



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4963 OF 2016

1. Mukund Mohan Kurunbhatti
Age : 45 years, Occ. : Business
R/o. Heramb society, behind Harshvardhan
Society Makhamalabad Naka, Panchavati
Tq. Nashik, Dist. : Nashik
2. Subodh Motichand Bundelchandi
Age : 50 years, Occ. : Business
R/o. Sadar Bazar Chalisgaon
Dist. Jalgaon.

... PETITIONERS

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Collector, Jalgaon
District Jalgaon
3. Assistant Director of Town planning
IInd floor, Bhikamchand Jain Market,
Jalgaon.
4. The Chalisgaon Municipal Council
Through its Chief Officer,
Chalisgaon.
5. The Planning Officer
Municipal Council,
Chalisgaon.

... RESPONDENTS

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- Mr. Mukul Kulkarni, Advocate h/f. Mr. G. L. Gujar, Advocate for Petitioners
 - Mr. P. S. Dighe, Advocate h/f. Mr. V. R. Dhorde, Advocate for Respondent Nos. 4 and 5
 - Mr. A. V. Lavte, AGP for State
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CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL – JADHAV, JJ.

RESERVED ON : NOVEMBER 13, 2025

PRONOUNCED ON : DECEMBER 04, 2025

JUDGMENT [Per Vaishali Patil – Jadhav, J.] :

. Rule. Rule made returnable forthwith and heard finally with the consent of learned Advocates for the parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners are seeking following reliefs :-

"A) The Hon'ble High Court may be pleased to direct Respondents to issue notification declaring that the reservation on Survey No.303/1/1C, situated at Chalisgaon has lapsed as provided under Section 127 of the MRTP Act.

AA) The Hon'ble High Court may be pleased to hold and declare that the re-reservation of the property of the Petitioner bearing No. 303/1/1-C admeasuring 0-H 19.5 R i.e. 20981 sq. ft. Areas of land situated at Chalisgaon in Sanctioned Development Plan dated 06.04.2016 bearing Site No. 46 is bad in law and non-est and hence the said reservation is quashed and set aside."

3. It is the case of the petitioners that lands bearing city Survey No. 303/1/1C and 309, are reserved as Site No. 41 for 'Play

Ground and School' in the development plan dated 22.12.1989. The petitioners purchased the Survey No. 303/1/1C by the sale deed dated 30.12.2014. Accordingly, entry was made in 7/12 extract wherein it is mentioned in other rights column that the land is reserved for Site No. 41. The Petitioner No. 1 issued purchase notice on 16.02.2015 under Section 127 of MRTP Act. After the purchase notice, Chief Officer sent land acquisition proposal to Collector by letter dated 28.05.2015. Note was also prepared by Special Land Acquisition Officer for seeking consent of the Collector to appoint Sub-Divisional Officer for carrying out acquisition proceeding under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for Site No. 41 Survey No. 303/1/1C. But no further steps were taken. It is the contention of the petitioners that as no steps were taken within 12 months of purchase notice, the reservation has lapsed and the land shall be deemed to have been released from the said reservation.

The revised second development plan got sanction of Government on 06.04.2016 wherein petitioners' land is reserved for 'Primary School and Play Ground' as Site No. 46. As the petitioners have served the purchase notice before the second revised plan was sanctioned, petitioners' need not wait for another 10 years.

4. The petitioners would submit that the reservation Site No. 41 consists of Survey No. 303/1/1C and 309 total admeasuring 0.45 R. The owner of Survey No. 309 filed **Writ Petition No. 3710 of 2014, *Chhaya Motichand Bundelkhandi Vs. The State of Maharashtra and Others***, before this Hon'ble High Court seeking declaration as per Section 127 of MRTP Act, 1966. The writ petition was allowed on 26.08.2014. As a result, larger portion of 0.25 R land of Site No. 41 is deleted and very small portion of 0.20 R land is left in Site No. 41.

In support of his submissions, petitioners relied on ***Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and others***, (2015) 11 SCC 554 and ***Sadashiv Tryambak Rajebahadur and others Vs. State of Maharashtra through Principal Secretary, Urban Development Department and others***, 2015(11) SCC 554.

5. Learned counsel for the Municipal Council would submit that the scheme to prepare the revised development plan commenced in the year 2009 and final development plan was sanctioned in the year 2016. He would submit that since the revised development plan was sanctioned on 06.04.2016, the cause of action for the petitioners to issue a notice under Section 127(1) of MRTP Act got extended by a further period of 10 years. Petitioners did not take objection at the relevant time. The notice dated 16.02.2015 is premature and the

petition be dismissed. To buttress his submission learned counsel relies upon the judgment of Hon'ble Apex Court in the case of ***Prafulla C. Dave and others Vs. Municipal Commissioner and others***, (2015) 11 SCC 90.

6. Learned advocate for Municipal Council would dispute the fact that petitioners' land is reserved by Site No. 41. Learned counsel would point out from the statement of sanctioned development plan of 1989 that petitioners' land is reserved in Site No. 42 for "Slum Clearance Scheme" which is in Survey No. 303 part and not in Site No.41, wherein there is mention of only Survey No. 309. Petitioner has mentioned wrong Site No. 41 in his purchase notice dated 16.02.2015. Hence, petition be dismissed and no relief be granted to the petitioners.

7. Learned AGP adopted arguments of learned counsel for Municipal Council. In addition, he would submit that by amendment in Section 127(1) of MRTP Act on 29.08.2015, the words "twelve months" were substituted by "twenty-four months". In view of the amendment, lapsing would be on 15.02.2017 i.e. after the expiry of 24 months from the date of purchase notice dated 16.02.2015. The notice would also lapse for the reason that the second revised plan came on 06.04.2016, wherein the petitioners' land is reserved for 'Play Ground' in Site No.46.

8. We have considered the rival submissions and perused the record.

9. It is the contention of the Municipal Council that, Site No. 41 does not include petitioner's land and his land is in Site No. 42 and he has wrongly mentioned Site No. 41 in his purchase notice. This contention cannot be accepted for the reason that the Municipal Council raised this objection only while answering this Writ Petition by way of an affidavit-in-reply. On the contrary, the Chief Officer of Municipal Council in his letter dated 28.05.2015 written to the Collector for initiating the acquisition proceedings has mentioned that he is in receipt of purchase notice under Section 127 in respect of Site No. 41, Survey No. 303/1/1C, admeasuring 1949.25 Sq. Mtrs. The petitioner has also filed 7/12 extract wherein there is entry to the effect that Survey No.303/1/1C is reserved for Site No. 41. The contention of the petitioner that Survey No. 309 and Survey No. 303/1/1C is included in Site No. 41 reserved for 'Primary School and Play Ground' gets the support from the remark written in column no. 5 Schedule "B" of Draft Development Plan dated 06.04.2016 produced by Municipal Council, which is as follows :-

SCHEDULE "B"

SUBSTANTIAL MODIFICATIONS REPUBLISHED BY THE GOVERNMENT IN RESPECT OF REVISED DEVELOPMENT PLAN OF CHALISGAON, DISTRICT JALGAON

(ACCOMPANIMENT TO THE GOVERNMENT NOTICE URBAN DEVELOPMENT DEPARTMENT No. TPS-3515/75/CR-74(B)(2016/UD-9, DATED 6TH APRIL 2016)

Sl. No.	Excluded part	Proposal as per Development Plan Published under Section 28 of the Maharashtra Regional and Town Planning Act, 1966	Proposals as per Development Plan submitted to the Government under Section 30 of the Maharashtra Regional and Town Planning Act, 1966	Modifications which are of substantial nature as proposed by the Government under Section 31 (1) of the Maharashtra Regional and Town Planning Act, 1966
1	2	3	4	5
1	EP-1	Site No. 371 pt., 373 pt., Site No. 84, Truck Terminus partly reservation is deleted and included in "Residential Zone".	Truck Terminus, Site No. 84	The Eastern portion admeasuring about 2.00 Hectare is retained in reservation of Truck Terminus and remaining area is proposed to be deleted and included in "Residential Zone" as shown on the Plan.
2	EP-2	Site No. 303 pt., 306 pt., Site No. 46 Primary School and Playground.	Primary School and Playground, Site No. 46.	Land bearing S. No. 308 (admeasuring area 2475 sq. mtr.) is proposed to be deleted from Site No. 46 and the remaining land bearing S. No. 303 (admeasuring area 2525 sq. mtr.) is proposed to be designated as a "Playground", Site No. 46 as shown on Plan.
3	EP-3	Site No. 91, "Secondary School and Playground", Site No. 90, "Playground", Site No. 93, "Shopping Center".	Site No. 91, "Secondary School and Playground", Site No. 90, "Playground", Site No. 93, "Shopping Center".	Site No. 91, "Secondary School and Playground", Site No. 90 "Playground" and Site No. 93, "Shopping Center" are proposed to be deleted and the lands so reserved are proposed to be included in "Residential Zone".

In the revised development plan, Municipal Council has deleted Survey No. 309 and Site No. 46 reserved for 'Primary School and Play Ground' now includes 303 part and 306 part. There is no merit in this contention of respondents that in Site No.41 in earlier development plan, petitioners' land was not included.

