



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

Writ Petition No. 12085 Of 2022

1. Premabai @ Premlata Chandmal Agrawal
Since Deceased through Legal Representative
Rupesh Chandmal Agrawal
Age : 49 years, Occupation-Business,
R/o. Row House No.8, Happy Home Phase-II,
Gut No.33, Anand Vihar, Near Wood Ridge,
High School, Itkheda, Paithan Road,
Aurangabad-431005.
2. Mangalabai @ Mangala Chandmal Agrawal,
Age : 72 years, Occupation-Household,
R/o. Row House No.8, Happy Home Phase-II,
Gut No.33, Anand Vihar, Near Wood Ridge,
High School, Itkheda, Paithan Road,
Aurangabad-431005.

.. Petitioners

Versus

1. The State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Director of Town Planning
Central Building, Pune – I.
3. The Joint Director of Town Planning,
Aurangabad.
4. The Aurangabad Municipal Corporation,
Aurangabad, Through Municipal Commissioner,
Aurangabad.
5. The Municipal Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.

6. The Administrator,
Aurangabad Municipal Corporation,
Aurangabad.
7. The Assistant Director of Town Planning,
Aurangabad Municipal Corporation,
Aurangabad.
8. The Aurangabad Municipal Corporation
Through Commissioner,
Aurangabad.
9. The Town Planner,
Aurangabad Municipal Corporation,
Aurangabad.

.. Respondents

- * Mr. Ameya N. Sabnis a/w Mr. Pranav Dhakne, Advocate for the Petitioners.
- * Mr. S.K. Tambe, Addl.GP for Respondent Nos. 1 to 3/State.
- * Mr. S.S. Tope, Advocate for Respondent Nos. 4 to 9.

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

DATE : 15th JANUARY 2025

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. Heard both sides.

2. The Petitioners are invoking jurisdiction of this Court under Article 226 of the Constitution of India for the directions to issue notification for releasing the property in question from reservation.

3. Petitioners are the owners of the land Gut No.33 situated at Itkheda, Paithan Road, Chhatrapati Sambhajinagar. Part of the land admeasuring 2331.44 Sq. Mtrs. was reserved in the development plan dated 15.10.1991 under reservation site no.11 for the purpose of Primary School. The Respondents/Planning Authority did not take effective steps as contemplated by Section 126 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'Act') within ten years from the date of commencement of development plan. The Petitioners were constrained to issue notice under Section 127 of the Act on 05.10.2020. In response to the notice, Respondent No.3 called upon the Petitioners to furnish certain documents vide letter dated 12.11.2020. The Petitioners tendered explanation to the Respondents vide letter dated 11.01.2021. The Petitioners refused to accept the Transferable Development Right (TDR) by letter dated 29.06.2021. The lapsing of the reservation and the releasing the land was re-agitated by the Petitioners.

4. Learned Counsel for the Petitioners Mr. Ameya Sabnis submits that the Respondents received purchase notice. However no steps were taken within ten years from the commencement of the development plan and thereafter within 24 months from the receipt of the purchase notice. Therefore, matter is squarely covered by Section 127 of the Act. He would further submit that what is contemplated by Section 127 is the document showing title and 7/12 extract which was furnished alongwith original notice is the due compliance. To buttress the submission, reliance is placed on ratio laid down in the matter of **Abdul Gani**

N. Wadwan Vs. State of Maharashtra and Others, 2018(4) Mh.L.J. 454.

5. It is submitted that offering of TDR cannot be the steps to mitigate rigor of Section 127. Reliance is placed on judgment in the matter of **Swami Samarth Builders and Developers, through its authorized partner Vijaykumar Narayandas Harkut Vs. State of Maharashtra**, through its Secretary and Others, 2024 SCC OnLine Bom 2826.

6. Per contra, learned Counsel Mr. Sambhaji Tope submits that 7/12 extract cannot be a document of title and in the absence of any document of title, the purchase notice is inoperative. He would further submit that 7/12 extract is very vague and does not reflect the extend of ownership and the four boundaries. There is no identification of the subject matter. He would place reliance on the judgments of **P. Kishore Kumar Vs. Vittal K. Patkar**, 2023 LiveLaw (SC) 999 and **Mariyam Begum Abdul Jalil Khan Vs. State of Maharashtra**, 2018 (3) AIR Bom R 596.

