

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 10618 OF 2022

- | | | | |
|----|----------------------------------|---|-----------------|
| 1. | Babubhai Shankarlal Mehta |] | |
| | Age : 65 yrs., Occ. : Business |] | |
| 2. | Giridharilal Shankarlal Mehta |] | |
| | Age : 68 yrs., Occ. : Business |] | |
| 3. | Gulabidevi Babubhai Mehta |] | |
| | Age : 61 yrs., Occ. : Housewife |] | |
| 4. | Nandadevi Mahavirkumar Mehta |] | |
| | Age : 55 yrs., Occ. : Housewife |] | |
| 5. | Mehulkumar Khateshi Savla |] | |
| | Age : 65 yrs., Occ. : Business |] | |
| 6. | Vimaladevi Ashokkumar Mehta |] | |
| | Age : 57 yrs., Occ. : Housewife |] | |
| 7. | Shaileshkumar Khateshi Savla |] | |
| | Age : 61 yrs., Occ. : Business |] | |
| 8. | Hulasidevi Giridharlal Mehta |] | |
| | Age : 65 yrs., Occ. : Housewife |] | |
| | All having address of 79, Nakoda |] | |
| | Group Office, Jodbhavi Peth, |] | |
| | Solapur – 413 001. |] | ... Petitioners |

V/s.

- | | | |
|----|--------------------------------|---|
| 1. | State of Maharashtra |] |
| | Through Chief Secretary, |] |
| | Urban Development Department, |] |
| | Mantralaya, Fort, Mumbai – 52. |] |

- | | | | |
|----|--|---|----------------|
| 2. | Solapur Municipal Corporation, |] | |
| | Through its Commissioner |] | |
| | Indra Bhuvan, Railway Lines, |] | |
| | Solapur – 413 001. |] | |
| 3. | The Assistant Director of Town Planning, |] | |
| | 1 st Floor, Above ICICI Bank, Park Chowk, |] | |
| | Solapur – 413 001. |] | ...Respondents |

Mr. Pradeep Salgar for Petitioners.

Mr. A.A. Alaspurkar, A.G.P for Respondent Nos.1 & 3-State.

Mr. Samir Kumbhakoni a/w. Ms. Anjali Shaw & Mr. Chaitanya Joshi for Respondent No.2.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 10th February 2025.

PRONOUNCED ON : 24th February 2025.

JUDGMENT (Per : A. S. GADKARI, J.) :-

1) By this Petition under Article 226 of the Constitution of India, the Petitioners have prayed for writ of mandamus or any other writ or Order or direction in the nature of mandamus thereby declaring that the Reservation Nos. 11/53 and 11/54 imposed on the property of Petitioners bearing Gat No. 105/2+3 situated at Village Bale, Taluka North Solapur, District Solapur (*for short, "suit property"*) and within the limits of Solapur

Municipal Corporation has lapsed, as contemplated under the provisions of Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (*for short, "MRTP Act"*) and for a direction to the Respondent No.1, State, to publish a Notification under Section 127(2) of the MRTP Act, notifying that, the Reservation Nos. 11/53 and 11/54 on the said suit property has lapsed.

2) Heard Mr. Salgar, learned Advocate for Petitioners, Mr. Alaspurkar, learned A.G.P. for Respondent Nos. 1 & 3 – State and Mr. Kumbhakoni, learned Advocate for Respondent No. 2 - Corporation. Perused entire record.

3) Shorn of unnecessary details, the brief facts giving rise to the present Petition can be summarized as under :-

3.1) The Petitioners are owners of a piece or parcel of land bearing Survey No. 105/2+3, admeasuring approximately 44,300 sq.mtrs., situated at Village Bale, Taluka North Solapur, District Solapur and within the territorial jurisdiction of Solapur Municipal Corporation i.e. the Respondent No.2 herein. The suit property was an agricultural land, initially situated outside the municipal limits of Respondent No.2. The municipal limits of Respondent No.2 were subsequently increased and the suit property is incorporated into the municipal limits of Respondent No.2.

3.2) The Respondent No.2 is the Planning Authority, as defined under Section 2(19) of the MRTP Act. The Respondent No.2 being the Planning Authority published a Notice for Development Plan on 23rd March 1999

under Section 26 of the MRTP Act, whereby the portion of the suit property was shown reserved for the purpose of primary school and high school being Reservation Nos. 11/53 and 11/54 respectively.