10. In so far as ground of the respondent Municipal Council regarding subsequent revised development plan, sanctioned and finalized on 06.04.2016, since notice issued by the petitioner under Section 127(1) of MRTP Act in tune with the right accrued to him to

issue such notices, having already been exercised even prior to sanction and finalization of the revised development plan under Section 38 of the MRTP Act, such subsequent revision would not give a lease of life for another ten years therefrom. Site No.41 includes Survey No. 309 admeasuring 2475 Sq. Mtrs. It appears that when this Court allowed Writ Petition No.3710/2014 (supra) on 26.08.2014 and deleted survey No.309 from Site No.41, that time also Municipal Council had taken up the proceeding for revised development plan but it was not brought to the notice of Court. The judgment in the case of ***Prafulla C. Dave Vs. Municipal Commissioner and others*** (supra) relied by the learned counsel for respondents would not help the respondents. In the said judgment, Apex Court has observed as under ;-

"21. Under Section 127 of the MRTP Act, reservation, allotment or designation of any land for any public purpose specified in a development plan is deemed to have lapsed and such land is deemed to be released only after notice on the appropriate authority is served calling upon such authority either to acquire the land by agreement or to initiate proceedings for acquisition of the land either under the MRTP Act or under the Land Acquisition Act, 1894 and the said authority fails to comply with the demand raised thereunder. Such notice can be issued by the owner or any person interested in the land only if the land is not acquired or proceedings for acquisition are not initiated within ten years from the date on which the final development plan had come into force. After service of notice by the land owner or the person interested, a mandatory period of six months has to elapse within which time the authority can still initiate the necessary action. Section 127 of the MRTP Act or any other provision of the said Act does not provide for automatic

lapsing of the acquisition, reservation or designation of the land included in any development plan on the expiry of ten years. On the contrary upon expiry of the said period of ten years, the land owner or the person interested is mandated by the statute to take certain positive steps i.e. to issue/serve a notice and there must occur a corresponding failure on the part of the authority to take requisite steps as demanded therein in order to bring into effect the consequences contemplated by Section 127. What would happen in a situation where the land owner or the person interested remains silent and in the meantime a revised plan Under Section 38 comes into effect is not very difficult to fathom. Obviously, the period of ten years Under Section 127 has to get a fresh lease of life of another ten years. To deny such a result would amount to putting a halt on the operation of Section 38 and rendering the entire of the provisions with regard to preparation and publication of the revised plan otiose and nugatory. To hold that the inactivity on the part of the authority i.e. failure to acquire the land for ten years would automatically have the effect of the reservation etc. lapsing would be contrary to the clearly evident legislative intent. In this regard it cannot be overlooked that Under Section 38 a revised plan is to be prepared on the expiry of a period of 20 years from date of coming into force of the approved plan Under Section 31 whereas Section 127 contemplates a period of 10 years with effect from the same date for the consequences provided for therein to take effect. The statute, therefore, contemplates the continuance of a reservation made for a public purpose in a final development plan beyond a period of ten years. Such continuance would get interdicted only upon the happening of the events contemplated by Section 127 i.e. giving/service of notice by the land owner to the authority to acquire the land and the failure of the authority to so act. It is, therefore, clear that the lapsing of the reservation, allotment or designation Under Section 127 can happen only on the happening of the contingencies mentioned in the said section. If the land owner or the person interested himself remains inactive, the

provisions of the Act dealing with the preparation of revised plan Under Section 38 will have full play. Action on the part of the land owner or the person interested as required Under Section 127 must be anterior in point of time to the preparation of the revised plan. Delayed action on the part of the land owner, that is, after the revised plan has been finalized and published will not invalidate the reservation, allotment or designation that may have been made or continued in the revised plan. This, according to us, would be the correct position in law which has, in fact, been clarified in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Assn. in the following terms:

"10. If there is no such notice by the owner or any person, there is no question of the reservation, allotment or designation of the land under a development plan of having lapsed. It a fortiori follows that in the absence of a valid notice Under Section 127, there is no question of the land becoming available to the owner for the purpose of development or otherwise."

