



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

962 WRIT PETITION NO.13352 OF 2024

Avinash Balasaheb Chaudhary And Others

Versus

State Of Maharashtra Through The Secretary And Another

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Shri. Akshay S. Jagtap h/f. Shri. Nitin S. Kadam,

Advocate for the Petitioners

Shri. S. B. Pulkundwar, AGP for the Respondent No.1/ State.

Shri. M. R. Tripathi, Advocate for Respondent No.2

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CORAM : R. G. AVACHAT AND
NEERAJ P. DHOTE, JJ.

Dated : JUNE 10, 2025

FINAL ORDER :-

. The Petitioners have approached this Court in exercise of the powers under Article 226 of the Constitution of India with the following prayers.

“(A) The Writ Petition may kindly be allowed;

(B) To hold and declare that, the reservation on the land bearing Survey No. 457, 458 and 459 as site No.30 and 31 as Children Park and Library situated at Gangakhed, Tq. Gangakhed, Dist. Parbhani admeasuring 52.95 R (14.70 R, 18.50 R, and 4.75 R of Survey No. 457, 458 and 459 respectively) as Site No.30 i.e. Children Park and admeasuring 15 R from Survey No.459 as Site No. 31 for Library has lapsed in view of the provisions of Sec. 127 of the Maharashtra Regional & Town Planning Act, 1966.

(C) By issuing writ of mandamus or any other order or directions in the like nature, the respondent authorities may kindly be directed to issue notification declaring that, the reseration on the land bearing Survey No. 457, 458 and 459 as site No.30 and 31 as Children Park and Library situated at Gangakhed, Tq. Gangakhed, Dist. Parbhani admeasuring 52.95 R (14.70 R, 18.50 R, and 4.75 R of Survey No. 457, 458 and

459 respectively) as Site No.30 i.e. Children Park and admeasuring 15 R from Survey No. 459 as Site No. 31 for Library has lapsed in view of the provisions of Sec. 127 of the Maharashtra Regional & Town Planning Act, 1966.

(D) Any other just and equitable relief to which the petitioner found entitled be granted.”

2. Heard the learned Advocate for the Petitioners, the learned AGP for Respondent No.1 / State and learned Advocate for Respondent No.2.

3. The Petitioners' land bearing Survey Nos.457, 458 and 459 admeasuring 14.40 R, 18.50 R and 4.75 R, respectively, situated at Gangakhed, Tal. Gangakhed, Dist. Parbhani, was reserved under Site No.30 for Children Park and 15 R land from Survey No.459 was reserved under Site No.31 for Library. The Notification in that regard was issued on 17.07.2006 making effective the reservation from 01.09.2006. Since Respondent No.2 failed to take appropriate steps for acquisition of land of the Petitioners as stipulated in the Provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the 'the MRTP Act'), the Petitioners served the notice to Respondent No.2 on 05.05.2022 asking for acquisition of the land. However, no steps were taken by Respondent No.2 within a period of two (2) years. Hence, the Petitioners have prayed to allow the Petition.

4. Respondent No.2 has filed the Reply affidavit. The same is taken on record. It is the contention of Respondent No.2 that due to limited

source of income and huge amount is required for acquisition of land, no steps were taken towards acquisition of the Petitioners' land.

5. Learned Advocate for Respondent No.2 submits that the Petition may be dismissed.

6. The issue involved in the Petition revolves around under Section 127 of the MRTP Act, which is reproduced below:

“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.]]”

7. From the above provision, it is clear that, there is stipulation of time provided by the legislature in respect of acquisition of land which is notified for Final Development Plan. It is clear that, legal fiction is

created by the above referred provision. The reasons given by Respondent No.2 for not taking appropriate steps in the matter are not sustainable under the law. In view of the above, Petition needs to be allowed and hence, we proceed to pass the following order.

ORDER

- (i) The Petition is allowed in terms of prayer clauses **(B)** and **(C)**.
- (ii) Respondent No.2 shall issue necessary Notification within a period of six (6) months from today.
- (iii) Petition stands disposed off accordingly.

(NEERAJ P. DHOTE, J.)

(R. G. AVACHAT, J.)