3.3) The Petitioners were intending to develop suit property and therefore filed an application with the Respondent No.2 under Section 44 of the MRTP Act seeking the development permission and submitted the proposed layout plan. The Respondent No.2 accordingly granted development permission to the Petitioners of the suit property, as contemplated under Section 45 of the MRTP Act, by imposing various conditions, as more specifically stated in the said development permission.

3.4) The Petitioners thereafter on 30th March 2000 filed an application with the District Collector of Solapur seeking permission to convert the suit property for non agricultural use, as it was one of the conditions imposed by the Respondent No.2 in the said development permission. The Collector of Solapur by its Order dated 6th June 2000 granted permission to the Petitioners to use the suit land for the purpose of non agricultural use of 43627.25 sq.mtrs for residential purpose and 672.75 sq.mtrs. for commercial purpose.

3.5) The Respondent No.1 published a Notification dated 28th October 2004 as contemplated under Section 31 of the MRTP Act and sanctioned the Draft Development Plan for the City of Solapur for the years 1997 to 2017. The said Development Plan was brought into effect from 15th

December 2004 including the reservation on the suit property, as mentioned therein.

3.6) On an application filed by the Petitioners with the Respondent No.2 to issue a Zone Certificate with respect to the suit property, the Respondent No.2 issued a Certificate dated 23rd August 2016 stating that, the portion of the suit property is reserved for high school and primary school bearing Reservation Nos. 11/53 and 11/54 respectively.

3.7) As the Respondent No.2 being Planning Authority did not take any effective steps in acquiring property of the Petitioners within a period of 10 years from the date of coming into effect the sanctioned plan as contemplated under Section 127(1) of the MRTP Act, the Petitioners issued a Notice dated 14th October 2019 under Section 127 of the MRTP Act through their Advocate to the Respondent No.2. Along with the said Notice, the Petitioners also enclosed all the necessary and relevant documents for the consideration of Respondent No.2. As per the record, the said Notice was duly served on the Respondent No.2 on 17th October 2019.

3.8) In response to the notice dated 14th October 2019, the Assistant Director Town Planning (ADTP) of Respondent No.2, addressed a communication dated 22nd November 2019. It is stated therein that, as mentioned in the notice by the Petitioners, no documents were found annexed therewith. The Petitioners were therefore called upon to submit the concerned documents, a list whereof was mentioned in the said

communication. It was further stated that, as per the prevailing Development Control Rules, against the reservation on the suit property the Petitioners were entitled for TDR or FSI towards compensation and directed the Petitioners to submit an application in proper format to avail the benefit of TDR/FSI.

3.9) The Petitioner No.1 on behalf of all the Petitioners replied the said letter dated 22nd November 2019 vide his reply dated 21st January 2020. The ADTP of Respondent No.2 was specifically informed that, the Petitioners were not interested in accepting the FSI or TDR but were interested only in the monetary compensation payable as contemplated under the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (*for short, "L.A. Act, 2013"*). It be noted here that, vide the said letter dated 21st January 2020 the Petitioners had specifically denied the offer of the Respondent No.2 for accepting the FSI or TDR towards compensation for the proposed acquisition of the suit property.

3.10) By a subsequent communication dated 5th February 2020 the ADTP of Respondent No.2 called upon the Petitioners to submit documents as informed in communication dated 22nd November 2019. The Petitioners vide their reply dated 6th October 2021 again submitted all the necessary and relevant documents to the ADTP of Respondent No.2. As the Respondent No.2 did not take any effective steps for acquisition of the suit property and to pay the compensation of it, after a lapse of more than 24 months from the

date of issuance of notice dated 14th October 2021, present Petition is filed on 10th August 2022.

4) Mr. Kalyan A. Jadhav, Assistant Director of Town Planning, Solapur has filed his reply dated 3rd April 2024 to the Petition. Most of the facts mentioned hereinabove are admitted in the said Affidavit. In para No.4 thereof, it is clarified that, the Petitioners failed to consider the fact that the Respondent No.3 herein is a different Authority than the ADTP of Respondent No.2, by whom the letter dated 22nd November 2019 is addressed to the Petitioner. It is categorically averred that, the Respondent No.2 i.e. the Solapur Municipal Corporation is the appropriate Authority for acquisition of the suit property and the Respondent Nos.1 & 3 have no role and power with respect to the acquisition of the said land.

