



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

WRIT PETITION NO.9496 OF 2024

Bhagwan Bhika Paradhi,
Age : 66 years, occ. Agri.,
r/o. Paradhi Wada, Amalner Road,
Parola Road, Dist. Jalgaon

..Petitioner

Vs.

1. The State of Maharashtra
2. The Director of Town Planning Dept.,
Maharashtra State, Pune
3. Town Planning Department,
Jalgaon
4. Parola Municipal Council, Parola,
Through its Chief Officer

..Respondents

Mr.D.S.Bagul, Advocate for petitioner
Ms.P.J.Bharad, AGP for respondent nos.1 and 2
Mr.N.R.Dayama, Advocate for respondent no.4

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : AUGUST 18, 2025

PER COURT :-

Heard.

2. This petition under Article 226 of the Constitution of India
has been filed for the following main relief:-

"(B) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby declare that the reservation of Play Ground vide Reservation Site No. 52 (old) 23 (New) in the sanctioned development plan of Parola Municipal Council on the land of the petitioner i.e. Gat No. 54 admeasuring tentatively 0.22 R (writ property) has been lapsed land in pursuant to purchase notice dated 18.01.2003 and the land is free from the reservation and available to the petitioner for utilization as per the use permissible to the adjacent and the respondent authorities be directed to issue appropriate notification in respect of deletion of Gat. No. 54 from reservation."

3. The land admeasuring 0.22 R has been reserved in the final development plan dated 02.12.1990 and the revised development plan dated 12.10.2017. The land has been reserved for the purpose of play ground being, identified as site no.52 in the latest development plan.

4. Since respondent no.4 - Parola Municipal Council (planning authority) to have not taken steps for acquisition of the land under reservation, the petitioner issued purchase notice under Section 127 of the Maharashtra Regional and Town Planning Act,

1966 ("MRTP Act", for short), on 18.01.2003. The notice was received by respondent no.4. Still, it did not take effective steps within the period of six months, from the date of receipt of such notice. The petitioner has, therefore, approached this Court.

5. Learned counsel for respondent no.4 would submit that the purchase notice was issued by only one of the co-owners, i.e. petitioner herein. Two others have not preferred this petition. Unless and until the land belonging to the petitioner herein is identified, the same cannot be dereserved. He would further submit that there was revision of the final development plan in the year 2017. Post such revision, the petitioner has not issued any notice under Section 127 of M.R.T.P. Act. He would further submit that the earlier notice issued way back in 2003 shall be deemed to have been waived, since the petition has been filed 21 years thereafter. On all these grounds, dismissal of the Writ Petition has been urged for.

6. We have considered the submissions advanced. Perused the documents on record. It is not in dispute that the petitioner herein is co-owner of the land under reservation. Admittedly, the land was reserved for play ground way back in 1990. The petitioner issued purchase notice dated 18.01.2003. Same was received by

respondent no.4. In spite of receipt of the said notice, admittedly, no effective steps have been taken for acquisition of the land. It is true that the petitioner approached this court 21 years after he issued the notice. The fact, however, remains that in view of Section 127 of M.R.T.P. Act, the deeming fiction regarding dereservation has to be made. In the case in hand, the petitioner, who is one of the co-owners of the land, necessarily, has interest in the land under reservation. The phraseology of Section 127 of M.R.T.P. Act indicates that it is the person, who is owner of the land under reservation or having interest therein, can issue a notice under Section 127 of M.R.T.P. Act. Since notice has been issued by the petitioner herein, respondent no.4 could not be heard to say that other co-owners ought to have joined the petitioners in issuance of the notice and even in filing the Writ Petition. The other two co-owners are none other than the family members. It is not that the other brothers are interested to see that the land remains under reservation and is acquired for the same. It is true that in 2017, there was revision of the development plan. The writ land again came to be placed under reservation for the vary purpose. True, thereafter, the petitioner has issued no notice.

7. For better appreciation we need to advert to Section 127 of M.R.T.P. Act, which reads thus:-

127. Lapsing of reservations.

(1) If any land reserved, allotted or designated for any purpose specified in 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 of 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) On 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. Close reading of the aforesaid provision would indicate that the owner of the land under reservation or a person having interest therein, may issue a notice requiring the planning authority to acquire the land. If the planning authority fails to take appropriate steps within the time frame, in the present case within six months, by virtue of deeming fiction, the land stands dereserved.

9. The petitioner herein issued the notice under Section 127 of M.R.T.P. Act way back in 2003. The petitioner then submitted an application for development of the land. Since it was turned down, the petitioner preferred an appeal against the said order. In the year 2017, the development plan was revised maintaining the very reservation. Thereafter, the petitioner, admittedly, did not issue notice under Section 127 of the M.R.T.P. Act. The issue, however, is no longer *res integra* in view of paragraph 5 of the judgment and order dated 21.08.2024, passed in Writ Petition No.6238 of 2024 (Vasantrya Digambarrao Salunke and anr. Vs. The State of Maharashtra and ors). The period of 10 years is to be reckoned from the approval of the first development plan and not its revision from time to time. For better appreciation, we reproduce paragraph 5 of the said order:-

5. *Keeping in view the above dates and events which are not contradicted, the law laid down by the Hon'ble Supreme Court in **Prafulla C. Dave and others Vs. Municipal Commissioner and others, (2015) 11 SCC 90**, would squarely apply. The Hon'ble Supreme Court has concluded in paragraph Nos. 18 to 23, in similar circumstances, as under:-*

"18. On behalf of the appellants it is contended that the period of ten years under Section 126 of the Act has to be reckoned from the date of coming into force of the initial final development plan and not the revised development plan made under Section 38 of the Act. Any other view, according to the learned counsel, would amount to a

perpetual deprivation of the owner of land which, at the same time is also not being put to use for the public purpose specified in the development plan. Section 127 of the Act, it is contended, is a beneficial provision in so far as the land owner is concerned calling for a liberal interpretation of its effect. Learned counsel has also drawn attention to the provisions of Section 31(5) of the MRTP Act which contemplates that in so far as reservation of land for public purposes specified in sub-section (b) and (c) of Section 22 is concerned inclusion of such land in the Development Plan should not be made unless the authority is reasonably confident of acquiring the land within a period of ten years. Learned counsel has, therefore, submitted that the legislative intent was to give the authority under the Act a maximum of ten years to acquire the land earmarked for a public purpose or at least to initiate steps for such acquisition failing which the reservation would lapse. Reliance has been placed on a decision of this Court in Bhavnagar University v. Palitana Sugar Mill (P) Ltd. in support of the contentions made by them.

19. *In reply, Shri Naphade has submitted that the scheme of the Act would suggest that a revised plan prepared under Section 38 tantamounts to a complete development plan contemplated in Sections 21 to 30 of the Act. The legislative scheme takes into account that development is a dynamic process and cannot be frozen by strict prescriptions of time. Once the final development plan is revised under Section 38 the period of ten years would necessarily run from the date of coming into force of such revised plan. Any other interpretation, according to the learned counsel, would render all provisions of the Act dealing with the revised plan otiose. Shri Naphade has also argued that in the event a revised plan under Section 38 is sanctioned and brought into force the relevant date for determination of compensation would stand transposed to the fresh dates of the declaration*

under Section 6 of the Land Acquisition Act which would ensure payment of a fair compensation to the land owner. This is by virtue of Section 126(4) of the Act and, according to Shri Naphade, is how the balance between public interest and the interest of the land owner is maintained under the provisions of the Act.

20. *In so far as the decision in Bhavnagar University (supra) is concerned, Shri Naphade has submitted that there are certain provisions of the MRTTP Act which are not embodied in the provisions of the Gujarat Act that was considered in Bhavnagar University (supra). Specifically it is pointed out that the provisions similar to Sections 37, 49 and 50 of the MRTTP Act which provide alternative escape routes to the land owners are absent in the Gujarat Act. It is on the aforesaid broad basis the decision in Bhavnagar University (supra) has been sought to be distinguished.*
21. *Under Section 127 of the MRTTP 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 MRTTP 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 provisions for acquisition is 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 MRTTP 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 vs. Dr. Hakimwadi Tenants' Association & Ors.[2] in the following terms:

"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."

22. *In fact the views expressed in Bhavnagar University (supra) in para 34 is to the same effect:*

"34. The relevant provisions of the Act are absolutely clear, unambiguous and implicit. A plain meaning of the said provisions, in our considered view, would lead to only one conclusion, namely, that in the event a notice is issued by the owner of the land or other person interested therein asking the authority to acquire the land upon expiry of the period specified therein viz. ten years from the date of issuance of final development plan and in the event pursuant to or in furtherance thereof no action for acquisition thereof is taken, the designation shall lapse."

23. *The facts of the present case makes it plainly clear that the notice under Section 127 by the appellants was issued only two years after the final revised plan under Section 38 had come into operation. The rejection of the appellants' plea before the appellate authority under Section 47 of the Act as well as the rejection of the writ petition filed by the appellants before the Bombay High Court was, therefore, fully justified. Consequently, we find no*

reason to interfere with the impugned order dated 20th September, 2007 passed by the High Court of Bombay. Accordingly, the appeal is dismissed. However, in the facts and circumstances of the case, we make no order as to costs."

10. In view of the above and the fact that the petitioner being one of the co-owners of the writ land, issued notice under Section 127 of the M.R.T.P. Act and on receipt of the said notice, respondent no.4 - planning authority, although submitted a proposal for acquisition, did not deposit any farthing with the Collector towards compensation to be paid to the land owners, it has to be observed that respondent no.4 did not take any effective steps for acquisition of the land under reservation within the time frame of six months from the date of receipt of the notice. By virtue of the deeming fiction under Section 127 of M.R.T.P. Act, the land, therefore, stands dereserved. The petition, therefore, deserves to be allowed.

11. In the result, the petition is allowed in terms of prayer clause (B). Respondent no.1 shall issue necessary notification indicating the land to have been dereserved within a period of six months from the date of this order.

[NEERAJ P. DHOTE, J.]
KBP

[R.G. AVACHAT, J.]