IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 811 OF 2024

Urmila Vilas Birajdar and another .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Shri P. P. More, Advocate for the Petitioners.
Shri A. S. Shinde, A.G.P. for the Respondent Nos. 1.
Shri Hanmant V. Patil, Advocate for the Respondent No. 2.

CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.
DATE : 03RD JANUARY, 2025.

ORDER :

. Heard both sides finally at the admission stage.

2. The petitioners are the owners of land Sy. No. 151 admeasuring 0H 92R situated at Latur, Tq. and Dist. Latur. It was reserved for the purpose of play ground in final development plan published on 23.12.1975, which was sanctioned on 07.12.1989. Under revised development plan dated 02.01.2002, said reservation continued. The respondent No. 2/planning authority did not take steps as contemplated U/Sec. 126 of the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred as to the M.R.T.P. Act for the sake of brevity and convenience).

3. The petitioners were constrained to issue purchase notice

on 11.10.2019. Despite service of notice, no effective steps were taken by the respondent No. 2/Municipal Corporation for more than two years. On 26.10.2023 a reminder was also sent to the respondent No. 2/Corporation, but there was no response. Hence the petitioners are before this Court seeking direction for releasing their land due to lapsing of reservation U/Sec. 127 of the M.R.T.P. Act.

4. The learned counsel for the petitioners submits that there is non compliance of statutory notice issued U/Sec. 127 of the M. R. T. P. Act. The defence of the respondent No. 2/Corporation that it was ready to offer T.D.R., cannot be a ground to deny lapsing of reservation. The petitioners are entitled to the relief of lapsing of reservation.

5. The learned counsel for the respondent No. 2 opposes the petition on the basis of affidavit in reply. It is contended that the present petition is premature. In fact, purchase notice is of 26 May, 2003. He would point out the order dated 01.06.2020 passed U/Sec. 127(2) of the M. R. T. P. Act releasing part of the subject matter from the reservation. He would further submit that the respondent No. 2/Corporation was ready to offer T.D.R., which the petitioners did not accept. It is therefore submitted that the petitioners are not entitled to claim any relief.

6. There is no dispute that the petitioners are the owners of the land in question and the said land was reserved for play ground in the final development plan as well as revised development plan. As the respondent No. 2/Corporation did not

take necessary steps for acquisition of the property in question for more than ten years. A purchase notice was issued on 11.10.2019. The purchase notice was served upon the respondent No. 2. The purchase notice also refers to the title documents which is mandatory as per the provisions of Sec. 127 of the M. R. T. P. Act. The steps were not taken for acquisition of land within two years after receiving notice.

7. We are of the considered view that in view of the law laid down by the Supreme Court in the matter of Girnar Traders Vs. State of Maharashtra and others reported in *(2007) 7 SCC 555* and the decision of the Full Bench in the matter of Shree Vinayak Builders and Developers, Nagpur Vs. State of Maharashtra and others reported in *2022(4) Mh. L. J. 739*, land in question deserves to be released from the reservation.

8. Letter dated 26.10.2023 is not a fresh purchase notice, but it is a reminder. Plea of the respondent that petition is premature cannot be accepted. Already the respondent No. 2 has passed an order U/Sec. 127(2) of the M. R. T. P. Act on 01.06.2020 releasing part of the land from the reservation. However, this would not be an impediment for granting relief to the petitioners. We hold that they are entitled to the relief claimed in the petition. We, therefore, allow this petition in terms of prayer clauses 'C' and 'D', which reads thus :

> "C. Issue writ of mandamus or any other writ or direction in the like nature, thereby kindly declare that, the reservation on the property Survey No. 151

area admeasuring 00H 60R out of total land 00H 92R within the limits of respondent No. 2 Municipal Corporation is lapsed.

D. Issue writ of mandamus or any other writ or direction in the like nature, thereby kindly direct to the respondent No. 2 to dereserve the reservation of the site No. 101 for play ground to the extent of Survey No. 151 admeasuring 00H 60R out of total land 00H 92R in view of the government resolution dated 01.06.2020."

[SHAILESH P. BRAHME, J.] **[S. G. MEHARE, J.]**

bsb/Jan. 25