7. We have considered the rival submissions of the parties.

8. The Respondents did not challenge the title of the petitioners. The correspondence between the parties and the affidavit-in-reply do not disclose any reservation for the title of the Petitioners. The purchase notice dated 05.10.2020 refers to furnishing of 7/12 extract alongwith it. The Petitioners were

called upon to furnish 7/12 extract, measurement map, measurement sheet and title search report. By letter dated 11.01.2021, it was reported by the Petitioners that it was not mandatory to furnish those documents.

9. As per Section 127, owners are expected to serve with purchase notice alongwith document showing their title or interest in the land. A single document showing title of the land would be sufficient to comply with Section 127. In this regard, reliance is placed on the judgment in the matter of Abdul Gani N. Wadwan (supra). We reiterate the relevant paragraph :

“6. We have considered the submissions. The requirement of sub-section (1) of section 127 is that owner or any person interested in the land may serve a notice along with documents showing his title or interest in the reserved land. In the present case, third Respondent is not disputing that the Petitioners are the owners. Their contention is that the lands are encumbered by a charge of a co-operative bank. Even if the charge is recorded, the Petitioners do not cease to be the owners or the persons interested. The requirement of sub-section (1) of section 127 is not of producing documents of title. The requirement is of producing documents showing title. Entries in the 7/12 extract constitute sufficient material to come to the conclusion that the Petitioners are certainly persons interested in the land, if not the owners thereof.”

10. Learned Counsel Mr. Tope adverted our attention to paragraph nos. 27, 28, 33 and 39 of judgment in the matter of Mariyam Begum Abdul Jalil Khan (supra). The judgment of the coordinate bench in the matter of Abdul Gani (supra) was delivered on 27.02.2018. The judgment in the matter of Mariyam Begum Abdul Jalil Khan (supra) was delivered on 20.03.2018.

Earlier judgment was not pointed out to the coordinate bench. We prefer to follow earlier judgment of Abdul Gani (supra). The judgment of Mariyam Begum Abdul Jalil Khan (supra) is distinguishable on facts. The same would be of no assistance to the Respondents.

11. Learned Counsel Mr. Tope refers to judgment of P. Kishore Kumar (supra) to buttress the submission that revenue record is not the document of title. What is mandated by Section 127 of the Act is document showing title and not the document of title. Undisputedly, 7/12 extract is not document of title but it is certainly document showing title. Therefore the objection of the Respondent/Corporation with reference to 7/12 extract is overruled.

12. The Petitioners need not produce any other document when already 7/12 extract was furnished. It is no more res-integra that offer of TDR is not a compliance of Section 126 of the Act. The larger bench has already taken this view in the matter of **Shree Vinayak Builders and Developers, Nagpur Vs. State of Maharashtra**, 2022(4) Mh.L.J. 739. The same view is reiterated in the matter of Swami Samarth Builders and Developers (supra) by the coordinate bench. We, therefore, cannot accept the submission of the Respondent that TDR was offered to the Petitioners and it was the acquisition of the reserved land.

13. Final development plan for additional area came into force

from 19.11.1991. No steps were taken for the acquisition of the land in question within ten years. After receiving the purchase notice, no such steps were taken within 24 months. There is sufficient compliance of Section 127 of the Act. Petitioners are entitled to the relief of lapsing of reservation.

14. For the reasons assigned above, we allow the Writ Petition in following terms :

- (i) Reservation No.11 over land Gut No.33 situated at Itkheda, Chhatrapati Sambhajinagar shall stand lapsed and subject matter shall stand de-reserved.
- (ii) The Respondent No.1 shall issue notification under Section 127(2) expeditiously.
- (iii) Rule is made absolute in above terms.

[SHAILESH P. BRAHME]
JUDGE

[S.G. MEHARE]
JUDGE

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