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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8377 OF 2025

M/s Shankarlal Gulabchand & Co., A Partership Firm
Through it's Partner Sunilkumar Shankarlal Mor
Versus
The State of Maharashtra and Others

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Mr. Surendra V.Suryawanshi, Advocate for the Petitioner.
Mr. S.K.Tambe, Addl. G.P for Respondents No.1 to 4

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CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 17 NOVEMBER, 2025

ORDER [Per Hiten S. Venegavkar, J.] :-

1. The petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking a declaration that the reservation for the public purpose of “public housing and houses for homeless” imposed under the sanctioned Development Plan of Jalgaon City in respect of land bearing CTS No. 2134, Survey No. 272 admeasuring 3844.5 square meters situated within the limits of Jalgaon Municipal Corporation has lapsed by operation of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as ‘the said Act’) and for a consequential direction to the respondents to notify such lapsing in the Official Gazette under Section 127(2) of the said Act.

2. The factual backdrop, which is largely undisputed in its chronology, is that the petitioners claim to have derived title to the subject land pursuant to an assignment executed on 04.04.1960 by the Official Assignee of Bombay in insolvency proceedings. The land, which is now identified as CTS No. 2134, Survey No. 272, came within the municipal limits of Jalgaon and upon sanction of the final Development Plan for Jalgaon City, which came into force on 15.02.1993, the said land was reserved as Reservation Site No. 82 for the public purpose of public housing and houses for homeless. It is the case of the petitioners that despite lapse of more than ten years from the coming into force of the final Development Plan, no steps were taken by the planning authority to acquire the land in accordance with Section 126 of the MRTP Act. Consequently, the petitioners issued purchase notices dated 29.07.2003 and 20.01.2004 invoking Section 127 of the Act. Correspondence thereafter ensued between the petitioners and respondent No.5, culminating in forwarding of an acquisition proposal to the State Government, which however never fructified into issuance of a declaration under Section 6 of the Land Acquisition Act, 1894 nor into passing of an award under Section 11 thereof. On these premises, the petitioners assert that the reservation has lapsed by operation of law.

3. The statutory framework relevant for consideration of the controversy is well settled. Section 126 of the MRTP Act provides the modes by which land reserved, allotted or designated in a Development Plan may be acquired, namely by agreement, by grant of Floor Space Index or Transferable Development Rights, or by acquisition under the Land Acquisition Act.

4. Section 127, as it stood at the relevant time, stipulates that if any land reserved, allotted or designated for any purpose specified in a Development Plan is not acquired by agreement within ten years from the date on which the final Development Plan comes into force, or if proceedings for acquisition are not commenced within such period, the owner may serve a notice (purchase notice) on the planning authority requiring it to acquire the land. If within six months from the date of service of such notice, the land is not acquired or no steps as contemplated by Section 126 are commenced, the reservation is deemed to have lapsed and the land becomes available to the owner for development as otherwise permissible.

5. Sub-section (2) of Section 127 casts an obligation on the State Government to notify such lapsing in the Official Gazette. However, before examining the applicability of these provisions on merits, it is necessary to note that the very same petitioners had earlier approached

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this Court by filing Writ Petition No. 6844 of 2007 before the Aurangabad Bench seeking substantially identical reliefs. The prayer clause in the said petition sought a declaration that land bearing Survey No. 272, CTS No. 2134 reserved under the Development Plan be declared de-reserved pursuant to the purchase notice dated 29.07.2003. By judgment and order dated 19.09.2023, the Aurangabad Bench considered the rival pleadings, including the affidavit filed by the Municipal Corporation specifically disputing the ownership status of the petitioners and contending that the petitioners were merely lessees holding leasehold rights under an indenture dated 04.04.1960 for a period of 51 years which had expired in the year 2001 without renewal. The Court recorded that the indenture was not produced before it and, therefore, it was not possible to ascertain whether the petitioners had absolute ownership rights or merely leasehold rights and whether such rights entitled them to seek development or claim lapsing of reservation.

6. In view of the serious disputed questions of fact relating to title and nature of rights, the Court held that such issues could not be adjudicated in writ jurisdiction and disposed of the petition keeping rival contentions open, granting liberty to the petitioners to adopt appropriate proceedings in accordance with law.

7. In the present petition, though couched in slightly different language, the substance of the grievance and the reliefs sought are the same, namely, declaration of lapsing of reservation under Section 127 in respect of the very same land. The doctrine of finality of adjudication and the principle that a litigant cannot re-agitate the same cause of action by merely rephrasing prayers are clearly attracted. Nonetheless, during the pendency of the present petition, by order dated 11.07.2025, this Court granted an opportunity to the petitioners to produce the original conveyance/assignment deed dated 04.04.1960, which was admittedly not placed before the Court when Writ Petition No. 6844 of 2007 was decided. The said document was produced and perused.

8. A careful perusal of the indenture and the accompanying conditions of sale unequivocally demonstrates that what was put to auction and purchased by the petitioners through the Official Assignee was not absolute ownership of freehold land but leasehold interest for a fixed term of 51 years commencing from 1 January 1950 in respect of lands bearing Survey Nos. 271 and 271A, subject to specific conditions. The document itself records that the insolvents held only leasehold rights derived from original lessors and that the auction was expressly subject to the conditions of the lease. There is nothing on record to show that the lease was renewed or extended beyond its expiry in the

year 2001. Thus, even on the petitioners' own showing through the original document now produced, the objection raised by the respondent authorities regarding the petitioners' ownership status is not without substance.

9. Whether a person holding leasehold rights for a limited term, which has admittedly expired, can invoke Section 127 of the MRTP Act and seek declaration of lapsing of reservation raises complex and disputed questions of fact and law, including the nature of subsisting rights, entitlement to develop the land, and locus to demand acquisition or lapsing of reservation. These issues necessarily require adjudication on evidence and cannot be satisfactorily determined in the exercise of writ jurisdiction under Article 226. The MRTP Act contemplates lapsing of reservation at the instance of an "owner" of the land. The determination as to whether the petitioners answer that description in the facts of the present case is itself in serious dispute.

10. In view of the above, this Court is of the considered opinion that the cause raised by the petitioners has already been the subject matter of adjudication by this Court in Writ Petition No. 6844 of 2007 decided on 19.09.2013. Even otherwise, the present petition involves disputed questions relating to title and nature of rights in the subject land, which render the petition unsuitable for determination under Article 226 of

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the Constitution of India. The petitioners' attempt to re-agitate the same issue by filing the present petition, despite the earlier adjudication and without first establishing their rights before a competent forum, cannot be permitted.

11. Accordingly, the writ petition is dismissed. However, in consonance with the liberty earlier granted and reiterated herein, the petitioners are at liberty to approach the appropriate forum and to initiate such proceedings as may be permissible in law for adjudication of their rights, title and entitlements in respect of the subject land. There shall be no order as to costs.

12. As per Court's order dated 11.07.2025, original documents submitted by the petitioner be returned to him.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE