

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6562 OF 2024

- | | | | |
|----|---|---|-----------------|
| 1. | Dr. Dattatray Baburao Kungulwar |] | |
| | Age 59 years, Occ. Doctor, |] | |
| | R/o. 'Indradhanu' Saras Crane Building |] | |
| | (C Wing), 11 th Floor, Plot No.1101, |] | |
| | Vishnu Mill Compound, Laxmi Peth, |] | |
| | Solapur – 413 001. |] | |
| 2. | Mr. Eknath Baburao Kungulwar |] | |
| | Age 64 years, Occ. Business, |] | |
| | R/o. 202, Guruwar Peth, Solapur. |] | |
| 3. | Smt. Kalavathi Baburao Kungulwar |] | |
| | Age 87 years, Occ. Household, |] | |
| | R/o. 202, Guruwar Peth, Solapur. |] | |
| 4. | Mr. Bhanudas Baburao Kungulwar |] | |
| | Age 61 years, Occ. Business, |] | |
| | R/o. 202, Guruwar Peth, Solapur. |] | ... Petitioners |
| | <u>Versus</u> | | |
| 1. | The State of Maharashtra |] | |
| | Through the Principal Secretary, |] | |
| | Urban Development Department, |] | |
| | Government of Maharashtra, |] | |
| | Mantralaya, Mumbai – 400 032. |] | |
| 2. | The Solapur Municipal Corporation |] | |
| | Indrabhuvan, Solapur – 413 001. |] | |
| | Through its Municipal Commissioner. |] | ... Respondents |

Dr. Ramdas Sabban for the Petitioner.

Mr. R.P. Kadam, A.G.P. for the Respondent No.1-State.

Mr. Anand S. Kulkarni (Through V.C.) for the Respondent No.2.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : 25th November 2025.

JUDGMENT (Per : Ajit B. Kadethankar, J.)

1. Rule. Rule returnable forthwith and heard finally with the consent of parties.

2. **Subject-matter** :- By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction to the Respondents, to declare that *the reservation of (i) District Center (Reservation Site No. 13/37), area admeasuring 13,800 sq. mtrs. (out of the total land Reserved area admeasuring 35,000 sq. mtrs.), situated at Survey No. 167/2B, Kasbe Solapur, Taluka North Solapur, District Solapur AND (ii) East – West 30 mts. D.P Road purposes, area admeasuring 3,674 sq.mtrs., situated at Survey No. 167/2B, Kasbe Solapur, Taluka North Solapur, District Solapur, [for short, “writ land”] have lapsed as per Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”).*

3. Facts in brief:-

- i) The Development Plan of Solapur for the year 1997-2017 came into force from 15th December 2004 and the writ land was reserved as for the purpose of Burial Ground and Cremation Ground.
- ii) The 10-year statutory period for acquiring the writ land expired in 2014.
- iii) Petitioners are the owners of the Subject-matter Writ Land. Purchase Notice was issued by the Petitioners on 7th February 2022.
- iv) The statutory period of two years after issuance of the Purchase Notice under Section 127 of MRTP Act for acquisition of the writ land expired on 6th February 2024. *(The 12 Months period is now amended to 24 months since after 2015)*
- v) Admittedly, no steps for acquisition of the writ land have been taken as contemplated in law by the Respondents.

4. Petitioner's arguments:

4.1 Dr. Ramdas Sabban, learned counsel for the Petitioner submitted that, the Petitioner has not yet learnt about any reservation post purchase notice. He would submit that this Court has held that, even otherwise, the reservation of the writ land for "fair ground" in any Revised Development Plan would be beyond the expiration of the one-

year period of the Purchase Notice and therefore, the same would be illegal and bad in law.

4.2 Mr. Sabban would further submit that the Petitioner had submitted all the documents, sought by the Respondents with its notice, a copy of which is also annexed at page No.20 to the present Writ Petition. He would submit that it can not be said that the Petitioner has not given a description of the writ land in the purchase notice.

4.3 In support of his contentions, he relied on the following decisions :

- 1) Girnar Traders v/s. State of Maharashtra¹
- 2) Shri Prakash R. Gupta v/s. Lonavala Municipal Council²
- 3) Shrirampur Municipal Council v/s. Satyabhamabai Bhimaji Dawkher and Ors.³ and
- 4) Godrej and Boyce Manufacturing Company Ltd. v/s. State of Maharashtra⁴

4.4 Mr. Sabban, learned counsel for the Petitioner would submit that the Corporation-Authorities vide letter dated 11th March 2022 asked the Petitioner to accept TDR, RCC & FSI by submitting some more documents. He would further submit that vide letters dated 27th May 2022 and 11th October 2023 the Petitioner clearly declined to accept the

1 (2007) 7 SCC 555

2 (2009) 1 SCC 514

3 (2013) 5 SCC 627

4 (2015) 11 SCC 554

TDR, RCC & FSI and demanded the compensation. He would further submit that vide letter dated 11th October 2023, the Petitioner reminded the Respondent-Corporation that the necessary documents pertaining to the writ land were already submitted together with the purchase notice.