Instead the judgment relied by the petitioners' in case of **Godrej and Boyce Manufacturing Company Limited Vs. State of Maharashtra and others** (supra), helps the petitioners wherein it is observed by Apex Court that :-

"20. Therefore, we have to hold that the impugned notification is bad in law and liable to be quashed. The High Court has not examined the impugned notification from the view point of Section 127 of the MRTP Act and interpretation of the above said provision made in the case of Girnar Traders (2)⁴, therefore, giving liberty to the Appellant by the High Court to file objections to the proposed notification is futile exercise on the part of the Appellant for the reason that the State Government, once the purpose the land was reserved has not been utilized for that purpose and a valid

statutory right is acquired by the land owner/interested person after expiry of 10 years from the date of reservation made in the Development Plan and 6 months' notice period is also expired, the State Government has not commenced the proceedings to acquire the land by following the procedure as provided Under Sections 4 and 6 of the repealed Land Acquisition Act, 1894. Therefore, the land which was reserved for the above purpose is lapsed and it enures to the benefit of the Appellant herein. Therefore, it is not open for the State Government to issue the impugned notification proposing to modify the Development Plan from deleting for the purpose of Railways and adding to the Development Plan for the formation of Development Plan Road after lapse of 10 years and expiry of 6 months' notice served upon the State Government."

11. Considering the above ratio, admittedly even before revised plan of the respondent - Municipal Council came into force w.e.f. 06.04.2016, the petitioners have exercised their rights by issuing a statutory notice dated 16.02.2015 under Section 127(1) of MRTP Act, hence, the 10 years period will have to be reckoned from the development plan of 1989.

12. The another ground raised by the respondents is that because of the amendment on 29.08.2015 in Section 127(1), the notice period will lapse on 15.02.2017 instead of 15.02.2016 as by way of amendment "Twelve Months" period is replaced by "Twenty-Four Months". Herein it will be apposite to refer to the case of ***Sadashiv***

Principal Secretary, Urban Development Department and others, 2023

Online Bom 999, wherein this Court has held as under :-

“10. In regard to the contention of the Respondent Nos.2 and 4, that in view of the amendment in August 2015, lapsing would be on the expiry of 24 months i.e. on 7th July 2017 and not after twelve months on 7th July 2016 from the service of the purchase notice on 8th July 2015 as contended in the purchase notice, in our view, such contention presumes that, an amendment to the period, as effected from 29th August 2015 would have a retrospective effect cannot be accepted. Such amendment to MRTP Act as noted above is not retrospective in operation, consequently, the lapsing would be after twelve months i.e. on 7th July 2016. In any event, this contention does not advance the case of the Respondent, in view of the Respondents’ failure to publish a declaration under section 6 of the Land Acquisition Act, 1894.”

In the present case, purchase notice was issued by the petitioners on 16.02.2015 and the notice period would lapse on 15.02.2016. The amendment introduced in August, 2015 would not be applicable as is held above that the said amendment is not retrospective in operation, consequently lapsing would be after one year i.e. on 15.02.2016.

13. According to the petitioners, once the reservation stood lapsed and the notice period was over, the Municipal Council could not have reserved the land of the petitioners again, as it stood released from reservation on completion of statutory period of 12 months after serving of purchase notice. This Court while allowing Writ Petition No.3710/2014 (supra) has observed that :

"12. Section 127 prescribes two periods. Firstly, the planning authority has to acquire the land reserved, allotted or designated within 10 years by agreement from the date on which final regional plan or final development plan came into force. Secondly, if first part of section 127 is not complied with or no steps are taken, then by virtue of second part of section 127, twelve months period is provided from the date on which notice has been served by the owner of land on the planning authority."

14. Municipal Council prepared development plan in the year 1989. Admittedly, no steps are taken for acquisition of Survey No.303/1/1C, reserved for 'School and Play Ground' at reservation Site No. 41. It is also admitted that petitioners have served notice on 16.02.2015 and Municipal Council has forwarded the land acquisition proposal to the Collector by letter dated 28.05.2015. Mere forwarding of proposal cannot be treated as compliance as contemplated in Section 127 of the MRTP Act. Therefore, in our considered opinion, as the

Municipal Council has failed to comply with the requirement of Section 127 of the MRTP Act, the reservation has lapsed. The land of the petitioner cannot be kept under reservation in perpetuity. The concept of ownership would be defeated.

15. For the abovementioned reasons, writ petition deserves to be allowed. In the result, we pass the following order :-

ORDER

- (i) The Writ Petition is allowed in terms of prayer clauses "A" and "AA".
- (ii) The State Government is directed to notify the lapsing of the reservation by an order to be published in the Official Gazette as per the requirement of Section 127(2) of the MRTP Act, which shall be done as expeditiously as possible and preferably within a period of six months from the date of uploading of this order.
- (iii) No order as to costs.
- (iv) Rule is made absolute in the above terms.

[VAISHALI PATIL – JADHAV, J.]

[NITIN B. SURYAWANSHI, J.]