



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

WRIT PETITION NO. 5635 OF 2024

**RAJUSING BHARATSINGH RAJPUT AND ANOTHER
VERSUS**

**THE STATE OF MAHARASHTRA T
HROUGH THE SECRETARY AND OTHERS**

...
Advocate for Petitioners : Mr. Palodkar Devdatt P.
AGP for Respondents/State : Mr. D.R. Korade
Advocate for Respondent No.5 : Mrs. Barhate Ranjita R.

...
**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

DATE : 27th FEBRUARY 2025

PER COURT :

. Heard both the sides finally at the admission stage.

2. The Petitioners are the owners of land gut no.303 situated at Gangapur District Chhatrapati Sambhaji Nagar and they are in possession of the same. Their land was reserved under the development plan for Gangapur Municipal Council dated 15.06.1992. As no steps of acquisition of the land in question were taken, Petitioners issued purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 on 30.03.2021. After receiving the notice, Respondents did not take effective steps within 24 months. The Petitioners attempted to get permission for the development of the land in question which was also refused by the Planning Authority. Therefore they have filed present petition seeking declaration of de-reservation of reservation and notification under Section 127(2) of the Act.

3. Learned Counsel for the Petitioners Mr. Palodkar submits that for more than ten years, the land of the Petitioners which was reserved for shopping center was not acquired by the respondent/Planning Authority. After serving of the purchase notice also, no steps were taken. Therefore, their case is squarely covered by Section 127 and they are entitled to the notification for de-reservation. He would further submit that Revised Development Plan for the Gangapur Municipal Council was published on 10.03.2016. It was sanctioned by the State Government on 06.11.2023. In the Revised Plan also, the subject matter was reserved for the identical purpose. Only the number was changed. Therefore, the sanction of Revised Development Plan would not be an impediment for granting relief to the Petitioners. He would rely on the judgments of **Prafulla C. Dave and Others Vs. Municipal Commissioner and Others**, (2015) 11 SCC 90 and **Santu Sukhdeo Jaibhave and Others Vs. Nashik Municipal Corporation and Others**, 2022 SCC OnLine Bom 5273.

4. Learned Counsel Mr. appearing for Respondent No.5 would vehemently oppose the petition and the submission of the Petitioners. She would submit that the purchase notice is bad in law. It is premature notice. The Revised Plan was sanctioned on 06.11.2023. Therefore, the purchase notice, would be of no help to the Petitioners. It is further submitted that there is change in circumstances. Initially the land in question was reserved by Reservation Site No.12 and in the Revised Plan, it is numbered as Reservation Site No.15.

5. Learned AGP appearing for Respondent Nos. 1 to 4 also repels the submission of the Petitioners. He would make the submission to adopt the learned Counsel for Respondent No.5. He has adverted to our attention to the paragraph nos. 7 to 9 of the affidavit-in-reply.

6. We have considered the rival submission of the parties. The relevant facts and dates are not disputed. Initially the Development Plan for Gangapur Municipal Council was sanctioned in 21.03.1992. The land belonging to the Petitioners was reserved for the purpose of shopping center. Thereafter on 10.03.2016, the Revised Draft Development Plan was published. It was sanctioned by the State Government on 06.11.2023. In the interregnum period, Petitioners issued notice under Section 127 on 30.03.2021. There is no dispute that the notice was received by the Respondents. No steps were taken for more than ten years from 21.03.1992 as well as within period of 24 months from 30.03.2023.

7. It is pertinent to note that the purpose of reservation in the original Development Plan sanctioned 21.03.1992 and later on Revised Development Plan sanctioned on 06.11.2023 is identical i.e. shopping center. Only site number changed which is inconsequential to decide the present controversy. When the purchase notice was issued, only Revised Draft Development Plan was in existence. When Revised Development Plant was sanctioned on 06.11.2023, the statutory period of 24 months has already expired on 30.03.2023.

Our attention is invited to law laid down by the coordinate bench in the matter of Sukhdeo (supra), following are the relevant paragraphs :

25. Question that arises for consideration of this Court is whether the purchase notice issued by the petitioners subsequent to the date of the Draft Revised Development Plan for the city of Nashik would be a valid notice or not or the petitioners were required to again wait for expiry of 10 years from the date of the Draft Revised Development Plan for the city of Nashik and then issue a fresh notice and then if no steps would be taken by the respondents within the time prescribed, the reservation in respect of the writ land would lapse at that stage or not.

26. It is not in dispute that the writ land was shown for a public purpose in the development plan for Nashik prepared under Section 26 of the MRTP Act which came into effect on 16th November 1993 and came to be reserved for "Housing for Dishoused." The respondents did not take any steps to acquire the said plot for a period more than 10 years as contemplated under the provisions of the MRTP Act. The petitioners had admittedly issued a purchase notice on 14 th July 2015. It is also not in dispute that in the Revised Draft Development Plan published in the Government Gazette on 4th June, 2015, the writ land once again is shown for public purpose. The purchase notice was issued however, on 14th July 2015.

27. It is not in dispute that the said Draft Revised Development Plan was implemented by issuing Notification dated 9th January 2017 in respect of the writ land and was shown under the reservation No. 205 for the purpose of 'Public Housing'.

28. The respondents have not disputed that purchase notice was issued by the respondents on 14 th July 2015 i.e. prior to the notification issued on 9th January, 2017 whereby the Draft Revised Development Plan was implemented. We are not inclined to accept the submission made by the learned counsel for the respondents that a purchase notice under Section 127 of the MRTP Act could not have been issued after the Draft Revised Development Plan was published though admittedly not sanctioned. In our view, the Draft Revised Development Plan cannot be elevated to the status of a final sanctioned plan under Section 31 of the MRTP Act.

8. In view of the pronouncement of the coordinate bench, we find that the Petitioners have made out a case and the sanction of Revised Development Plan would not be an impediment. Its matter of

record that from 1992 till 2021, there was no steps taken by the Respondents and the Petitioners were unable to use land in question. The owners of the land cannot be deprived of the rights to enjoy the land for the indefinite period.

9. The submissions of the Respondents in respect of change in the site of the reservation of the suit land has no substance. We find that the purchase notice issued by the Petitioners is valid. It is not out of context to mention that Respondent No.5 in paragraph no.6 has candidly mentioned that the Municipal Council is unable to acquire the property due to precarious financial conditions. If that is the case then we have no iota of doubt that the petitioners are entitled to get their property de-reserved by way of notification under Section 127(2) of the Act. We pass following order :

ORDER

- (i) Writ Petition is allowed in terms of prayer clause 'B'.
- (ii) Respondent Nos. 1 and 2 shall issue notification under Section 127(2) of the MRTP Act within three months from today.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]