5. Respondent's arguments :-

5.1 *Per contra*, Mr. Kulkarni, learned counsel appearing for the Respondent No.2-Corporation submitted that, Mr. Manish J. Bhishnurkar, Deputy Director Town Planning, Solapur Municipal Corporation, Solapur, have filed an Affidavit-in-Reply dated 24th September 2024 to oppose the prayers made in the Writ Petition.

5.2 He would submit that in the said Affidavit-in-Reply, the Respondent-Authorities have clearly mentioned that the Petitioner did not give correct description of the writ land nor had annexed requisite documents together with the purchase notice and therefore it cannot be said to be a notice as contemplated under Section 127 of the MRTP Act. He accordingly submitted that, the Petition is thus liable to be dismissed.

5.3 It also reveals from the reply Affidavit that the Respondent No.2 offered TDR, RCC & FSI to the Petitioner in leu of compensation.

5.4 Mr. Kadam, learned A.G.P appearing for Respondent No. 1, supported the submissions of Advocate Mr. Kulkarni and contended that the Petition is devoid of merit and therefore deserves to be dismissed.

6. **Consideration and discussion:**

6.1 We have heard the counsel for the parties and perused the entire record and proceedings before us. In view of the aforesaid factual position, the following issues arise for our consideration :

- (I) *Whether the Purchase Notice is defective for lack of documents and for want of detailed description of the writ land, as contemplated under Section 127 of the MRTP Act ?*
- (II) *Whether the offer of TDR, RCC & FSI by the Respondent No.2 override the scheme of Section 127 of the MRTP Act ?*

6.2 In view of the fact that the entire issue wriggles around Section 127 of the MRTP Act, for the sake of convenience, we reproduce the same hereunder for ready reference:

“(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, along with 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*.]”

6.3 The period of 12 months has been substituted by 24 months by an amendment that came into effect from 29th August 2015. Therefore we apply the test of 24 months for the purpose of the present case.

6.4 It is held by this Court that the submission of documents, showing title or interest in the said land along with the Purchase Notice to the concerned Authority as per Section 127(1) is intended to facilitate clear transfer of title from the owner or the person interested in the land upon payment of the consideration to the claimant within the stipulated period of 12/24 months as the case may be.

6.5 The law is absolutely clear that after the expiry of the stipulated period 12/24 months (as the case may be) under Section 127 (1) of service of Purchase Notice, if the land is not acquired or no steps as contemplated under the section are commenced for its acquisition, then thereupon the land is deemed to be released from such reservation. Under such circumstances the concerned authority cannot raise a defence that the Purchase Notice was defective as it was not accompanied by the documents showing his title or interest in the said land.

6.6 In other words, the concerned Authority or State cannot take up a defence of a defective Purchase Notice for want of documents showing title or interest in the said lands, when it has failed to take the steps to acquire the property within the stipulated period as contemplated by the MRTP Act.

6.7 This is so because the land or property is being released to the owner, whosoever it may be. Obviously, there is no “transfer” of right, title or interest in the reserved land upon “release” from reservation, allotment or designation. If there is a dispute regarding the ownership of the land or property, the authority is not concerned; and that issue has to be decided by the jurisdictional Civil Court. However such is not the case in hand. Its a clear property as there is no dispute with regards to the title of the Writ Land.

6.8 Therefore, the concerned Authority cannot claim the Purchase Notice to be defective, in defence to resist or deny releasing the

land or property from such reservation, to become available to the owner for the purpose of development or otherwise as permissible.

6.9 If Section 127 of the MRTP Act is not implemented scrupulously but by giving unjust and irrational reason to release the reservation, the owners or the person having interest in the property will not be able to claim lapsing of reservation if the steps for acquisition could not be concluded for want of documents of title within the statutory period of one/two years as the case may be.

6.10 In *Dina Sohrab Hakim and Another v/s. State of Maharashtra*⁵ this Court held that, Notice under Section 127 of the MRTP Act does not contemplate an investigation into title by the concerned Authority, nor can the concerned Authority prevent running of time if there is a valid Notice. Further it held that, the Executive Engineer of the Municipal Corporation was not justified in addressing the letter by which he required the owners to furnish information regarding their title, ownership, and particulars of the tenants, the nature and user of tenements and the total areas occupied by them. It held that, the Corporation had the requisite information in their records or that it had access to all land records following the judgment of the Supreme Court in *Municipal Corporation of Greater Bombay v/s Dr. Hakimwadi Tenants' Association and Others*⁶.

