

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5395 OF 2024

1. Shri. Subhash Laxman Shendge
Since deceased by Lrs.

1 (a) Megha Subhash Shendge
Age: 61 yrs., Occ. Agriculture,

1 (b) Shrinivas Subhash Shendge
Age: 37 yrs., Occ. Agriculture,
Both R/o. 12/572, Sudarshan Chowk,
R. P. Road, Ichalkaranji, Tal. Hatkanangale,
Dist. Kolhapur

1 (c) Sneha Yogesh Hawal
Age: 40 yrs., Occ. Agriculture,
No. 1(a) and 1(c) Through, Power of Attorney
Holder No. 1(b) R/o. Ichalkaranji, Tal.
Hatkanangale, Dist. Kolhapur

2. Suresh Shankarrao Mehtre
Age- 72 years, Occ.
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur
Through Power of Attorney Holder Sunil Gajanan
Kamble Age: 66 yrs., Occ. Agriculture, R/o.
Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

3. Ashok Shivling Chougule
Age: 58 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4. Pandurang Mahadev Shendge
Since deceased by Lrs.

4(a) Sudhakar Pandurang Shendge
Age: 53 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(b) Dinesh Pandurang Shendge
Age: 49 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(c) Sheetal Vijay Kolekar
Age: 58 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(d) Vinaya Ganesh Bagade
Age: 57 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(e) Vandana Sandip Malve
Age: 56 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(f) Anjana Santosh Dhokate
Age: 51 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(g) Vedika Sharad Malvade
Age: 51 yrs., Occ. Agriculture,
R/o. Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur

4(b) to 4(g) through Power of Attorney Holder No. ... Petitioners
4(a)

Versus

1. The State of Maharashtra,
Through Secretary, Urban Development Department,
Mantralaya, Mumbai.

2. Directorate of Town Planning,
Maharashtra State, Central Building, Pune – 411 001

3. Assistant Director of Town Planning
Kolhapur Division, Bindu Chowk, Kolhapur.

4. Ichalkaranji Municipal Corporation,
Through Administrator (Commissioner),
Ichalkaranji, Dist. Kolhapur.

5. Home Department,
Government of Maharashtra Through Secretary,
Mantralaya, Mumbai

6. District Superintendents of Police
Kasba Bawada Road, Kolhapur.

... Respondents

Mr. Tejpal Ingale, for the Petitioners.

Mr. Siddheshwar B. Kalel, A.G.P for the Respondent-State.

Mr. Akshay Shinde, (Thr VC) for the Respondent No 4.

Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.

Reserved on : October 6, 2025.

Pronounced on : October 10, 2025.

Uploaded on : October 10, 2025.

JUDGMENT (PER : Sharmila U. Deshmukh, J.)

1. Rule. Rule made returnable forthwith and with consent taken up for final hearing.

2. The Petitioners seeks declaration of lapsing of reservation under Section 127 of the Maharashtra Regional and Town Planning Act, 1966

(for short ***“M.R.T.P Act”***) in respect of subject land bearing Survey No. 524 admeasuring 3600 sq. mtrs at Ichalkaranji, District-Kolhapur reserved for “Police Parade Ground and Quarters” under Reservation Site No. 87 of sanctioned D. P (Revised) of Ichalkaranji City.

3. The case pleaded in the petition is that the Petitioners land bearing Revision Survey No. 524 admeasuring 3600 sq. mtrs came to be reserved for purpose of “Police Parade Ground and Quarters” in the sanctioned Development Plan (Revised) of Ichalkaranji City, which came into force on 1st August, 1981. On 24th December, 1982, the police department which was the acquiring authority, acquired land admeasuring 1-H 64-R from adjoining Revision Survey No. 523 and developed the reservation, however, the subject land i.e. Survey No. 524 was not acquired.

4. On 17th August, 2015, the Petitioners issued purchase notice under Section 127 of the M.R.T. P. Act which was served upon the Respondent Nos. 5 and 6 - acquiring authority. As no steps were taken for acquisition of subject land, on 5th January, 2024, the Petitioners applied for development permission by treating the reservation as having lapsed.

