby it has been stated that the land of the petitioners' was affected in the development plan approved under Section 31 of the MRTP Act vide Government notification dated 02/01/2002. It is true that the local authority i.e. Municipal Council, Latur did not require the land to be reserved in the development plan. The ultimate authority, however, is the State Government in the Department of Urban Development. It did not act on the proposal moved by the local authority. On the contrary, in 2015 and to be specific on 31/08/2015, Government issued notification in following terms.

“Now, therefore, in exercise of the powers conferred on it by the sub-section (1) of section 31 of the said Act and all other powers enabling it in that behalf, and after consulting the Director of Town Planning, Maharashtra State, the Government of Maharashtra hereby, except for the Excluded parts in terms of EP Nos. 13-B(1) & B(2) which are republished

vide separate notice, sanctions the draft Development Plan of the Latur, Municipal Council as regards the said Excluded Parts in terms of E.P. Nos.2 to 12, 13 B(3), 13 B(4), 14 to 35, 37, 38 & 40 to 45 as specified in the Schedule of Modification annexed hereto, which shall be a part of the final Development Plan of the Latur Municipal Council as regards the said Excluded Parts.

The final Development Plan in respect of the said Excluded Parts of Latur Municipal Council viz. E. P. Nos.2 to 12, 13B (3), 13B(4), 14 to 35, 37, 38 & 40 to 45 shall come into force after one month from the date of publication of this notification in the Official Gazette.”

10. The learned counsel for the responded – Municipal Council was right in submitting that the final development plan has in fact been approved vide notification dated 31/08/2015 and the petitioners would have to wait to issue notice under Section 127 of the MRTP Act for the 10 years next after the date of publication of the said notification. He meant to say that the petition was premature since the period of 10 years has not yet been over for issuance of notice and thereafter the authorities concerned would get a period of two years to respond to the notice, if any, that may be issued on behalf of the petitioner.

11. In our view, the documents on record make out a case of the land of the petitioners' to have been comprising in final development plan approved on 31/08/2015 and therefore issuance of notice under Section

127 of the MRTP Act is premature. We, therefore, find the petitioners to have no case in the matter and the petition stands dismissed. Rule is discharged.

(SANDIPKUMAR C. MORE, J.)

(R. G. AVACHAT, J.)

VS Maind/-