⁵ 2002 (2) Mh.L.J. 851

⁶ 1988 (Supp) SCC 55

6.11 In *M/s C. V. Shah v/s. The State of Maharashtra and Others*⁷ the Court held that, the object of the Notice under Section 127 is to inform the Authority to acquire the land which is reserved, designated or allotted in the final development plan. It held that the notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms and that is not prescribed under Section 127. If Notice describes the land with sufficient clarity and requires the concerned Authority to acquire or compulsorily purchase the land which is reserved/designated/allotted then it would meet sufficient compliance.

6.12 In *Popat Kisan Mhaske & Anr. v/s. Hon'ble Minister for Urban Development, Mumbai*⁸ this Court has held that, non-issuance of the requisite documents together with Purchase Notice cannot invalidate the Purchase Notice.

6.13 In *Chinmay Gurunath Parale v/s. State of Maharashtra and others*⁹ this Court held that, non-submission of the title documents along with the Purchase Notice would not render the Purchase Notice invalid.

7 2005 SC OnLine Bom 542

8 2018 (2) Mh.L.J. 435

9 2023 SCC OnLine Bom 827

6.14 Suffice to note, it is not the case of the Respondents that the writ land was reserved after expiry of the statutory period of two years after issuance of Purchase Notice or in the intervening period. However, even in such cases this Court in the case of *Santu Sukhdeo Jaibhave v/s. Nashik Municipal Corporation*¹⁰ has held that, the publication of the Draft Revised Plan prior to the issuance of Purchase Notice cannot have an effect of continuing the reservation on account of the same being sanctioned subsequently.

7. **Conclusion :**

7.1 In the present case, the Purchase Notice gave a clear description of the land that was to be released and thus the contention that the Notice was vague for want of particulars cannot be accepted. Moreover, the Purchase Notice dated 7th February 2022 is annexed at page 20 of the Writ Petition compilation. It shows that the 7/12 extract, Part Plan, Demarcation Plan, Zone Certificate etc. were annexed to the Purchase Notice. The Respondents in their Affidavit-in-Reply have clearly admitted that they received the Purchase Notice. Under these circumstances, we absolutely do not agree with the contentions of the Respondents that there was no detailed description of the writ land offered by the Petitioner.

10 2022 SCC OnLine Bom 5273

Case in hand is squarely covered by the exhaustive judgment of this court at Bombay rendered in the **Writ Petition No.15701 of 2022 [Anant Rajegaonkar & another V/s. State of Maharashtra¹¹]**.

7.2 True that upon receipt of the Purchase Notice dated 7th February 2022 the Respondent-Corporation asked the Petitioner to accept the TDR, RCC & FSI by submitting more documents, however the Petitioner has flatly declined to accept such offer. We are of the view that such offer or suggestion by the Corporation will not frustrate the effect and scheme under Section 127 of the MRTP Act. The provision for lapsing of reservation would continue to operate under Section 127 of the Act, despite there being any offer made by the Respondent-Corporation for TDR, RCC & FSI as the case may be. The right of a party seeking lapsing of reservation u/s 127 of the MRTP Act would neither be delayed nor would be frustrated if such an offer is made by the Corporation.

7.3 Final Order :

Hence, we find that the Petitioner has successfully made out a case under Section 127 of the MRTP Act and the Writ Petition accordingly deserves to be allowed as follows :-

11 2025 SCC OnLine Bom 1855

- (i) The Respondent Authorities shall take steps to notify all concerned Authorities about the lapsing of reservation u/s 127 of the MRTP Act, of the Subject-matter “Writ Land” within a period of six weeks from the date of the Order.
- (ii) The Respondent Authorities shall notify lapse of reservation over the Subject-matter Writ Land by an Order to be published in the Official Gazette as required by Section 127 (2) of the MRTP Act, within a period of 12 weeks from the date of this Order, and
- (iii) The Respondent Authorities shall release the Subject-matter Writ land from the said reservation, allotment or designation and shall make available the same to the Petitioner for the purpose of development or otherwise.
- (iv) Upon such discharge and release from reservation u/s 127 of the MRTP Act, the R.No. 2 shall accord permission to the Petitioner for development of the Subject-matter Writ Land in accordance with the law.
- (v) Rule is made absolute in the aforesaid terms.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

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