5. On 7th February, 2024, the Respondent No. 4 - Planning Authority declined to grant development permission for want of notification under Section 127(2) of the M.R.T. P. Act. On 12th February, 2024, the Respondent No. 4-Municipal Corporation declared its intention to revise

the development plan for the area under Section 26(1) of M.R.T. P. Act. The Petitioners submitted their objections on 7th March, 2024 pointing out the fact of lapsing of reservation and requesting that no reservation be put on the subject land. As there was no response, the present Petition has been filed seeking direction of lapsing of reservation.

6. Mr. Ingale, learned Counsel appearing for the Petitioners submits that the purchase notice dated 17th August, 2015, under Section 127(2) of the M.R.T. P. Act was duly received on 29th August, 2015 and the statutory period of 24 months expired on 29th August, 2017. He submits that as no steps were taken to acquire the subject land till today the reservation has lapsed and the land would be available for development. He submits that in the absence of notification under Section 127(2) of M.R.T. P. Act, though reservation had lapsed, development permission was not granted to the Petitioners. He would submit that it is settled by the decisions of the Hon'ble Apex Court as well as this Court that where reservation has lapsed, the statutory right conferred upon the owner of the land for development of such land cannot be taken away by putting the land under reservation once again in revised development plan. He draws supports from the following decisions:

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| 1. | <i>Popat Kisan Mhaske vs. Hon'ble Minister for Urban Development</i> ¹ |
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¹ 2018 (2) Mh.L.J 435

2.	<i>Shantaram Shankar Jamsandekar vs. State of Maharashtra</i> ²
3.	<i>Baburao Dhondiba Salokhe vs. Kolhapur Municipal Corporation, Kolhapur</i> ³
4.	<i>Bhavnagar University vs. Palitana Sugar Mills (P) Ltd</i> ⁴
5.	<i>Shrirampur Municipal Council Shrirampur vs. Satyabhamabai Bhimaji Dawkher</i> ⁵

7. Mr. Kalel, learned AGP submits that the subject land was reserved in the development plan of 1981 and subsequently the development plan (part revision) was sanctioned on 5th March, 1999 in which the subject land was included partly in Residential Zone and partly in public semi public zone and was affected by 18 mtr wide Development Plan road. He submits that since the year 1991 the subject land was not under reservation and therefore the purchase notice of 17th August, 2015 was ineffective and there was no necessity to declare and publish notification of lapsing of reservation under Section 127(2) of the M.R.T. P. Act. He submits that the process of hearing objections and suggestions as regards the draft development plan of 2024 is under progress in which the subject land is partly included in residential zone and is partly affected by reservation for municipal purpose, parking and 18 meter wide development plan road. He submits that after submission of draft

2 2015(1) Mh. L.J. 719

3 [2003 (3) Mh.L.J.820

4 (2003) 2 SCC 111

5 (2013) 5 SCC 627

development plan to the State Government, appropriate decision will be taken on merits.

8. Mr. Shinde, learned Counsel appearing for the Respondent No. 4-Ichalkaranji Municipal Corporation would point out to the affidavit dated 2nd December, 2024 filed by the Assistant Director of Town Planning. He would submit that application seeking development permission was received from the Petitioners and the application could not be processed by the planning authority as there was no official gazette published by the State Government under Section 127(2) of MRTP Act. He would submit that under the draft development plan published on 15th February, 2024, the subject land i.e. Survey No. 524 is affected partly by reservation for municipal purpose and parking and partly by reservation of 18 mtr D.P. road to which objections have been submitted by the Petitioners.

9. In rejoinder, Mr. Ingale would submit that in the part revised development plan submitted on 5th March, 1999, the reservation of subject land was not changed but only shown for public and semi public use. He submits that the sanctioned development plan of 1981 is still in force as regards subject land.

10. We have considered the submissions and perused the record.

11. The undisputed position is that the subject land was reserved for

the purpose of “Police Parade Ground and Quarters” in the sanctioned development plan (revised), which came into force on 1st August, 1981. Section 127 of MRTP Act provides that if a land reserved for any purpose in development plan is not acquired by agreement within 10 years or no steps are taken for acquisition within such period, the owner may serve notice on the concerned authority to that effect and if within 24 months from date of service of such notice, if the land is not acquired or no steps are commenced for its acquisition, the reservation shall be deemed to have lapsed.