5) Record clearly discloses that, despite sufficient opportunity the Respondent No.2 has not filed any reply to the Petition. However, Mr. Kumbhakoni, learned counsel for Respondent No.2 made a feeble attempt in defending the Respondent No.2. He submitted that, to the notice dated 14th October 2019 the Petitioners did not annex necessary documents, though stated therein and therefore in its reply dated 22nd November 2019 the concerned Authority of Respondent No.2 has specifically stated that, though it received the notice under Section 127 of the MRTP Act, no documents were found annexed therewith. That, it is the reason the proposal of the Petitioners in furtherance of notice under Section 127 of the MRTP Act could

not be scrutinized and/or taken to its logical end. However, he could not answer and fairly so, as to what steps were taken by the Respondent No.2 after the Petitioners again submitted complete set of documents in furtherance of the communication dated 21st January 2020 with its reply dated 6th October 2021. He however requested this Court to dismiss the Petition.

6) Record indicates that, with its notice dated 14th October 2019 issued under Section 127 of the MRTP Act, the Petitioners had annexed all the necessary and relevant documents for the consideration of the Respondent No.2. Despite service of notice upon Respondent No.2 on 17th October 2019 the Respondent No.2 did not take any effective steps for acquisition of the suit property. The statutory period as contemplated under Section 127 of the MRTP Act of 24 months came to an end on 16th October 2021. Record clearly reveals that, except indulging into issuing redundant correspondence with the Petitioners, the Respondent No.2 did not take any effective steps for acquisition of the suit property.

7) Despite increasing the period from 6 to 24 months from the date of service of the purchase notice under Section 127(1) of the MRTP Act, the Respondent No.2 has failed to take any effective steps to acquire the suit property. Perusal of record thus clearly discloses that, the Respondent No.2 has failed to take any effective steps to acquire the land of the Petitioners within the stipulated period, as contemplated under the provisions of the

MRTP Act.

8) The Hon'ble Supreme Court in the case of *Girnar Traders Vs. State of Maharashtra & Others*, reported in (2007) 7 SCC 555, in para Nos. 54 to 58 has held as under :-

54. *When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay vs. Dr. Hakimwadi Tenants' Assn., (1988 Supp SCC 55). If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the*

land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of “eminent domain”. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated

should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. *It may also be noted that the legislature while enacting Section 127 has deliberately used the word “steps”(in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.*

58. *The MRTP Act does not contain any reference to Section 4 or Section 5-A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5-A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.*

9) The Hon'ble Supreme Court in the case of *Shrirampur Municipal Council, Shrirampur Vs. Satyabhamabai Bhimaji Dawkher & Others*, reported in (2013) 5 SCC 627, in para Nos.42, 43 & 46 has held as under :-

42. *We are further of the view that the majority in Girnar Traders (2) Vs. State of Maharashtra, (2007) 7 SCC 555, had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.*
43. *The expression “no steps as aforesaid” used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilized for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why time-limit of ten years has been prescribed in Section 31(5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not*

commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution.

46. As a sequel to the above discussion, we hold that the majority judgment in Girnar Traders (2) lays down correct law and does not require reconsideration by a larger Bench. We further hold that the orders impugned in these appeals are legally correct and do not call for interference by this Court. The appeals are accordingly dismissed.

10) After applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases to the case in hand, we are of the considered view that, the Petition deserves to be allowed in terms of prayer clauses (a) & (b). The Petition is accordingly allowed and Rule is made absolute in terms of prayer clauses (a) & (b).

11) The State Government to notify the lapsing of reservation of the Petitioner's land by publishing it in the Official Gazette, as per Section 127(2) of the MRTP Act within a period of six weeks from the date of uploading of the present Order on the Official website of the High Court of Bombay.

12) It is clarified that, the Petitioners will be entitled to proceed with the development of the property and the Respondents will not delay the granting of permissions as the notification in the Official Gazette is merely a ministerial act, as held by the co-ordinate Bench of this Court in the case of *Arun Motiram Nimkar Vs. Municipal Corporation of City of Amravati & Ors.*, reported in 2013 SCC OnLine 739 : (2013) 5 Bom CR 546.

13) All the concerned to act on an authenticated copy of thus Judgment.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

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