12. Upon failure of the Respondents to take steps for acquisition of the land within the statutorily prescribed period, purchase notice was issued by the Petitioners on 17th August, 2015 which was duly served upon the Acquiring Authority on 29th August, 2015. However, no steps were taken to acquire the land within the period of 24 months as prescribed under Section 127 of the M.R.T. P. Act. There was no response to the purchase notice informing the Petitioners that under the revised development plan of 1999, the subject land was no longer under reservation. The stand taken in reply Affidavit filed by the Respondent Nos. 1 to 3 that the subject land was not under reservation in the sanctioned development plan (part revision) which came into force on 7th May, 1999 is inconsistent with the stand taken by the Respondent No 4-Ichalkaranji

Municipal Corporation admitting that the development permission sought by the Petitioners on 31st January, 2024 was refused on the ground that notification under Section 127(2) of MRTP Act had not been issued as regards lapsing of reservation. The reply Affidavit of the Respondent Nos. 1 to 3 merely annexes the notification dated 5th March, 1999 issued under Section 31(1) of the MRTP Act without demonstrating that the subject land was free from reservation under the part revised Development Plan of 1999. The reply Affidavit of the Municipal Corporation does not state that the subject land was free from reservation in the part revised sanctioned development plan of the year 1999. The planning authorities have therefore treated the subject land as continuing to be reserved under the sanctioned development plan of the year 1981.

13. The Petitioners have been deprived of their ownership rights of development of their property since the year 1981. There is total inaction on part of the Respondents to acquire the land within the period prescribed under Section 127 of MRTP Act or to apprise the Petitioners about the lapsing of reservation. The authorities cannot resist the lapsing of reservation by reason of legal consequences flowing from Section 127 of MRTP Act on ground of the reservation imposed under the draft development plan of year 2024. The Petitioners had applied for development permission which if, would have been granted by the

Planning Authority, the subject property would have been developed and would no longer be available for reservation for public purpose. The Respondent No. 4 assumed the continuation of reservation under the sanctioned development plan of the year 1981 while declining the development permission and it is unacceptable that the purchase notice of the year 2015 should be treated as invalid. Even accepting that in the part revised sanctioned development plan of the year 1999, the subject land was not under reservation, the net effect is that the subject land was free from reservation and available for development.

14. By virtue of draft development plan published on 15th February, 2024, it is contended that the subject land is again reserved for municipal purpose and parking and 18 meters development plan road, which constitutes revival of lapsed reservation. In that context it would be apposite to refer to the decision of the Hon'ble Apex Court in the case of *Bhavnagar University vs Palitana Sugar Mill (P) Ltd* (supra), where the Hon'ble Apex Court considered the issue whether the inaction to acquire the lands under the relevant statutory provisions within the prescribed period, the same stood de-designated in view of issuance of draft revised plan and thereby the term of 10 years stood extended. The relevant enactment in that case was Gujarat Town Planning and Urban Development Act, 1976 which is pari materia with MRTP Act. The

Hon'ble Apex Court held in paragraph 20, 21, 22, 25, 26, 27, 28, 29 and 30 as under:

“20. Sub-section (2) of Section 17 reads as under:

“17. (2) Where the draft development plan submitted by an area development authority or, as the case may be, the authorized officer contains any proposals for the reservation of any land for a purpose specified in clause (b) or clause (n) or clause (o) of sub-section (2) of Section 12 and such land does not vest in the area development authority, the State Government shall not include the said reservation in the development plan, unless it is satisfied that such authority would acquire the land, whether by agreement or compulsory acquisition, within ten years from the date on which the final development plan comes into force.”

21. Under Section 18, the State Government has been empowered even to amend the final development plan, by extending or reducing its area. Under Section 19, the State Government is empowered to vary the final development plan, but, only after inviting suggestions and objections in the manner laid down therein. Section 20 provides for acquisition of land designated or reserved for specified purposes mentioned in Section 12. As the said provision is material for this case, the same is reproduced hereunder:

“20. Acquisition of land.—(1) The area development authority or any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), clause (f), clause (k), clause (n) or clause (o) of sub-section (2) of Section 12, may acquire the land either by agreement or under the provisions of the Land Acquisition Act, 1894.

(2) If the land referred to in sub-section (1) is not acquired by agreement within a period of ten years from the date of the coming into force of the final development plan or if proceedings under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisition, the designation of the land as aforesaid shall be deemed to have lapsed.”

22. Section 21 of the Act provides for the revision of development

plan and reads as under:

“21. Revision of development plan.—At least once in ten years from the date on which a final development plan comes into force, the area development authority shall revise the development plan after carrying out, if necessary, a fresh survey and the provisions of Sections 9 to 20, shall, so far as may be, apply to such revision.”

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfil the statutory purpose and not to frustrate it.

27. An owner of a property, subject to reasonable restrictions which may be imposed by the legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under the statute would not be presumed.

28. In Legislation and Interpretation by Jagdish Swarup, at p. 479, it is stated:

“... We ought not to assume without the clearest language that the legislature intends to destroy common law rights. The presumption is that the legislature intends not to interfere with any legal rights or any legitimate expectations of any person whatsoever. Rights, whether private or public, cannot be taken away or hampered by implication from the language employed in a statute, unless the legislature clearly and distinctly authorises the doing of a thing which is physically inconsistent with the continuance of an existing right. In order to take away the right it is not sufficient to show that the thing sanctioned in the Act, if done, will of a sheer physical necessity, put an end to that right; it must also be shown that the legislature has authorised the thing to be done at all events, and irrespective of its possible interference with existing rights. An Act should be so interpreted as in no respect to interfere with or prejudice a clear private right

or title unless that private right or title is taken away per directum....”

29. By reason of the provision of the said Act, a reasonable restriction has been imposed upon the owner on the user of his property. In terms of Section 12 of the said Act, town planning is contemplated through preparation of draft development plan which contains not only proposals for designating certain area for residential, industrial, commercial, agricultural or recreational purposes but also for the purposes for maintaining environment and ecological balance by setting up zoological gardens, green belts, natural reserves and sanctuaries. In terms of such development plan reservation of certain land for public use is also provided. From the relevant provisions of the said Act, as noticed hereinbefore, it is absolutely clear that in terms thereof the State Government is made the ultimate authority to publish a development plan, inter alia, providing for designation or reservation of the land. The State Government while arriving at its conclusion as regards public interest involved in the matter is required to arrive at its satisfaction on objective basis as provided in terms of sub-section (2) of Section 17 to the effect that the lands in respect whereof reservation is proposed to be made can be acquired for the fulfilment of the object therefor either by agreement or compulsory acquisition within the period specified therein. It has not been disputed before us nor is it necessary to consider in the facts and circumstances of this case as to whether establishment of the educational institutions or universities would be covered by the provisions of sub-section (2) of Section 12 thereof.

30. Sections 20 and 21 of the said Act are required to be read conjunctively with Sections 12 and 17. We may notice that clause (k) of sub-section (2) of Section 12 does not find mention in sub-section (2) of Section 17 as regards proposed reservation for the State and other statutory authorities but clauses (n) and (b) of sub-section (2) of Section 12 are specifically mentioned in Section 20. In Section 20, provisions of clauses (b), (d), (f), (k) and (o) of sub-section (2) of Section 12 have specifically been mentioned. The High Court has proceeded on the basis that the words “designation” or “reservation” are interchangeable for the purpose of the Act. The said finding of the High Court is not in question.”

15. The Hon’ble Apex Court has thus held that in exercise of its

statutory powers to revise the development plan, the rights of the owners accrued in terms of Section 127 are not taken away. It held that only because draft revised development plan or final revised development plan is made would not automatically result in revival of reservation which has lapsed in terms of Section 127 of MRTP Act.

16. Considering the law enunciated by the Hon'ble Apex Court which was followed by Hon'ble Division Bench of this Court in *Baburao Dhondiba Salokhe vs Kolhapur Municipal Corporation* (supra), in our considered view, the Petition deserves to succeed and is hereby allowed.

17. Accordingly, we hold that the reservation in respect of the Petitioner's land bearing Survey No. 524 admeasuring 3600 sq. mtrs at Ichalkaranji reserved for Police Parade Ground and Quarters under reservation Site No. 87 has lapsed under Section 127 of the M. R. T. P. Act and the land is available to the Petitioners for purpose of development.

18. The Respondent No. 1 is directed to issue necessary notification under Section 127 (2) of the M. R. T. P. Act and publish such order in the official gazette of the State Government forthwith.

19. The Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]

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